

Number: WG29099



Llywodraeth Cymru
Welsh Government

Welsh Government
Consultation – summary of response

Draft Additional Learning Needs and Education Tribunal (Wales) Bill

July 2016

Mae'r ddogfen yma hefyd ar gael yn Gymraeg.
This document is also available in Welsh.

Draft Additional Learning Needs and Education Tribunal (Wales) Bill

| | |
|----------------------------|--|
| Audience | This document is aimed at all those with an interest in the provision of education for those with special educational needs. |
| Overview | This is a summary of the responses to the consultation issued by the Welsh Government on the draft Additional Learning Needs and Education Tribunal (Wales) Bill. |
| Action required | None – for information only. |
| Further information | Enquiries about this document should be directed to: Additional Learning Needs Reform Branch Support for Learners Division The Education Directorate Welsh Government Cathays Park Cardiff CF10 3NQ Tel: 029 2082 6015 e-mail: SENreforms@wales.gsi.gov.uk |
| Additional copies | This document can be accessed from the Welsh Government's website at www.gov.wales/consultations |
| Related documents | <i>Draft Additional Learning Needs and Education Tribunal (Wales) Bill (2015)</i> Welsh Government consultation |

Contents

| | |
|---|-----------|
| 1. Introduction | 2 |
| 2. Methodology | 3 |
| 3. Key messages | 5 |
| 4. Responses to questions | 8 |
| 5. Summary of campaign responses | 29 |
| 6. Summary of stakeholder events | 32 |
| 7. Next steps | 34 |
| Annex: List of respondents | 35 |

1. Introduction

The Welsh Government's draft Additional Learning Needs and Education Tribunal (Wales) Bill was published for consultation on 6 July 2015. The draft Bill set out proposals for a new legislative system for supporting children and young people aged 0–25 who have additional learning needs. The new system would replace the 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.

In addition, a working draft of the Additional Learning Needs Code along with an outline plan for implementation, a children and young people's version of the consultation document and an easy read explanation of the draft Bill were published on 30 September and 16 October respectively.

The draft Bill, consultation document, consultation response form and other supporting documents can be accessed from the Welsh Government's website at:

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

The consultation period ended on 18 December 2015. A total of 263 written responses were received. The list of respondents is at Annex A with anonymity protected where requested. Copies of the responses received can be viewed on the consultation web page.

This document presents respondents' views to the questions contained in the consultation document which accompanied the draft Bill.

2. Methodology

The consultation asked participants for their views on six areas relating to the draft Additional Learning Needs and Education Tribunal (Wales) Bill. In total, the questionnaire consisted of five closed questions and opportunities to provide responses to six open-ended questions. The final question was an open invitation to raise any related issues.

An easy read version of the consultation response form was also produced. This consisted of ten closed questions and seven open questions, with the final question an open invitation to raise any related issues.

In addition, a consultation for children and young people, asking ten questions, was developed for a series of participation events with children and young people.

A total of 263 responses to the consultation were received by the Welsh Government. This includes campaign responses highlighting Welsh Language matters (31 responses) and concerns raised by the National Deaf Children's Society (NDCS) Cymru and Sense Cymru in relation deaf and deafblind learners (73 responses). Six of the responses were completed using the easy read version of the questionnaire. No responses were received using the consultation for children and young people.

The following tables provide a breakdown of the number of respondents into types based on category and location.

| | |
|---|----|
| Schools | 21 |
| Special schools | 8 |
| Special Educational Needs Co-ordinators | 11 |
| Further education sector | 7 |
| Preschool organisations | 0 |
| Education professionals | 18 |
| Teaching unions | 6 |
| Local authorities | 12 |
| Work based learning organisations | 0 |
| Local health boards | 6 |
| Health professionals | 2 |
| Other public sector organisations | 8 |
| Third sector organisations | 23 |
| Individuals | 89 |
| Other ¹ | 37 |
| None stated | 15 |

| | |
|---------------|-----|
| Wales | 167 |
| Outside Wales | 10 |
| None stated | 86 |

¹ Includes responses where more than one category was selected

Whilst the majority of responses were returned using the Welsh Government's response form, 25 were presented in another format, including corporate headed paper, private correspondence and free text submissions.

