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Welsh Government

White Paper

Legislative proposals for additional learning needs

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Action required: Responses by 25 July 2014

Legislative proposals for additional learning needs

Overview	<p>This consultation document seeks views on proposals to introduce a new legislative framework for supporting children and young people with additional learning needs. This will replace existing legislation surrounding special educational needs and the assessment of children and young people with learning difficulties and/or disabilities in post-16 education and training.</p>
How to respond	<p>Responses to this consultation should be e-mailed/posted to the address below to arrive by 25 July 2014 at the latest. Please insert your principal interest in this consultation in the subject line of your e-mail (e.g. parent/carer, child or young person with SEN, teacher, speech and language therapist, etc.) when you respond.</p>
Further information and related documents	<p>Large print, Braille and alternate language versions of this document are available on request.</p> <p>The consultation documents can be accessed from the Welsh Government's website at www.wales.gov.uk/consultations</p> <p><i>Forward in partnership for children and young people with additional needs (2012)</i> www.wales.gov.uk/consultations/education/senframeworkconsultation/?lang=en</p> <p>A summary of discussions from a series of workshops held with stakeholders in September and October 2013 can be accessed from the Welsh Government website at http://wales.gov.uk/topics/educationandskills/schoolshome/curriculuminwales/additionaleducationalneeds/additional-learning-needs-reform/?lang=en</p> <p>Reports on the Additional Learning Needs Pilot can be accessed from our website at www.new.wales.gov.uk/statistics-and-research/programme-action-research-additional-learning-needs-pilot/?lang=en</p> <p><i>Special Educational Needs Code of Practice for Wales (2004)</i> http://learning.wales.gov.uk/resources/special-education-needs-code-of-practice/?lang=en</p>
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**Data
protection****How the views and information you give us will be used**

Any response you send us will be seen in full by Welsh Government staff dealing with the issues which this consultation is about. It may also be seen by other Welsh Government staff to help them plan future consultations.

The Welsh Government intends to publish a summary of the responses to this document. We may also publish responses in full. Normally, the name and address (or part of the address) of the person or organisation who sent the response are published with the response. This helps to show that the consultation was carried out properly. If you do not want your name or address published, please tell us this in writing when you send your response. We will then blank them out.

Names or addresses we blank out might still get published later, though we do not think this would happen very often. The Freedom of Information Act 2000 and the Environmental Information Regulations 2004 allow the public to ask to see information held by many public bodies, including the Welsh Government. This includes information which has not been published. However, the law also allows us to withhold information in some circumstances. If anyone asks to see information we have withheld, we will have to decide whether to release it or not. If someone has asked for their name and address not to be published, that is an important fact we would take into account. However, there might sometimes be important reasons why we would have to reveal someone's name and address, even though they have asked for them not to be published. We would get in touch with the person and ask their views before we finally decided to reveal the information.

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Ministerial foreword

Every child and young person deserves to be provided with the very best opportunity to succeed. Children and young people who have special educational needs (SEN) face particular barriers to accessing opportunities and fulfilling their potential. However, if appropriate support is provided from childhood, many of these barriers can be overcome and should not prevent children and young people from leading a fulfilling adolescence and adulthood. Supporting children and young people with special educational needs will also be important to our tackling poverty agenda. Pupils eligible for Free School Meals are overrepresented amongst learners with SEN. Our Tackling Poverty Action Plan recognises the importance of supporting pupils from poorer backgrounds to achieve better outcomes, thereby reducing the likelihood of children living in poverty becoming adults living in poverty.

Today's system for supporting children with SEN is based on a model introduced more than 30 years ago that is no longer fit for purpose. 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 identified that the current system is complex, bewildering and adversarial. The evidence points to an assessment process which is inefficient, bureaucratic and costly, as well as insufficiently child-centred or user-friendly. Needs are sometimes identified late and interventions are not planned or implemented in a timely or effective way. Families tell us that they feel they have to battle at each stage of the system to get the right support for their child, and they don't know where to turn for advice and information.

This White Paper forms an important step in meeting our commitment to reforming the process for children and young people with additional learning needs (ALN) in either a school or Further Education setting. It outlines the changes to policy and primary legislation that we believe are necessary to reform effectively the current framework for SEN and deliver improvements in the support provided to learners. In some instances, proposed legislative provisions would constitute a radical break with the current statutory framework. Elsewhere, they will simply build upon existing strengths. Our approach is based on the principle that what works should be retained and strengthened; that which doesn't work should be adapted or replaced.

Our proposals support our strong focus on collaboration. All services involved in working with children, young people and their families, including education, health and social services, have a crucial role to play in delivering efficient, effective, child-centred support. The overall impact of these reforms will be to support children and young people in Wales with ALN to reach their full potential.

We welcome your views.



Huw Lewis AM
Minister for Education and Skills

Introduction

Our *Programme for Government*¹ in 2011 included a commitment to reform the process for children and young people with additional learning needs in schools and Further Education (FE).

The use of the term ‘additional learning needs’ (ALN) represented a conscious shift away from the out of date system of ‘special educational needs’ (SEN) and towards a more inclusive approach which better reflects the diversity of learning needs. The *Programme for Government* commitment also indicated that a new ALN system would encompass both schools and FE institutions. Currently, separate legislation exists in relation to FE which refers to learners with ‘learning difficulties and/ or disabilities’ (LDD) rather than SEN.

Throughout this document, when we refer to the existing legislation, we use the term ‘SEN’ (or ‘LDD’ in relation to the current post-16 system and legislation). We use ‘ALN’ when describing our proposals for change across the birth to 25 age spectrum. More detail on our proposals for changes to the statutory definitions is set out in Chapter 1.

We are aware of various definitions of the terms ‘children’, ‘young people’ and ‘young adults’ in use across the education, health and social services sectors. In accordance with their use in the Rights of Children and Young Persons (Wales) Measure 2011, the terms ‘children and young people’ or ‘child and young person’ are used throughout this document to mean anyone up to the age of 25.

Principles

Our approach to the reform of the SEN framework is underpinned by a number of key principles. These are as follows:

- the best interests of learners must be a primary consideration²;
- learners’ opinions should always be considered, along with those of their parents³;
- learners should expect to have their needs identified and met;

¹ The *Programme for Government* is available at: www.wales.gov.uk/docs/strategies/110929fullen.pdf

² Article 3 of the United Nations Convention on the Rights of the Child provides: ‘In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.’ The full convention can be found at: www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx

³ Where it is used in our proposals, the term ‘parent’ includes persons who, although not a child’s natural parent, have parental responsibility for that child, or care for him/her.

- agreeing assessment and provision for learners should be simpler and less adversarial;
- disagreements should be resolved as quickly and easily as possible; and
- all those involved in providing support to learners should work together to provide a seamless service.

Aims

In the light of our key principles, we have developed proposals for legislative changes which, taken as a whole, aim to create:

- 1. a unified legislative framework to support children and young people aged 0 to 25 with additional learning needs;**
- 2. an integrated, collaborative process of assessment, planning and monitoring which facilitates early, timely and effective interventions; and**
- 3. a fair and transparent system for providing information and advice, and for resolving concerns and appeals.**

Summary of proposals

This White Paper takes the above aims as its chapter headings and within each we outline the current position, why we are proposing change, and the specific changes we are proposing to make through a Bill. These changes will create a new legislative framework for children and young people with ALN and replace the existing statutory SEN framework and provisions for the assessment for post-16 education and training of children and young people with LDD.

In summary, our key proposals to achieve these aims are to:

1. Introduce the terms ‘additional learning needs’ and ‘additional learning provision’ to replace the existing terms ‘special educational needs’ and ‘special educational provision’.
2. Introduce Individual Development Plans (IDPs) to replace statements of SEN, post 16 assessments (under section 140 of the Learning and Skills Act 2000) and non-statutory Individual Education Plans (IEPs) and post-16 plans.
3. Require the Welsh Ministers to consult on and issue a Code of Practice on ALN which may include:

- mandatory requirements in accordance with which relevant bodies (likely to be local authorities, maintained schools, FE institutions, pupil referral units (PRUs), local health boards and the Special Educational Needs Tribunal for Wales ('the Tribunal')) must act; and
 - guidance to which those bodies and other providers of education and training must have due regard.
4. Set out the minimum requirements for information that must be included in an IDP, and require the Code to set out detailed mandatory requirements to underpin this.
 5. Require local authorities to prepare an IDP and ensure that any agreed additional learning provision set out in the IDP Action Plan is put in place for all children and young people aged 0-25 who have been determined as having ALN and who are receiving or wish to receive education or training.
 6. Require maintained schools, FE institutions, and PRUs to use their best endeavours to secure that the additional learning provision set out in a child or young person's IDP is provided.
 7. Require local authorities to secure specialist education provision for post-16 learners where the IDP indicates that this is necessary to meet a child or young person's needs.
 8. Prohibit the placement of any child or young person into an independent school that has not been registered to provide the type of additional learning provision identified in their IDP.
 9. Require local authorities to ensure that children, young people and their parents are involved, consulted with, and have their views taken into account from the outset of and throughout the IDP assessment and planning process.
 10. Require, as a minimum, IDPs to be reviewed on an annual basis but permit reviews to be conducted earlier or more often where this is appropriate.
 11. Require the Code of Practice to provide guidance to professionals on the early identification of children with ALN including those aged below compulsory school age.
 12. Require local authorities, local health boards and FE institutions to co-operate and share information in assessing, planning and delivering provision to meet the additional learning needs of children and young people up to the age of 25.