Throughout Chapter 4, the figures relate only to those responses submitted using the Welsh Government's response form. In each closed question respondents were asked to tick one box from a choice of 'Agree', 'Disagree' or 'Neither agree nor disagree'. However, not all respondents who used the questionnaire ticked a box in response to every closed question; where respondents did not indicate a preference they have been included under 'not ticked'.

This is a complex policy area and this complexity is reflected in the responses received. Negative responses to closed questions were frequently accompanied by narrative indicating broad support for the key principles outlined but noting specific concerns or issues for further consideration.

Throughout, the responses to the easy read exercise are considerably more positive than to the detailed consultation with strong support across all questions.

The comments reported in this Summary of Consultation Responses are based on an analysis of the qualitative information provided both in the 'supporting comments' boxes of the Welsh Government response form and in the responses received in other formats.

The two campaign responses have been summarised separately in Chapter 5.

Participation events for children, young people and their parents/carers were held on behalf of the Welsh Government by Cognition Associates. A full report of those events is published separately on the Welsh Government website at:

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

Two formal multi-agency consultation events with stakeholders were also held in North Wales and South Wales.

The outcomes of these participation and engagement events have been included in the summary of stakeholder events presented in this report.

3. Key messages

The principles of the draft Bill were broadly welcomed by respondents. Whilst some concerns were expressed with the legislative proposition outlined in the draft Bill, the vast majority of concerns related to the implementation and operation of the new statutory framework rather than the framework itself. There were requests from stakeholders for further detail and clarification, either in the Bill or through the Code, on a number of areas of the reforms. Respondents also wanted assurances that the necessary capacity of the workforce and funding would be in place to implement the new system and ensure that the needs of all children and young people with Additional Learning Needs (ALN) would be met.

Use of Additional Learning Needs and Additional Learning Provision

The introduction of the terms 'Additional Learning Needs' and 'Additional Learning Provision (ALP)' were welcomed by a wide range of respondents to the consultation. The new terms were considered to be more inclusive and positive than the previous use of Special Educational Needs (SEN) and Learning Difficulty and/or Disability (LDD). The main concern raised by stakeholders was the potential for the definitions to be open to interpretation and the risk that they would be applied inconsistently across Wales unless absolute clarification was provided in the Bill and Code.

0 – 25 age range

The principle of a single legislative framework covering the age range from 0 – 25 was broadly welcomed by stakeholders, who felt that it would support children and young people to move between different education phases and settings. Further clarification and detail was sought on the roles and responsibilities of local authorities, education settings and other agencies, in particular for the early years and the 16 – 25 age group. There were concerns raised by a number of respondents to the consultation that the new system would not extend beyond Further Education (FE) and that consideration should be given to including apprenticeships, work based learning and Higher Education (HE) within the scope of the Bill.

Move to a single statutory plan

While the proposal to introduce a unified planning process was welcomed, there were concerns that the removal of the graduated response within the current system would lead to a strain on resources due to the extension of the cohort of learners entitled to a statutory plan; with all children and young people with ALN entitled to an Individual Development Plan (IDP) regardless of the severity or complexity of their need. Respondents called for a robust legal framework to support the IDP process with clear criteria, definitions and responsibilities for preparing, maintaining and reviewing an IDP. This included developing a standard IDP template to support consistent delivery across Wales.

Engagement with children and young people

The emphasis in the Bill on increased participation of children and young people throughout the process was welcomed by a wide range of stakeholder groups. Respondents commented that the introduction of IDPs and the focus on person centred planning would help ensure that a child or young person would be engaged throughout the decision making process. However, some respondents felt that the duty to favour mainstream education did

not reflect the possibility that a child or young person's wishes may be to attend a non-maintained school or special school that better suited their needs.

Disagreement resolution

The proposed new framework for disagreement resolution was welcomed by a broad range of stakeholders who felt that the emphasis on early resolution and engagement with children, young people, and parents throughout the decision making process would help avoid unnecessary escalation to the Tribunal. Providing access to independent advocacy services was also supported, although reassurances were sought that it would remain independent and run separately from local authorities. Concern was highlighted in relation to the appeal process, in particular the lack of powers in the Bill for the Tribunal to direct health bodies to deliver provision. A number of stakeholders also disagreed with parents being unable to appeal to the Tribunal on behalf of a young person once they reach 16 years old.