13. Require the Code of Practice to provide guidance to support effective multi-agency working practices.
14. Require mainstream schools to designate an ALN Co-ordinator (ALNCO).
15. Enable IDPs to replace or serve the function of Personal Education Plans (PEPs) for children and young people who are looked after by a local authority.
16. Require local authorities to put in place arrangements to give information and advice and require the Welsh Government to set out guidance (to authorities), including mandatory requirements where necessary.
17. Require local authorities to put in place disagreement resolution arrangements and require the use of local complaints processes prior to appeal to the Tribunal.
18. Require local authorities to appoint an independent person to facilitate the resolution of disagreements.
19. Enable a right of appeal to the Tribunal against:
 - a decision not to put an IDP in place;
 - a refusal of a request to review an IDP;
 - the content of an IDP, including the description of the child or young person's needs or the educational provision required to meet those needs;
 - a failure to make available the provision identified through the IDP; and
 - a decision to cease to continue an IDP
20. Provide a right of appeal to any child or young person of school age or below who has an IDP (or their parent) or believes they should have one.
21. Extend the right of appeal to post-16 learners with ALN, up to the age of 25, who are receiving or wish to receive education or training.
22. Restate the existing provisions in relation to independent advocacy services and case friends, but require the Welsh Government to set out guidance on this, including mandatory requirements where necessary.

Scope

In accordance with our *Programme for Government* commitment, our proposals are focussed on maintained schools (that is community, voluntary, foundation,

community special and maintained nursery schools) and FE institutions⁴. We are suggesting various mandatory requirements in relation to these providers of education, and include PRUs alongside them.

Other providers of education and training, including independent schools, independent specialist colleges, private and voluntary providers of early years education, and work based learning providers, also have a part to play in delivering education and training for children and young people with ALN. We will look to develop clear guidance in the Code of Practice about the ways in which their roles might be developed and may require these bodies to have regard to guidance it contains.

The White Paper does propose a new registration requirement in relation to independent schools at which children and young people with ALN are placed, and we are considering extending this to independent specialist colleges.

We have not included Higher Education (HE) in our proposals for reform because of the infrastructure already in place in the HE sector to support learners with ALN. Funding mechanisms are in place through the Higher Education Funding Council for Wales (HEFCW) to support HE institutions in Wales to widen access and improve provision for disabled students and under-represented groups⁵. This has been commended in recent independent review by the Higher Education Academy which welcomed the strong commitment to widening access demonstrated by the HE sector in Wales and cited many examples of excellent and innovative practice⁶.

In addition, Disabled Students' Allowances (DSAs) are available as non-repayable grants to assist disabled students to benefit fully from a course of HE. Although the Education (Student Support) (Wales) Regulations 2013 which underpin DSAs do not define disability, Welsh Government guidance sets out that all cases should be considered where additional costs are incurred in studying an HE course because of a disability, mental health condition or specific learning difficulty⁷. The Welsh Government is currently considering measures to modernise DSAs and will be consulting on any proposed changes in due course. We will ensure that proposals take account of the reforms outlined in this White Paper.

⁴ The term 'further education institution' includes further education corporations and designated institutions under the Further and Higher Education Act 1992, as well as wholly owned subsidiaries of Higher Education Institutions in receipt of DfES funding to deliver further education.

⁵ More information on Widening Access to HE is available from the HEFCW website at http://www.hefcw.ac.uk/policy_areas/widening_access/widening_access.aspx

⁶ Michael Hill and Sue Hatt (2012), *Review of Widening Access and Reaching Wider Strategies in Wales*.

http://www.heacademy.ac.uk/assets/documents/nations/wales/Review_of_the_Widening_Access_and_Reaching_Wider_Strategies_in_Wales_English.pdf

⁷ More information on DSAs is available at

<http://www.studentfinancewales.co.uk/practitioners/products/disabled-students'-allowances.aspx>

United Nations Convention on the Rights of the Child (UNCRC)

These proposals for legislative reform have been developed in accordance with the Welsh Ministers' duty to give balanced consideration to the rights set out in the UNCRC which includes when they are formulating or reviewing policy and legislation⁸.

⁸ Rights of Children and Young Persons (Wales) Measure 2011.

Background and context

In 2007, the Welsh Government conducted a preliminary consultation⁹ on possible reform of the legislative framework for supporting children and young people with SEN. This followed a comprehensive review of SEN by the former Education, Lifelong Learning and Skills Committee of the National Assembly for Wales¹⁰. Subsequently, a number of pilot projects were set up to develop and trial new systems and approaches.

In June 2012, the Welsh Government consulted on its intention to bring forward legislation in this area. The consultation document, *Forward in Partnership for Children and Young People with Additional Needs*¹¹, set out a broad vision of a reformed system. A summary of responses to the consultation was published in 2013¹². While the majority of respondents welcomed the proposals in principle, many felt that greater detail was needed in order to properly understand the implications of proposals in practice.

Consequently, the then Minister for Education and Skills, Leighton Andrews AM, announced that legislative reform would be delayed in order to work with our key partners to develop and reconsider the scope, impact and deliverability of the proposals¹³. To that end, we held a series of workshops in autumn 2013¹⁴ and have continued to exchange ideas with a range of external stakeholders and professional groups, in order to identify practicable and realistic ways in which effective and lasting reform can be taken forward.

Since the last consultation in 2012, the environment in which reform of the SEN framework would take place has also been influenced and to some extent reshaped by a number of other factors. These have included:

⁹ Welsh Government (2007), *Statements or Something Better?*

¹⁰ National Assembly for Wales Education and Lifelong Learning Committee, Policy Review of Special Educational Needs (2004), *Part 1: Early Identification and Intervention*; (2006) *Part 2: Statutory Assessment Framework (Statementing)*; (2007) *Part 3: Transition*.

¹¹ Welsh Government (2012), *Forward in partnership for children and young people with additional needs: Proposals for reform of the legislative framework for special educational needs* (WG14863).

¹² Welsh Government (2013), *Consultation – summary of responses: Forward in partnership for children and young people with additional needs: Proposals for reform of the legislative framework for special educational needs*.

¹³ Leighton Andrews AM (26 September 2012), *Written Statement: Update on ‘Forward in Partnership for Children and Young People with Additional Needs’*
www.wales.gov.uk/about/cabinet/cabinetstatements/2012/senframework/?lang=en

¹⁴ A summary of discussions from workshops with stakeholders in autumn 2013 is available on our website at:
<http://wales.gov.uk/topics/educationandskills/schoolshome/curriculuminwales/additionaleducationalneeds/additional-learning-needs-reform/?lang=en>

- The completion of ALN pilot projects, which had been running across eight local authorities in Wales since 2009, and the publication of a number of evaluation reports relating to these projects¹⁵.
- The new Social Services and Well-being (Wales) Act¹⁶ 2014 and the opportunities it offers to improve the connection between ALN and social care planning.
- Reforms to the SEN framework in England under the Children and Families Act 2014. This has raised issues and provided lessons for consideration as well as having some cross-border impacts.
- The introduction of the Education (Wales) Bill¹⁷ to the National Assembly for Wales in July 2013, which contained 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. These provisions were removed from the Bill during Stage 2 proceedings in January 2014, when the Minister for Education and Skills announced that they would be incorporated into a separate Bill on additional learning needs¹⁸.
- The publication, in January 2014, of a report by the Commission on Public Service Governance and Delivery¹⁹, which sets out a radical vision of how public services might be delivered in the future. Meanwhile, the impact on the budgets of local authorities and others of constrained public sector finances continues to be realised, while the demand for public services continues to increase.

We have reflected carefully on these developments and the responses received to the 2012 consultation. As a consequence, we have refined and in some respects reformulated our proposals for legislative reform so that, while still bold and radical, they provide workable solutions to the deficiencies in the current system.