Multi-agency collaboration

Responses to the consultation agreed that the Bill provides the basis for increased multi-agency collaboration and planning. In particular, the development of IDPs, the move to person centred planning and the creation of the Designated Medical/Clinical Officer (DMO/DCO) role were all highlighted as helping to create a more unified and inter-agency approach across Wales. There were requests for more guidance within the Code to ensure that the collaboration between agencies was effective and clarification on the responsibilities of the new DMO/DCO role. Stakeholders also sought further explanation of the requirements, restrictions and the format for sharing information across agencies to ensure the implementation of robust and secure systems.

Resource and capacity

The issue of having the necessary resources and capacity in place to ensure various elements of the new system could be implemented correctly was raised by the majority of respondents to the consultation. Respondents were concerned that the new system could significantly increase the workload for staff within education settings, local authorities and other agencies, especially in respect of the 16–25 age group. It was commented that the draft Regulatory Impact Assessment produced alongside the draft Bill underestimated the impact of the legislative proposals in terms of workload and finance and the notion that the reforms would be cost neutral was disputed. There was strong support for implementation of the new system being accompanied by a package of additional funding, workforce training and ongoing support to ensure the delivery partners are properly resourced and supported.

Welsh language

Several bodies including Cymdeithas yr Iaith Gymraeg requested statutory requirements within the Bill to give children, young people or parents rights to access all stages of the ALN process and support in either Welsh or English. It was also proposed that the Code should outline requirements to ensure children, young people and parents were able to access all services and communications in their preferred language.

Other issues

There was a strong view among education professionals and third sector organisations that the role of specialist services or professionals, for example Educational Psychologists

(EPs), would benefit from strengthening in both the Bill and Code. This was especially so in relation to the assessment of complex or low incidence needs such as sensory impairment.

Although respondents welcomed the establishment of the Additional Learning Needs Co-ordinator (ALNCo) and the DMO/DCO roles, there were concerns that workload could potentially be extensive making the roles unmanageable. Further guidance was sought on the responsibilities, functions, and the qualification and training requirements associated with the roles.

Further clarification was also sought on the support arrangements that would be offered to organisations, professional groups and the public during transition to the new system and how any phased implementation of the new system would operate alongside the existing system for an interim period.

4. Responses to questions

Question 1: The introduction of the term ALN and a 0–25 age range

Do you agree that the definitions of ALN and ALP set out in the draft Bill appropriately reflect our intended focus on educational needs and do you agree that the draft Bill would deal properly with the age range it sets out to capture?

| Consultation Response Form | |
|----------------------------|-----|
| Agree | 34% |
| Disagree | 41% |
| Neither Agree nor Disagree | 19% |
| Not answered | 6% |

Whilst 41% of respondents disagreed with the closed question there was broad overall support for the proposals, but with respondents raising some specific areas of concern. Analysis of the full responses highlighted the following:

Overall

The majority of respondents commented that the shift from the current terminology to ALN and ALP was a positive step forward and that the definitions of ALN and ALP set out in the draft Bill reflected the intended focus on educational needs and inclusivity.

In the supporting comments the majority also agreed that, in theory, the draft Bill looked to deal properly with the age range that it sets out to capture. However, many respondents stated that the definitions required greater clarity and expressed concerns over how the needs of a 0-25 age range, in particular 0-3 and 16-25 would be met.

Definition of Additional Learning Needs

A number of respondents, including the Children’s Commissioner for Wales, welcomed the use of the term ALN as it indicated a move away from the ‘negative and demeaning connotations’ that were associated with SEN. It was also considered to be a more positive and inclusive term. Others noted, however, that it will be only a matter of time before the new term would be subject to the same stigma associated with SEN.

Several third sector organisations, including Guide Dogs Cymru/Blind Children UK Cymru, supported the term ALN because ‘learning’ had the potential to acknowledge that children and young people learn beyond the boundaries of ‘education’ in its more formal and statutory sense. Other respondents, including the National Association of Independent Schools & Non-Maintained Special Schools (NASS), felt that the definition appropriately reflected the Bill’s primary focus on educational needs.