Our wider improvement agenda

This White Paper sets out the proposals for legislative change which will play an important role in creating an improved system for supporting children and young

¹⁵ ALN pilot evaluation reports are available at: <http://wales.gov.uk/statistics-and-research/programme-action-research-additional-learning-needs-pilot/?lang=en>

¹⁶ Information on the Social Services and Well-being (Wales) Act 2014 is available at: www.senedd.assemblywales.org/mglIssueHistoryHome.aspx?lId=5664

¹⁷ Information on the Education (Wales) Bill is available at: www.senedd.assemblywales.org/mglIssueHistoryHome.aspx?lId=7186

¹⁸ Huw Lewis AM (06 January 2014), *Written Statement: Education (Wales) Bill – SEN provisions* <http://wales.gov.uk/about/cabinet/cabinetstatements/2014/8334615/?lang=en>

¹⁹ Commission on Public Services Governance and Delivery (2014), *Full Report* <http://wales.gov.uk/topics/improvingservices/public-service-governance-and-delivery/report/?lang=en>

people with ALN. However, legislation alone is not the whole answer and should not be seen in isolation from the Welsh Government's wider education improvement agenda. Therefore these proposals should be seen as supporting a suite of improvements and reforms to support learners to achieve their full potential, including:

- ***The National Model for Regional Working***²⁰ - the Welsh Government's framework for regional school improvement, based on a vision of regional consortia working on behalf of local authorities to lead, orchestrate and co-ordinate the improvement in the performance of schools and education of young people. While local authorities retain the statutory responsibility for the delivery of SEN provision, local authorities and consortia should ensure that their services for pupils with SEN are closely aligned.
- ***Improving schools***²¹ - the national implementation plan for school education in Wales, which includes the reform of SEN legislation as part of its commitment to supporting and safeguarding vulnerable children or those with particular learning needs.
- ***Tackling the impact of deprivation on educational attainment*** - Children from low income households are often educationally disadvantaged on their first day of school. Children from deprived backgrounds can, at the age of 5, already be a year behind their more affluent classmates with their vocabulary. Without support to overcome the barriers they face, the cumulative effect of this disadvantage means that their chance of achieving 5 good GCSEs including English or Welsh and mathematics is less than half of that of pupils from better off families²². To help poorer pupils to overcome the barriers that living in poverty puts in their way, we will publish a programme of initiatives to improve the educational progress of learners from deprived backgrounds. We have also introduced the £32.4 million Pupil Deprivation Grant, fully delegated to schools, to invest in effective approaches for tackling the impact of deprivation on educational attainment. In addition, schools in Communities First areas will benefit from £3million of Communities First funding, matched against the Pupil Deprivation Grant to support closer working between schools and their communities. These initiatives form an important element in meeting

²⁰ Welsh Government (2014), *National Model for Regional Working*
<http://wales.gov.uk/topics/educationandskills/publications/guidance/national-model-for-regional-working/?lang=en>

²¹ Welsh Government (2012), *Improving Schools*
<http://learning.wales.gov.uk/news/sitenews/improvingschools/?lang=en>

²² In 2013-14 25.8% of pupils eligible for free school meals (e-FSM) achieved the Level 2 inclusive (5 GCSEs at A* - C including English or Welsh first language and mathematics), whilst 58.5% of their non-eligible counterparts achieved the threshold - a gap of 32.7%. Our Tackling Poverty Action Plan includes a target to improve the overall attainment levels of students eligible for free school meals, measured as the proportion of learners eligible for free school meals at age 15 who achieve Level 2 inclusive at Key Stage 4 - to 37 per cent by 2017.

the commitments we made in our 2011 Child Poverty Strategy. Our refreshed 2013 Tackling Poverty Action Plan includes a specific target to improve the educational outcomes of children and young people living in low income households, and break the link between poverty and educational attainment²³.

- ***Review of the National Curriculum and assessment arrangements in Wales***²⁴ - We want an inclusive education system that supports all our learners to achieve their potential. Professor Graham Donaldson's comprehensive, wide ranging review will identify ways of delivering a curriculum flexible enough to meet the needs of all learners and supported by assessments that will ensure well-judged teaching and meaningful learning for all children and young people.
- ***Specific Learning Difficulties Framework for Wales*** - supported by a Task Group of experts, we are developing a framework to provide a consistent approach to support early identification and early interventions for learners with specific learning difficulties.
- ***The Autistic Spectrum Disorder (ASD) Strategic Action Plan for Wales***²⁵ sets the direction for improvements in the commissioning and delivery of services so that individuals with ASD are supported to reach their full potential in all aspects of their lives. Since its launch in 2008, much has been achieved to establish a national infrastructure for ASD services. A refreshed Strategic Action Plan is due to be published for consultation later this year to reflect the priorities for action identified by stakeholders, the advice of an ASD Advisory Group and the findings of an independent evaluation.
- ***The Framework for Action on Independent Living***²⁶ sets out action to promote the rights of disabled people in Wales to live independently and exercise the same choices as other citizens. By tackling barriers for disabled people it will not only advance their rights, it will have wider benefits in terms of access and inclusion, and will promote more sustainable and responsive services for all. The Framework therefore includes the message that the Welsh Government and local service providers must all do our best to ensure that we develop person-centred policies and programmes, and adopt an outcomes-focused approach to service delivery.
- ***Workforce planning and development*** - The Welsh Government is committed to raising the capacity of the workforce to better meet the learning

²³ <http://wales.gov.uk/about/programmeforgov/poverty/programme?lang=en>

²⁴ <http://wales.gov.uk/newsroom/educationandskills/2014/8612374/?lang=en>

²⁵ Welsh Government (2008), *The Autistic Spectrum Disorder Strategic Action Plan for Wales*.
<http://wales.gov.uk/topics/childrenyoungpeople/publications/autisticspectrumdisorderplan/?lang=en>

²⁶ <http://wales.gov.uk/topics/equality/rightsequality/disability/framework-for-action/?lang=en>

needs of children and young people with SEN. This is a phased approach which began in January 2014 with a review of the skills and identification of the needs of the general education workforce. The next phase will consider workforce planning in respect of specialist services.

- ***Masters in Educational Practice (MEP) Programme*** - As part of raising teaching standards, newly qualified teachers in Wales have the opportunity to follow the MEP Programme alongside their induction and early professional development. From spring 2014, the programme includes a module on ALN.
- ***Welsh-medium Education Strategy (WMES)***²⁷ - Our WMES calls for 'improved planning of Welsh-medium education provision and services for learners with ALN as an integral part of education provision at national, regional and local levels.' Local authorities are expected to develop Welsh in Education Strategic Plans (WESPs) to detail how they intend to achieve the targets of the WMES. The WESPs provide the means for the Welsh Government to monitor the way in which local authorities respond and contribute to the implementation of the WMES.
- ***Person-centred planning (PCP)*** - PCP requires a far more holistic approach to assessing and agreeing the needs of the child or young person and places their views, and those of their family, at the heart of the process. We will be developing and issuing guidance on PCP to encourage all those involved in the current system to adopt this approach to planning for and supporting children and young people with SEN in advance of legislative reform.
- ***Quality assurance*** - The most effective provision comes where there is good data on where the learner starts, which interventions are needed and made, expected outcomes and actual outcomes. This level of 'quality assurance' is as important to the current SEN system as it is to any new ALN system. We will set out the key principles and coverage of quality assurance systems to support effective provision for children and young people with SEN, and will support training to ensure that all settings provide quality and comparable information on interventions. We will be working closely with our partners as we develop our plans further.

²⁷ Welsh Government (2010), *Welsh-medium Education Strategy*
<http://wales.gov.uk/topics/educationandskills/publications/guidance/welshmededstrat/?lang=en>

1. A unified legislative framework to support children and young people aged 0 to 25 with additional learning needs

1.1 What is the current position?

Legislation in relation to SEN 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 young people with more complex needs who are entitled to a statement of SEN issued by the local authority. At January 2013 103,791 pupils at schools in Wales had some form of SEN, which is around 22 per cent of all pupils. However only 13,104 pupils with SEN had a statement, which is 2.7 percent of all pupils.

The legislation relating to post-16 learners in FE with LDD is included in the Learning and Skills Act 2000 ('the 2000 Act'). The legislation on LDD relates to the statutory assessment (by the Welsh Ministers) of those children and young people with more complex needs who are leaving school and intend undertaking further education or training.

Statutory guidance on SEN is provided in the SEN Code of Practice for Wales²⁸. 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, 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 guidance in relation to learners with LDD.

1.2 Why are we proposing change?

We consider the current legislative framework for SEN to be unsatisfactory for the following reasons.