There was agreement from a number of respondents that the definition of ALN would ‘provide more consistency and clarity in terminology’ and it is ‘succinct’ and ‘appropriate’. However, a number of respondents stated that given the Bill’s intention to support a broad range of needs the definition requires ‘absolute clarity’ to avoid it becoming open to interpretation. In particular, stakeholders sought clarification on the following matters:

- determining who is eligible for an IDP and who maintains responsibility for it under the new framework;
- interpretation of the term ‘significantly greater difficulty’;
- the definition of ‘disability’ and ensuring that it is used by all agencies, including those within the health and social services sector; and
- whether children and young people who do not have a learning difficulty but require additional support for a physical, sensory, behavioural, or emotional difficulty will be considered fully under the definition.

A number of respondents, including the Special Educational Needs Tribunal for Wales (SENTW), commented that the Bill focussed primarily on school-aged children and requested that further work was undertaken to consider how the definition meets the needs of learners in the early years and FE.

Definition of Additional Learning Provision

The introduction of the term ALP was broadly welcomed. As with the definition of ALN, a selection of organisations and individuals agreed that the term reflected ‘the intended focus on educational needs’, while other respondents suggested that the term provided ‘a positive focus on learning’.

The Children’s Commissioner for Wales did not agree with the definition of ALP, commenting that ‘inclusion of the term “different from” blurs the distinct boundary between existing responsibilities to differentiate classroom-based teaching and any additional learning support provision’. The Commissioner added that ‘providing differentiated teaching does not necessarily mean that an individual child or young person has additional learning needs.’

A number of respondents sought clarity on what constituted ALP. Specific points made included:

- development of a precise definition for ALP was necessary to ensure consistent application across Wales;
- the focus on education rather than learning in the definition of ALP was thought to have implications for children under compulsory school age in obtaining developmental and behavioural support;
- whether children and young people would receive effective access to specialist provision such as speech and language therapy was questioned; and
- clarity was sought on access to provision for children and young people in non-maintained settings and special schools.

0-25 age range

A number of third sector organisations, local authorities, and education professionals welcomed a system covering a 0-25 age range. Learning Disability Wales, Epilepsy Action Cymru, British Academy of Childhood Disability (BACD), the Department of Community Child Health at Abertwae Bromorgannwg University Health Board and a number of local authorities including Flintshire, Merthyr Tydfil and Rhondda Cynon Taff all suggested that including the full age range would help transition planning for children and young people as they move through different education stages and settings.

However, a number of local authorities, third sector organisations and one response via the easy read questionnaire queried why the Bill only applied to young people studying in FE

and, therefore, why support would not be available to those undertaking apprenticeships, work based learning or in HE.

A number of respondents queried how the proposed 0-25 age range would align with social services and health services provision as 19–25 year olds are transferred to adult services in these sectors. In particular respondents:

- questioned how health provision for 19-25 year olds would be coordinated; and
- raised concerns around capacity to meet the additional demand for 19–25 year olds in areas such as speech and language therapy.

For the 0–3 age range, a number of local authorities sought clarification as to who would be responsible for maintaining IDPs and providing services in non–educational settings, and the additional costs associated with that. A small number of respondents highlighted the primary role of health services from 0–3 year olds and questioned whether responsibility for the assessment process and preparing an IDP should reside with them.

For the 16–25 age range, a number of respondents sought clarification on the expectations that would be placed on local authorities and FEIs to deliver provision and who would be eligible to seek provision within that age group.

The Children’s Commissioner for Wales proposed that the Bill extend the definition of a ‘child’ to cover anyone aged under 18. The Commissioner noted that this ‘would provide a parity of rights for all children, as defined by the United Nations Convention on the Rights of the Child (UNCRC), with additional learning needs’. If this could not be achieved, the Commissioner called for the Bill to introduce a provision that ‘sufficiently balances a young person’s right to be heard with the right for their best interests to be given paramount consideration’.

Capacity and resource

Significant concerns were raised by local authorities, third sector organisations and education professionals that the capacity and resource would not be in place to implement the reforms, in particular for the 0-25 age range. To ensure that the needs of children and young people were met, a number of respondents called for additional resources, including funding and training, to be made available, particularly for local authorities to manage provision for 16–25 year olds.

Specialist roles

Respondents raised concerns around access to specialist services and questioned whether, in assessing the needs of children and young people, schools/ALNCoS would know when to involve specialists, especially for young people with complex and or low incidence needs such as sensory impairment. Concerns were also expressed around the capacity and access to specialist services and specialist teachers for early years and post-16 learners, especially for Further Education Institutions (FEIs).