- **The current terminology stigmatises children and young people and is associated with a system which needs fundamental reform.**

The current legislative terms 'special educational needs' and 'learning difficulties and/ or disabilities' are strongly associated with a system which we believe requires fundamental reform. In order to secure the reforms we wish to make, and in order to

²⁸ The Special Educational Needs Code of Practice for Wales can be accessed from our website at <http://learning.wales.gov.uk/resources/special-education-needs-code-of-practice/?lang=en>

underline the significance of the reforms, a change in terminology is essential. If the terms remain the same but the system and process changes, confusion and misunderstanding will inevitably arise. For example, if different terms continue to be used for school and further education provision, continuity and coherence in the system will be more difficult to establish. We think that a very strong case for changing the terminology can be made on this basis alone.

However, we also think current terms and their definitions are deficient in other ways. Although they are well known and, for those working in the field, well understood, the terms are often misunderstood and misused in the wider community and have, in some instances, acquired negative connotations. We are not persuaded that the benefits of retaining terms which are familiar and well understood by professionals outweigh the opportunity that new terminology can bring in terms of bringing greater clarity and changing perceptions among the wider public. The current definitions can appear cumbersome, can be difficult to understand and do not necessarily extend to all those who we believe require statutory assistance and protection. We believe that we need definitions which match the scope and direction of our wider reform.

- **There is an unclear divide between those requiring statements of SEN and those who do not.**

Statements of SEN provide statutory entitlement to the support that they identify. However, the legislation on SEN does not attempt to set out specific criteria which, when met, require a local authority to issue a statement. Rather, it requires that a local authority makes and maintains a statement when it thinks it is necessary to determine the special educational provision for which a child's learning difficulty calls. The SEN Code of Practice suggests that this might be when the local authority concludes that a mainstream school could not reasonably be expected to make the necessary special educational provision from within its own resources.

Statements are therefore generally issued in relation to children and young people who have more complex needs, but we do not think that there is sufficient clarity for children and young people, their parents, schools, local authorities or anyone else with an interest in this matter.

- **The lack of clear criteria about when and for whom a statement should be made results in an inconsistent approach between local authorities.**

Local authorities operate very different policies in relation to when and for whom statements should be made. Consequently, a child with a particular set of needs living in one local authority might receive a statement, whilst a child with the same needs living in another area might not. Furthermore, there is significant variation between local authorities in relation to the overall proportion of children receiving statements. Although the level and quality of provision made available for a child

without a statement may be no less than that provided to one who has a statement, it nevertheless creates a perception of unfairness and inequality.

- **There is a perception that the existing SEN Code of Practice is not always applied rigorously or is interpreted differently by different local authorities.**

Although we have seen no evidence to suggest that there is any systemic failure in the application of the SEN Code of Practice, we recognise that its current status as guidance to which relevant bodies 'must have regard' does leave room for local interpretation. Local authorities and others should have a clearer set of parameters within which they should work so that decisions are made in a more consistent way.

- **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.**

Although we do not believe that the support given to children and young people with SEN who do not have a statement (i.e. those who would fall in to the categories of School Action, Early Years Action, School Action Plus or Early Years Action Plus, as defined in the SEN Code of Practice) is necessarily inadequate – indeed, in the overwhelming majority of cases we believe that the current levels of support do meet their needs – we think that a child or young person should be entitled to have their needs met, irrespective of their complexity. It does not seem fair to base entitlement or protection on the extent of a child or young person's needs.

- **Trust between parents and local authorities or schools is often undermined and this leads to dispute.**

The lack of statutory entitlement to provision for children on School Action and School Action Plus means that parents may seek a statement for their child even though that may not be necessary in the light of their needs. Parents may be concerned that the absence of any statutory protection, in relation to School Action Plus in particular, means that provision can be taken away at any time. Parents may also feel less assured that their child is receiving the provision that is appropriate to their needs where the child does not have a statement.

Where a local authority does not undertake a statutory assessment in response to a parental request, or where the statutory assessment does not result in a statement, parents can feel that their child's needs are being ignored or trivialised. This leads to a breakdown in trust between parents and the local authority. The disputes which subsequently arise can be time consuming, expensive and stressful for all involved, or even distressing for the child or young person and their families.

- **It is difficult to adopt a flexible approach to the delivery of special educational provision.**

The current distinction between children and young people who have statements and those who do not, militates against a flexible approach to the delivery of provision. Furthermore, once the current complex and time-consuming statutory assessment process has been implemented, and the statement has been agreed, families and services can be deterred from making future changes to it, either for fear of 'relinquishing' the support that currently has legal protection, or simply because the process itself is perceived as being too stressful. This makes it difficult to alter the level and nature of provision over time in order to ensure that it matches the changes in an individual's need.

- **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.**

Under the current legislative arrangements, the Welsh Ministers are responsible for the assessment of post-16 learners with LDD who have left or are about to leave school. The Welsh Ministers are also responsible for securing specialist post-16 provision where this is necessary. This means that local authorities have no continuing responsibility for the education of a child or young person with LDD who previously had a statement of SEN whilst at school. Consequently, they have no incentive to plan for the post-16 educational needs of such children and young people or collaborate with FE institutions and others to ensure continuity and progression in their learning. We believe that this may make the post-16 provision for learners with LDD less efficient and effective than it might otherwise be.

Furthermore, when learners with LDD enter further education or training, the provider may not always have access to all the relevant information about that child or young person. This lessens the ability of the provider to ensure that the child or young person receives, from the outset, the additional provision appropriate to their needs. Although this information should accompany the assessments made under Section 140 of the 2000 Act, the fact that the Welsh Ministers and not the local authority are responsible for undertaking these assessments makes this less likely to happen.

Finally, the Welsh Ministers' responsibility for securing specialist placements for those learners with LDD whose needs cannot be met in the mainstream FE sector undermines the efficiency of the process. As they have had no prior knowledge or involvement in the child or young person's education, decisions about the funding of specialist placements are often delayed by the need for the Welsh Ministers to

secure the necessary evidence or negotiate with other agencies in relation to a child or young persons' health or social care needs. These are issues which could be potentially resolved at a much earlier stage if the same body were responsible for that child or young person's education both pre and post-16.

- **The current legislation to 'approve' and 'register' an independent school to admit pupils with an SEN does not provide an effective system for ensuring that appropriate provision is made available or in clarifying whose responsibility it is to do so.**

For some children and young people with a SEN it may be more appropriate to attend an independent school to meet their educational needs. Any independent school that wishes to admit pupils with a statement of SEN must be approved by the Welsh Ministers under section 347 of the Education Act 1996 ("section 347"). An approval under section 347 can be a general approval which means that the school is approved to admit any pupil with a statement of SEN. Regulations made under section 347²⁹ ("the approval regulations") set out the criteria to be taken into account to approve the school. If the school does not have general approval and a pupil with SEN wishes to attend that school, the Welsh Ministers would be required to consent to the placement.

In addition, to operate as an independent school, a school must be registered under section 160 of the Education Act 2002 ("section 160"). As part of the registration process an independent school can also register to admit pupils with SEN regardless of whether they have a statement. An application for registration by any school is assessed by Estyn against the Independent School Standards, these are standards set out in regulations³⁰.

We think that the current regime to administer the section 347 process is both unnecessary and duplicates the process required to consider an application under section 160 to register a school to admit pupils with an SEN.

It is our view that the requirement for general approval or consent to individual placements by Welsh Ministers under section 347 does not provide any meaningful assurances for a child or young person with SEN being admitted into an independent school. Under their statutory duty to provide appropriate education provision it is the local authorities who are better placed to ensure the placement offered matches the needs of the child, rather than the Welsh Ministers.

²⁹ Education (Special Educational Needs) (Approval of Independent Schools) Regulations 1994.

³⁰ Independent School Standards (Wales) Regulations 2003 made under section 158 of the Education Act 2002.

1.3 What changes are we proposing to make through a Bill?

In order to address the concerns that we have about the current process, we propose that a Bill will:

- 1. Introduce the terms ‘additional learning needs’ and ‘additional learning provision’ to replace the existing terms ‘special educational needs’ and ‘special educational provision’.**

During the consultation we conducted in 2012, we suggested the possible option of adopting the term ‘additional needs’ (AN). However, whilst some stakeholders were content to see this term introduced, others felt that its potentially broad scope (which might include needs unconnected with or having no impact on a child or young person’s education or training) would lessen the focus on the learning needs of children and young people. It was felt that a lessening of focus could result in a dilution of resources and subsequent reduction in the impact of interventions. We have reflected at length on this view, and have concluded that the emphasis should remain on ‘learning’ and the fulfilment of educational potential.