There were concerns around the expanded remit and workload for the ALNCo role, with Learning Disability Wales highlighting that within a FE setting the caseload of staff may make the role unmanageable. The Down’s Syndrome Association also suggested that the increase in workload may result in a ‘diversion of focus and expertise away from those pupils and students with the most significant needs and a possible diluting of scarce resources’.

A number of education professionals and individuals highlighted the uncertainty of the role of Educational Psychologists (EPs), as there was no mandatory requirement for them on the face of the Bill. It was proposed that the role of EPs be recognised on the face of the Bill and the Code to ensure that children and young people in Wales have the same rights of access to an EP as those in England. It was also suggested that the Code should 'state that schools should consult with an EP before any case is referred to a local authority' and recognise 'the wider role of the EP in supporting school staff at all levels including FEIs'.

Easy read responses

In the new law we say what we mean by additional learning needs (ALN). Do you think it is clear that we want to focus on learning needs?

| | |
|----------|------|
| Yes | 100% |
| No | - |
| Not sure | - |

Do you think it's a good idea to focus on learning needs instead of other needs like health?

| | |
|----------|-----|
| Yes | 83% |
| No | - |
| Not sure | 17% |

Do you think the new law will be good for people aged 0–25 with ALN?

| | |
|----------|-----|
| Yes | 67% |
| No | - |
| Not sure | 33% |

Some concern was expressed by respondents that the role of the health service was not sufficiently addressed by the draft Bill and Code. However, it was also commented that the transferable nature of IDPs was to be welcomed and there was support for both a move from SEN to ALN and a 0-25 age range.

Question 2: A unified planning process with increased participation by children and young people

Do you agree that the draft Bill would create a robust legal framework for the preparation, maintenance and review of Individual Development Plans (IDPs)?

| Consultation Response Form | |
|----------------------------|-----|
| Agree | 23% |
| Disagree | 53% |
| Neither Agree nor Disagree | 17% |
| Not answered | 7% |

Whilst 53% of respondents disagreed with the closed question there was still broad overall support for the proposals. Again respondents used narrative to highlight specific areas of concern, but the overall analysis of the responses did not convey as high a level of disagreement with this aspect of the draft Bill as the closed question response might indicate.

Overall

The introduction of a unified planning process and the emphasis on increased participation was strongly welcomed by responses to the consultation, although further clarity and detail was requested in the Bill and Code to ensure that the legal framework was fully robust.

Increased participation

Respondents from across the various stakeholder groups welcomed the emphasis on increased participation by children and young people. The Association of Educational Psychologists (AEP) reflected the views of many when it said 'The emphasis on increased participation of children and young people is to be welcomed. It is essential that the voices of children and young people are heard in whichever manner is most appropriate for them and that all practitioners incorporate the culture of listening within their day to day practice'.

Unified planning process

A number of respondents welcomed the proposal to introduce a unified planning process including the use of statutory IDPs. Comments ranged from it adding to the robustness of the legal framework to it simplifying and improving the current process.

There were concerns expressed from schools and education professionals that moving to a unified planning process would remove the graduated response inherent within the current SEN system. The Vale of Glamorgan Council noted that the 'removal of a graduated response will potentially result in demands for provision being made at a much lower level of need than currently, resulting in resources both physical and financial being over stretched'. There were also calls for entry and exit criteria for IDPs to be clarified to help avoid disputes with parents.

Legal framework

There were conflicting views from respondents on whether the draft Bill created a robust legal framework for the preparation, maintenance and review of IDPs.

Some respondents agreed that the draft Bill would create a clear and robust legal framework to support the IDP process. However, concerns were raised that there was not enough information included in the Bill and the supporting documents to provide assurances that that would be the case.

A number of stakeholders called for clear definitions and criteria for preparing, maintaining and reviewing IDPs to ensure consistency across Wales. This included:

- obligations on partner agencies such as health and social services to collaborate on IDPs;
- guidance on the formal assessment of needs, decision making and who will contribute to the preparation, maintenance and review of an IDP, such as the use of specialist professionals and support services;

- clarity on when IDPs should be referred from schools to local authorities for learners with complex needs;
- guidance on review timescales;
- clarification on who will monitor the quality of IDPs; and
- developing a robust definition of ALN and ALP.