Therefore, we propose to repeal the terms ‘special educational needs’ and ‘special educational provision’ and set out new terms, ‘additional learning needs’ and ‘additional learning provision’, on the face of a Bill. The Bill will set out the precise definitions, but we propose that the term ‘additional learning needs’ will capture children and young people who require additional learning provision in order to allow them to benefit as fully as possible from the education or training available to them.

As is currently the case in relation to SEN, a child or young person will not be regarded as having ALN solely because the language of their home is different from the language in which they are taught. Similarly, more able and talented children and young people would not be considered to have ALN solely on the basis of their enhanced ability or talent. We recognise that these children and young people require enhanced opportunities in order to achieve their full potential but do not consider this to be the same as additional learning provision.

The term ‘additional learning provision’ will define the provision which is made available to meet the child or young person’s additional learning needs. We propose that this will not be a significant change to the current definition of ‘special educational provision’, in that it will apply to provision which is additional to, or otherwise different from, the educational provision made generally for children or young persons of the same age other than in special schools. We will reflect the fact that this may be provision from a range of services beyond education, but focus on their necessity to enable a child or young person to access learning.

Our intention is that the learners captured by the definition of ALN will include all of those currently regarded as having SEN (i.e. children and young people supported through School/ Early Years Action, School/ Early Years Action Plus and with statements of SEN). In addition, we intend that the term will also be used to encompass young people up to the age of 25 who are currently said to have LDD.

2. Introduce Individual Development Plans (IDPs) to replace statements of SEN, post-16 assessments (under section 140 of the Learning and Skills Act 2000) and non-statutory Individual Education Plans (IEPs) and post-16 plans.

We wish to ensure that all children and young people with ALN have the same rights to receive the provision they require and that local authorities have a duty to ensure that the provision is delivered. We think that the simplest and fairest way to remove the inconsistencies and unfairness which arise from the existing statutory and non-statutory categories of SEN, and the different systems for learners in schools and FE institutions, is to entitle every child or young person with ALN to receive the same statutory plan - the IDP – which recognises their learning needs as equally important, irrespective of how complex they are. Furthermore, as IDPs will cover a wide spectrum of need, they can then be amended and adapted over time to take account of changes in a child or young person’s circumstances or needs. Children and young people and their families should therefore feel more confident that the support that is appropriate to their current needs will continue to be delivered and protected.

3. Require the Welsh Ministers to consult on and issue a Code of Practice on ALN which may include:

- **mandatory requirements in accordance with which relevant bodies (likely to be local authorities, maintained schools, FE institutions, PRUs, local health boards and the Tribunal) must act; and**
- **guidance to which those bodies and other providers of education and training must have due regard.**

We want to ensure 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. At the same time, we recognise the importance of striking an appropriate balance between the legislative requirements we intend to impose and guidance on the practical detail of how we expect these duties to be delivered. We therefore propose that a new statutory Code of Practice will provide both mandatory requirements and practical guidance on how we expect statutory duties to be carried out. We will engage our key stakeholders and partners as we develop a draft ALN Code of Practice and it will be subject to public consultation in due course. In addition, we intend that the Code

(and any subsequent revisions) would have to be laid before the National Assembly before it could be issued.

Where local authorities or maintained schools fail to carry out mandatory duties under the Code, the Welsh Ministers would be able to exercise their existing powers of intervention under the School Standards and Organisation (Wales) Act 2013. We will consider, in conjunction with stakeholders, what other enforcement and monitoring mechanisms might be needed in order to ensure adherence to the new Code of Practice.

So far as possible, we want to set out in the new Code of Practice all the relevant information about the operation of the ALN system. We will therefore look to keep Regulations (in the form of statutory instruments) to a minimum, possibly restricting these only to the procedures by which the Tribunal operates.

4. Set out the minimum requirements for information that must be included in an IDP, and require the Code to set out detailed mandatory requirements to underpin this.

The Bill will set out the key information which must be included in an IDP. This will not be an exhaustive list, but will set the minimum requirements which will be explained in a Code of Practice.

We expect the list on the face of the Bill to include the child or young person's needs; the agreed outcomes sought; the additional provision required to meet those needs; an Action Plan that sets out how, by whom and by when the agreed interventions will be delivered; how the outcomes of interventions will be measured; and which agency has agreed to fund each intervention.

The Code of Practice will also set out requirements for the form and content of IDPs and timescales within which an IDP must be produced and reviewed. We are aware of the importance of identifying and providing for a child or young person's needs as quickly as possible, and the timescales in the Code will reflect this.

For children and young people who are due to move between stages of education and training, or out of education and training altogether, the IDP will set out transition planning arrangements. The Code of Practice will set out requirements on the arrangements to be made to support effective transition planning.

The new process of considering whether someone has ALN will involve the child or young person, their parents and relevant agencies (including education, social services or health and others as appropriate to their needs) working together using a person-centred approach to determine whether an IDP is required. We recognise that children and young people with a very wide spectrum of needs, in

terms of both diversity and complexity, will be entitled to an IDP. Consequently the process to be adopted, and in particular the breadth and extent of specialist involvement, will vary significantly. For example, for those children with less complex needs, the process might only involve school-based staff, as is currently the case in relation to children in the School Action category. Others with more complex needs will require varying levels of external advice, support or funding along the lines of those on School Action Plus or who have a statement. The Code of Practice will set out guidance in relation to this, to which relevant bodies must have due regard. The emphasis will be on ensuring that the nature of the process is proportionate to the level of need and intervention required.

5. Require local authorities to prepare an IDP and ensure that any agreed additional learning provision set out in the IDP Action Plan is put in place for all children and young people aged 0-25 who have been determined as having ALN and who are receiving or wish to receive education or training.

We propose that the statutory duty for preparing and implementing an IDP will rest with local authorities, to ensure that there is accountability for the delivery of ALN provision. This means that we will expect local authorities to have effective governance arrangements in place to deliver, monitor and review their ALN duties.

In practice, we envisage that for children and young people currently needing support at School Action or School Action Plus level, the local authority's involvement would be minimal as the school, nursery or PRU would utilise their best endeavours to ensure that the learner's needs were met. Local authorities would, however, remain ultimately responsible for discharging their new duties so would need to put in place arrangements to monitor and review the situation.

Local authorities would be directly responsible for coordinating and reviewing IDPs for children and young people with ALN up to the age of 25 who attend FE institutions or specialist post-16 provision (and would have a power to continue an IDP until the end of the academic year in which the young person becomes 25). The local authority would retain overall responsibility for ensuring that the additional learning needs of a child or young person with an IDP were being met. We think that this will facilitate a much smoother transition between school and further education for children and young people with ALN and ensure that all relevant information about the child or young person's needs is available to the FE institution. However, FE institutions would continue to receive funding directly from the Welsh Government to support additional learning provision suitable to the needs of most children and young people with ALN. This would be underpinned by the duty set out in proposal 6 below.

Local authorities would be able to discontinue IDPs for children and young people who took up post-16 opportunities (such as higher education or work based learning)

outside of a school, FE institution or specialist FE placement or did not take up the opportunities identified for them within the school or FE sector within a specified timeframe (to be set out in the Code of Practice). However, as described earlier, local authorities would be responsible for ensuring the transition planning arrangements had been put in place.

Local authorities would be under a duty to determine whether it was necessary to continue to maintain an IDP, or provide the additional learning provision it contains, should a child become home educated. Where they are requested to do so by a parent, a local authority will have the power to put IDPs in place for children educated at home. The Code of Practice will provide more detail on these matters.

6. Require maintained schools, FE institutions, and PRUs to use their best endeavours to ensure that the additional learning provision set out in a child or young person’s IDP is provided.

A similar duty already exists in relation to maintained schools, nurseries and PRUs but we want to extend this to FE institutions in order to underpin the creation of system which extends up to the age of 25. The new duty on these bodies to use their ‘best endeavours’ – that is, to do all that they reasonably can – will be subject to its compatibility with the provision of efficient education and the efficient use of resources. However, the statutory duty for preparing and implementing an IDP will remain with the local authority.

IDPs might also be used in non-maintained settings such as independent schools, voluntary or private early years providers, but those settings would be under no ‘best endeavours’ duties in relation to the delivery of provision.

7. Require local authorities to secure specialist education provision for post-16 learners where the IDP indicates that this is necessary to meet a child or young person’s needs.

In order to make this change we propose to repeal Section 140 of the 2000 Act, assimilate the responsibility into the new IDP process for assessing the post-16 education and training needs of children and young people with ALN and give local authorities responsibility for securing specialist post-16 provision, including residential provision, where it is necessary to meet assessed education and training needs.

We think that this change would improve the transition process by encouraging local authorities and post-16 providers to work together to secure support and improve local provision relevant to the individual needs of children and young people with complex LDD. It would also provide a greater incentive for local authorities to make

the connections between education and social services departments that are needed for a child or young person's effective transition into further education.

Existing funding would be transferred from the Welsh Government to the Revenue Support Grant to support local authorities in their duty to secure specialist post-16 provision.

8. Prohibit the placement of any child or young person into an independent school that has not been registered to provide the type of additional learning provision identified in their IDP.

We believe the simplest way to remove the unnecessary duplication within the 'approval' and 'registration' regimes is to repeal section 347 and strengthen the way that independent schools register to admit pupils. We propose to amend section 160 so that an independent school wishing to admit pupils identified as having ALN, will be required to have demonstrated as part of its registration that it can provide the required type of additional learning provision. We will work with independent specialist colleges to consider whether a similar approach might be introduced in relation to such settings.

We propose that local authorities would be prohibited from placing a child or young person at an independent school that has not been registered to provide the specified type of additional learning provision.

The process by which an independent school is registered under section 160, and Estyn's current role within that, including monitoring visits of ALN registered independent schools will continue unchanged. However, it is further proposed that there be a requirement for a summary of all monitoring visit reports of ALN registered independent schools, conducted by Estyn, to be published online. This will improve the accessibility and availability of information to local authorities and parents on the suitability of provision at an independent school and enable informed decisions when considering the placement of a child or young person with ALN into an independent school.

2. An integrated, collaborative process of assessment, planning and monitoring which facilitates early, timely and effective interventions

2.1 What is the current position?

The processes for assessment and for making, issuing and reviewing a statement of SEN are set out in the Education (Special Educational Needs) (Wales) Regulations 2002. The SEN Code of Practice includes guidance on these matters and on the identification of SEN.

The Education Act 1996 requires local health boards and other local authorities to comply with a request from a local authority to help it exercise its SEN functions. Certain exceptions apply, if they consider that:

- their help is not necessary to fulfil the local authority's functions;
- the request is unreasonable given the resources available to them;
- the request is incompatible with their own statutory duties; or
- it unduly prejudices the discharge of any of its functions.

2.2 Why are we proposing change?

- **Some parents and families feel excluded from the processes around statements of SEN which they see as impenetrable, bureaucratic and inefficient.**

The current process of 'statementing', where a local authority receives an application for an assessment and makes a decision about whether the assessment should proceed, and subsequently decides whether the child or young person should have a statement put in place, can make families feel that the process is being 'done to' them and that they have very little control. This in turn can lead to a 'fight culture' whereby families feel that they have to battle with authorities in order to ensure their child receives the support they need. Subsequent lengthy disagreements about whether the child or young person meets the criteria for a statement and should receive more expensive support are often at the expense of implementing earlier and more cost-effective intervention. Even without disagreements arising, the current timescales set out in regulations state that it may take up to 26 weeks between a request for a statutory assessment and a statement being put in place.

- **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.**

The rigid procedures associated with the process of making and amending a statement prevent it from being changed quickly or efficiently in response to changing needs. This absence of flexibility means that children and young people may continue to receive a particular form of support even after it has ceased to be relevant to their needs.

- **Evidence from Estyn reports and other reviews of SEN policy have identified that multi-agency working is sometimes weak and ineffective.**

Services need to work together collaboratively and flexibly in order to ensure that children, young people and their families and carers receive coherent, well co-ordinated support which helps them achieve positive outcomes. Evidence from Estyn and others suggests that this is not always the case and support is sometimes less effective as a consequence.

- **Identification and intervention does not always happen at the earliest opportunity.**

Much evidence exists to demonstrate the benefits of early intervention, both to the child's outcomes and in terms of the cost of support. Identifying children's support needs early is vital if they are to thrive and enables parents and professionals to put the right approach in place quickly. However, close collaboration and information sharing between agencies is essential to this. We believe that the current level of collaboration between agencies is not always sufficient to ensure early and successful interventions for children and young people with SEN and that information is not always shared as effectively as it could be.

- **The particular support that children and their families require may be put in place needlessly late.**

Often this is due to the way that the current system is operated. For example, the process of making a statement can sometimes be delayed significantly while a series of clinical and other specialist assessments are undertaken to rule out potential conditions and allow an official diagnosis to be made. Although there is no requirement that a diagnosis is in place before a statement is made, this is what happens in practice in some areas. While a diagnosis can be helpful to identifying the reasons that a child or young person may be struggling to make progress, in our view there should be no reliance on a diagnosis in order to unlock access to support.

- **The important co-ordination role undertaken by SEN Co-ordinators (SencoOs) is not well-defined and varies considerably.**

The current SENCO role is interpreted differently across settings and authorities. There is a lack of consistent support and training for SENCOs who undertake a critical role in the current system and will play a pivotal role in embedding our proposed new ALN system.

- **For looked after children, the SEN statutory assessment is just one of many assessments, and the separate processes are not well integrated.**

Assessment and planning can be particularly complicated for looked after children, many of whom face barriers in several areas of their development. Their lives often involve a number of different professionals and the assessment of their SEN might overlap with other statutory plans such as their 'Personal Education Plan' as part of the social care planning and review process. This does not always fit well with the current SEN assessment and planning processes, even though it is important that looked after children should have any SEN identified early as part of the care planning process. In some cases this can result in inconsistent plans for support. In others, it can mean a duplication of effort and an inefficient use of resources when many of the same professionals are involved in multiple assessment and planning processes for the same child. For the child or young person, it can mean a bureaucratic and complicated experience where they have to repeat the same information lots of times for different people or purposes.

2.3 What changes are we proposing to make through a Bill?

In order to address the concerns that we have about the current process, we propose that a Bill will:

- 9. Require local authorities to ensure that children, young people and their parents are involved, consulted with and have their views taken into account from the outset of and throughout the IDP assessment and planning process.**

We want to strengthen existing duties and guidance on involving children, young people and their parents, and move towards a much more person-centred approach to identifying needs and appropriate actions to meet those needs. We will soon be issuing guidance on person-centred planning to encourage all local authorities to adopt this approach in advance of legislative reform. Our intention is that IDPs will be developed in accordance with the principles of person-centred thinking and planning and that the Code of Practice will set out clear guidance on how we expect this to be applied.

10. Require, as a minimum, IDPs to be reviewed on an annual basis but permit reviews to be conducted earlier or more often where this is appropriate.

We propose that local authorities will be responsible for ensuring that reviews of IDPs take place for children and young people up to the age of 25. We will require that the IDP is reviewed every 12 months as a minimum. In many cases more frequent reviews may be appropriate just as IEPs are currently often reviewed in schools on a termly basis. We would expect the interventions set out in the IDP action plan to include the milestones which will trigger a review of their effectiveness. Children and young people and parents will be able request earlier reviews.

We propose that the Bill will enable the Code of Practice to make further provision about the review process. The Code may also include guidance regarding the scope for aligning the timing and conduct of an IDP review with other multi-agency reviews conducted in relation to the same child or young person (for instance, Continuing NHS Health Care reviews) to reduce the burden on professionals (as well as children and young people and their families).

11. Require the Code of Practice to provide guidance to professionals on the early identification of children with ALN including those aged below compulsory school age.

All professionals who come into contact with families have a part to play in identifying children's needs early. For example, for children who have not yet reached statutory school age, health visitors are especially well placed to identify children who may show signs of early developmental problems, and paediatricians play a key role in providing further clinical assessment of needs. Similarly, Flying Start Children's Centres in deprived areas play a key role for children with ALN and their families. They can bring health, early learning and other early years' services together, and offer an opportunity for an integrated response. We need to ensure that all agencies and professionals who work with children and young people are supported to work closely with others including colleagues from the local authority, to ensure that when they identify children and young people who need extra support, the right support is put in place.

The Code will provide information to support practitioners working with children below compulsory school age (such as those working in maintained and non-maintained school nurseries, local authority day care providers and other registered day care provision) to help identify ALN early on and provide all children with a broad range of stimulating learning experiences. It will reflect other Welsh Government policy developments, such as the commitment to introduce an Early Years Development and Assessment Framework, focussing on those areas that are essential to young children's development, such as communication and language, social and emotional skills and physical development.

12. Require local authorities, local health boards and FE institutions to co-operate and share information in assessing, planning and delivering provision to meet the additional learning needs of children and young people up to the age of 25.

We plan to restate the existing provisions from the 1996 Act, but amend them so that they include a duty to share information. The duties will be extended to cover all children and young people up to the age of 25 in education or training who meet the new definition of ALN.

These duties will be supported and strengthened by other legislative provisions including those in the Social Services and Well-being (Wales) Act 2014 requiring a local authority to make arrangements to co-operate with its partners and ensure the integration of care and support in order to improve the well-being (including well-being in relation to education and training³¹) of children and young people. In addition, the Welsh Government has already legislated to create a statutory duty of co-operation between local authorities, health and other partners in the Children and Families (Wales) Measure 2010.

Local authorities would be required to consider the advice, information or views of other agencies when preparing, implementing and reviewing an IDP.

All the service providers on which the child and their family rely would work together with the family to agree an action plan within the IDP which reflects their ambitions, for now and for the future. Where input is required from other agencies to support the child or young person to overcome barriers to learning, the IDP will include provision agreed by health, social services and other services as well as education. Nevertheless, statutory responsibility for preparing and implementing the IDP would remain with the local authority.

However, a diagnosis will not be a requirement for an IDP. Where a diagnosis is known its inclusion can of course be agreed along with other assessments and evidence to support the professionals involved to make the right decisions about the most effective interventions.

Where a child or young person requires support from more than one agency, the IDP Action Plan will be clear about which agency is responsible for delivering the individual elements, include a commitment from all parties to provide their services, and be transparent about funding for the package of support.

³¹ The Social Services and Well-being (Wales) Act 2014 says that for its purposes, 'well-being' in relation to a person, means (amongst other things) well-being in relation to education, training and recreation.

13. Require the Code of Practice to provide guidance to support effective multi-agency working practices.

We recognise that more needs to be done to change culture, practice and ways of working in order to strengthen multi-agency working. However, we do not think that legislation is the root of the problem or the best lever to drive improvements. More than anything, the barriers to effective multi-agency working are embedded within cultures and systems: poor communication and information sharing, under-developed planning and evaluation, a lack of clarity about the roles and responsibilities of different agencies and professionals, and multi-disciplinary assessments being completed in isolation from one another.

Approaches such as the Team Around the Family model and Transition Key Working can help to improve the co-ordination of services for children and young people with ALN and their families, and can be particularly valuable where families are in contact with lots of different professionals. These are not statutory models and local authorities have the flexibility to develop their own approaches taking into consideration their local circumstances. We do not envisage changing this, but want to draw on the lessons and successes of such models to embed a culture of professionals working in partnership with families, so that parents are at the heart of any discussions or decisions about their child.

In designing a new system, we want to take full account of the views of professionals who understand how best to deliver these services, and so we will be working closely with education, health, social care and other agency professionals to develop solutions to the barriers preventing effective multi-agency working. We will work with key stakeholders to produce clear guidance and requirements for inclusion in the Code of Practice, along with other training and support mechanisms as appropriate.

We will also consider the non-legislative ways that might exist of promoting and enabling the third sector to contribute positively to the assessment planning and delivery processes. We recognise that third sector bodies already fulfil important roles on behalf of children and young people and will look to build on this as we develop the systems around ALN.

14. Require mainstream schools to designate an ALN Co-ordinator (ALNCO).

This would replace the existing SENCO role. We will place a duty on the governing body of a maintained school or nursery to designate a member of the school staff as the person responsible for co-ordinating provision for children with ALN at the school. We will use the new Code of Practice to require governing bodies to ensure that ALNCOs have certain experience or qualifications or both, and to confer other functions on these governing bodies relating to ALNCOs. The detail of the ALNCO's

responsibilities would be set out in the Code of Practice, and we will work with key stakeholders to develop guidance on the role, to be consulted on in due course. We will look to extend to FE institutions the guidance in the Code in relation to the co-ordination of ALN. FE institutions already have individuals responsible for the co-ordination of provision for children and young people with LDD. Our intention is to identify and build upon the practice that already exists.

15. Enable IDPs to replace or serve the function of Personal Education Plans (PEPs) for children and young people who are looked after by a local authority.

For children and young people who are looked after by a local authority, an IDP would be able to either replace or serve as the PEP currently required in respect of these learners. We recognise that not all looked after children and young people will have ALN but believe that the cross over between the likely contents of an IDP and existing PEPs, and the significant proportion of looked after children and young people who have ALN, makes it sensible to bring these two plans together.

We have looked at the model in Scotland for looked after children and propose to adopt a similar provision in the Bill, whereby local authorities will be required to assess all 'looked after' children and young people to determine whether they require additional learning provision. Under our proposal, local authorities would initiate the IDP process for all looked after children, and would establish through the process whether the child or young person had ALN. The resulting plan would then reflect such needs where they are present.

We will also consider ways to ensure that IDPs also take account of, connect with and if possible, function as or instead of, other plans which have been made for the child or young person (for example, plans made for care leavers), where this is appropriate.

3. A fair and transparent system for providing information and advice, and resolving concerns and appeals

3.1 What is the current position?

The 1996 Act requires local authorities to make arrangements for the provision of advice and information to children with SEN, and their parents, in relation to their needs, make arrangements for the avoidance or resolution of disputes in respect of SEN, and provide children with SEN with access to independent advocacy services.

The 1996 Act provides that a parent may appeal to the Tribunal against:

- a decision not to comply with a request to carry out a statutory assessment of SEN;
- a decision not to issue a statement of SEN;
- the content of a statement;
- the school named in the statement or that no school is named;
- a decision not to reassess a child's SEN where no assessment has been made for at least 6 months;
- a decision not to change the school named in a statement;
- a decision to cease to maintain a statement.

3.2 Why are we proposing change?

- **Arrangements for information and advice giving vary across Wales, in terms of both their nature and their effectiveness.**

We are keen to ensure that every parent and child receives the information and advice which they need in order to have confidence in the system, make informed choices, and provide challenge where this is required. At the moment, this may not always be the case. Parental feedback suggests that they often feel the system is difficult to navigate and they are unaware of where to seek information about the process or to understand how decisions are made that affect their child's support. Providing this transparency reduces conflict and builds trust. We want there to be better clarity of information for children, young people and their families.

- **The current arrangements for disagreement resolution are insufficiently robust to ensure that disagreements are resolved quickly or avoided altogether.**

Despite the best efforts of parents and professionals to agree on the special educational provision for children, sometimes they do not. Whilst we believe that a

right of appeal to Tribunal provides an important backstop in ensuring that local authorities and others discharge their functions appropriately, we believe the appeal process should be a measure of last resort. It can be better for parents and a better use of public funds if disagreements about the assessment of needs and the provision made to meet them are resolved earlier and through non-judicial means. The appeal process is time consuming, expensive, stressful and can result in a legacy of mistrust between parents and local authorities. We want to see a situation where every effort is made to avoid disagreements but, where they do arise, procedures are in place that allow them to be resolved as quickly as possible through direct liaison between the parties involved. We believe that there is currently an absence of effective alternative disagreement resolution procedures and that this results in a higher number of appeals than would be the case if clear, consistent and effective arrangements were in place.

- **The current absence of any appeal process in relation to the support received by children and young people who have SEN but who do not have a statement, places them at a potentially unfair disadvantage.**

The current SEN appeals process is centred solely on the statementing process. There is no specific right of appeal in relation to the provision of special educational provisions for children and young people with SEN who do not have or do not need a statement (e.g. those supported through Early Years/ School Action or Early Years/ School Action Plus). Furthermore, there is no right of appeal in relation to post-16 learners with LDD who have left school.

We do not think it appropriate that the complexity of a child or young person's needs should determine whether they can appeal against a failure to provide for them. What is more, we think this situation encourages parents to seek a statement in respect of children and young people who may not need one. This in turn might lead to an increased number of appeals against a local authority's refusal to assess or issue a statement. We think that the absence of any right of appeal in relation to post-16 learners who are pursuing or wish to pursue education and training outside of the school environment is particularly unfair.

3.3 What changes are we proposing to make through a Bill?

In order to address the concerns that we have about the current process, we propose that a Bill will:

16. Require local authorities to put in place arrangements to give information and advice and require the Welsh Government to set out guidance, including mandatory requirements where necessary.

We think that children, young people and their parents have a right to receive appropriate advice and information in relation to the process for identifying, assessing and planning for the child or young person's needs. We wish to restate the existing requirement for local authorities to make arrangements for information and advice giving, but we want this information to be provided more clearly and effectively. Clearer information for families on what support is available could help reduce the need for parents to invest their time and energy in an appeal to Tribunal in order to get the right support, as well as saving local authorities the expense of this process.

There is already good practice in some areas. Many parents benefit from advice and information from their local Parent Partnership Services which exist to provide impartial information and advice to parents about their child's SEN. The new Code of Practice will provide refreshed guidance on the effective delivery of these services, drawing on this good practice. We expect the focus to shift towards 'Family Partnership Services' in line with wider developments in Welsh Government policy in relation to a model of family-centred support.

Our consultation in 2012 said that we intended to develop Provision Pathways that clearly defined roles, responsibilities and minimum standards for service provision relating to each level of need. Although we still see potential merit in Provision Pathways as a possible approach to support learners with specific hearing or visual impairments, we now consider that their universal application would run contrary to the principle that provision should reflect the differing needs of the individual and not his or her condition. We will consider what scope for specific Provision Pathways might exist as part of our development of the Code of Practice.

17. Require local authorities to put in place disagreement resolution arrangements and require the use of local complaints processes prior to appeal to Tribunal.

We think that effective disagreement resolution arrangements should play an important part in delivering quick and straightforward solutions to disagreements about additional learning provision between children and young people, or their parents, and school or local authorities.

We will restate the existing requirement to put such arrangements in place, but also propose that parents and children be required to have gone through the appropriate local complaints process before an appeal to the Tribunal is allowed to progress. However, we recognise that this should not result in an unreasonable delay in the ability to exercise the right of appeal and will set out appropriate timescales around this. We will include clear guidance and, where necessary, mandatory requirements in respect of these arrangements in the new Code of Practice.

18. Require local authorities to appoint an independent person to facilitate the resolution of disagreements.

We want to boost the role of mediation facilitated by an independent party in the appeal process. Despite the potential benefits of mediation, it is currently under-used and under-promoted, so we will use the new Code of Practice to encourage its more frequent use and provide guidance on its effective operation.

19. Enable a right of appeal to Tribunal against:

- a decision not to put an IDP in place;
- a refusal of a request to review an IDP;
- the content of an IDP, including the description of the child or young person's needs or the educational provision required to meet those needs;
- a failure to make available the provision identified through the IDP;
- a decision to cease to continue an IDP.

In order to ensure that the new system for supporting ALN is robust and has the confidence of children, young people and parents, we think it essential that there remains an ultimate right of appeal to an independent Tribunal whose decisions are binding. Although we see recourse to Tribunal as a last resort, the retention of this right should help to ensure that duties in respect of learners with ALN are properly discharged. We intend to rename the Tribunal the Additional Learning Needs Tribunal Wales (rather than SENTW) to reflect the terminology which will be used under the new system.

20. Provide a right of appeal to any child, young person of school age or below who has an IDP (or their parent) or believes they should have one.

We want to ensure that no distinction is drawn between the 'value' of IDPs made for children and young people with less or more complex needs. If a child or young person has ALN, we want them to have a right to an IDP and we think that there should be equal entitlement to appeal in relation to that right.

21. Extend the right of appeal to post-16 learners with ALN, up to the age of 25, who are receiving or wish to receive education or training.

In order that a unified approach to ALN, which supports the smooth transition of children and young people from school to post-16 education and training is created, we think it is important that children and young people with ALN have similar rights of appeal in relation to the pre- and post-school education and training environment. IDPs are intended to work across this divide, and we think that the right of appeal in relation to IDPs should do likewise. As the duty to secure and maintain the IDP and

secure its contents will remain with the local authority; Tribunal's power to make an order will relate only to the local authority, regardless of the education or training setting which the child or young person attends.

22. Restate the existing provisions in relation to independent advocacy services and case friends, but require the Welsh Government to set out guidance on this, including mandatory requirements where necessary.

We think that it is important that children and young people are able to access independent advocacy services in order to be fully able to exercise their right to appeal or to engage in disagreement resolution procedures. We will therefore restate the existing legislative provision requiring local authorities to make arrangements for the provision of independent advocacy services (which is expected to be rolled out across Wales within the next year). We will also restate the existing provisions allowing regulations to be made by the Welsh Ministers in respect of the provision of case friends. In relation to advocacy services, we will provide clear guidance and mandatory requirements in the Code in respect of the nature and quality of these arrangements.

Conclusion

What will the impact be?

We believe these proposals will:

- **provide a unified, equitable system** across the 0-25 age range, different education providers and varying levels of need, thereby removing inconsistency and unfairness;
- **introduce a more flexible, responsive process** of ongoing assessment, enabling provision for the individual learner to evolve over time in accordance with their changing needs;
- **ensure a more person-centred approach**, placing the child or young person's views at the heart of the process and involving them and their families in the assessment, intervention, planning and review process from the onset;
- **provide better support and access to information and advice** for children, young people and their families to understand the ALN process and make informed choices;
- **avoid duplication** arising from plans which do substantially the same thing and integrate where possible existing plans and interventions delivered for children and young people;
- **improve collaborative working** between agencies to plan their interventions, agree priorities, and ensure appropriate resources are made available in time to make a difference;
- **reduce the likelihood of disputes arising** by developing stronger partnership working with parents and promoting a culture of transparency which should encourage greater trust between parents, education providers and local authorities;
- **minimise the number of appeals** by ensuring that disagreements are resolved at the earliest possible opportunity;
- **retain and extend the right of appeal** to the Tribunal as an ultimate safeguard in relation to the adequacy of the support provided to every child and young person who has ALN, not just those who have complex needs.

A comprehensive consideration of the costs associated with these proposals will be made prior to the introduction of a Bill and will form part of a regulatory impact assessment published at that time. However, significant financial resources are currently allocated to support children and young people with SEN. Total expenditure on SEN provision in the 2013-14 financial year was budgeted to be £358 million, an increase of £11.5 million or 3.3% compared with the previous financial year. Of the total expenditure, that delegated to special schools accounts for 24% whilst notional allocations within nursery, primary and secondary schools account for a further 45% of the total. The remaining 31% is made up of money held centrally by local authorities

The bringing into force of legislative reforms, and the simultaneous issuing of the new Code of Practice, will need to be accompanied by a programme of promotion and training amongst staff in schools and other educational facilities, relevant staff in local authorities, and professionals who are likely to work with children with ALN. This is to ensure that everyone responsible for delivering services for children and young people with ALN understands the process and the role they will be expected to play in it. It will also be necessary to actively promote the new system and terminology amongst children and young people, parents and the wider public. There will be one-off costs associated with this programme.

We will minimise the disruption and uncertainty that the act of changing from one system to another will have on stakeholders by carefully planning the transition between them. We are aware that replacing statements with IDPs has, in particular the potential to cause anxiety for those learners, and their parents, who currently have a statement. We will work with stakeholders over the coming months to ensure that a detailed and costed transition plan and timetable is available at the time that a Bill is introduced. Our transition plan will focus on ensuring that the rights of children and young people are fully protected and that no learner is disadvantaged by the process of change.

We expect that the ALN definition and entitlement to an IDP would include all those learners currently on early years/ school action and early years/ school action plus or who have a statement. We do not think that the cost of support made available for those learners would differ significantly from that which is currently provided.

Our intention is to create a system which minimises the need to appeal and our proposals to require dispute resolution prior to an appeal should support this. However, we recognise that by extending the right to appeal to include all learners with an IDP and, in particular, to children and young people aged between 16 and 25, there is potential for a greater number of appeals. We also recognise that there may be costs associated with the creation of a robust dispute resolution and information and advice giving system.

It is likely that there will be some recurring costs associated with the inclusion of children and young people aged between 16 and 25 in the definition of ALN. In particular, there will be costs associated with local authorities taking on the responsibilities for the assessing post-16 learners (as part of the IDP process) and for securing specialist post-16 provision for them. There will be a transfer of funding between the Welsh Government and local authorities in order to fund this provision.

Timetable and next steps

The First Minister will announce his legislative priorities in his annual statement on the Welsh Legislative Programme in July. It will be published on the National Assembly for Wales' website at www.assemblywales.org.

For more information on the stages of the legislative process, a guide can be accessed from the National Assembly for Wales' website at www.assemblywales.org/guide_to_the_legislative_process_e_final.pdf

We envisage that the earliest that a Bill including these legislative proposals would be introduced into the National Assembly for Wales is 2015. The earliest that any proposals could come into force would be in relation to provision for the academic year 2016/17: however, the actual implementation date will be subject to consultation. In due course, we will also issue for public consultation, a full draft of the Code of Practice.

In the meantime, we will continue to work closely with children, young people and their families and key stakeholders from across the education, health, social care and voluntary sectors, as we refine our proposals for reform. The views we receive in response to this White Paper will be essential to shaping the detail of the provisions to be included in a draft Bill. We encourage all those who have a view on the current system for SEN or any of the proposals contained in this White Paper to share their ideas with us. Details of how to respond are included on page 1. The closing date for responses is 25 July 2014. Following this we will carefully analyse the feedback we receive and will publish a summary of responses on the Welsh Government website in due course.