A significant number of respondents called for an IDP template to be developed to support the consistent delivery across Wales. NDCS Cymru reflected the views of many when it said 'We believe that the Welsh Government must provide a national template in order to secure a consistent, transparent and portable IDP. A template would also help to uphold the legal integrity of the document'.

Capacity

A number of respondents from Local Government and education settings, including Special Educational Needs Coordinators (SENCOs), were concerned that the new system would increase the workload for schools and local authority staff and for other providers. It was highlighted that to successfully implement the new planning process sufficient funding would need to be made available and comprehensive and timely training provided across the entire relevant workforce.

The role and responsibilities of the ALNCo was specifically highlighted by a number of respondents as being potentially burdensome, which could result in quality and consistency issues. Guide Dogs Cymru/Blind Children UK Cymru noted that the 'roles and responsibilities of the ALNCo at point 45 of the Code of Practice are vast and expansive'. They added 'whilst it is right and proper to be ambitious for the role and to set high expectations, we are concerned that the ALNCo role will be excessive and burdensome. The pressure of making the new ALN framework work should not be shouldered entirely by the ALNCo; local authorities must not be allowed to offload their responsibilities on nurseries, schools and FEIs through this role'. It was proposed by a small group of respondents that the role should be full time with consideration given to appointing administrative support to help them with the administrative requirements of the job.

Welsh language

A number of respondents from schools, teaching unions and third sector organisations noted that to create a robust legal framework it was expected that the Bill should include a reference to the principles of the Welsh Language (Wales) Measure 2011. In particular that Welsh should not be treated less favourably than English.

Mentrau Iaith Cymru highlighted the view expressed by a number of other respondents that the 'planning process should – along with every other step in the process – be available equally through the medium of Welsh or English, according to the language preference of the child/young person and/or parents. That principle should be clearly on the face of the Bill as a statutory requirement'.

Easy read responses

Do you think our plans on how to:

- **get ready for**
- **write**
- **do**

- check the new individual development plan are good?

| | |
|----------|-----|
| Yes | 66% |
| No | 17% |
| Not sure | 17% |

Will having one individual development plan be better than having different plans for different types of ALN?

| | |
|----------|------|
| Yes | 100% |
| No | - |
| Not sure | - |

A number of respondents commented that they thought the new system would be easier to understand. However, it was suggested that there needs to be a very clear process and there were calls for a ‘specific form for the IDP’.

Question 3: High aspirations and better outcomes

Do you agree that the draft Bill would help to ensure that the interests of children and young people with ALN are safeguarded and promoted?

| Consultation Response Form | |
|----------------------------|-----|
| Agree | 30% |
| Disagree | 47% |
| Neither Agree nor Disagree | 16% |
| Not answered | 7% |

Here again we see a mismatch between closed question responses, 47% disagreed, and the accompanying narratives which, overall pointed to strong support for the proposals in the draft Bill seeking to safeguard and promote the interests of children and young people. A number of specific concerns were expressed, many of which sought to build on what was set out in the draft Bill.

Overall

Respondents welcomed the high aspirations behind the Bill and the ambition to improve outcomes for children and young people with ALN. They highlighted that the draft Bill promoted and protected the interests of children and young people with ALN, with a clear emphasis on their participation throughout the process through the introduction of Person Centred Practice (PCP).

However, there were concerns that the draft Bill did not provide a sufficiently clear framework to give confidence that the needs and interests of children and young people with ALN would be met, protected or promoted. Respondents highlighted that there was insufficient clarity and detail on how children and young people’s ALN would be identified, assessed and met to suggest that the proposed system would deliver improvements to the outcomes for children and young people compared with the current system. There were

also concerns that the draft Bill provided no guarantee of access to Welsh language provision for those who wish to communicate through the medium of Welsh.

Individual Development Plans

The response from a number of education professionals was that the introduction of statutory IDPs indicated a clear focus on promoting the interests of children and young people. Estyn commented that it would afford greater levels of protection than was currently the case and saw the proposed emphasis on involving the learner in the development and review of their IDP as a positive step.

Concern was raised from the SENTW that there was a potential watering down of rights and protections for children and learners with severe and complex needs by trying to ensure the system is flexible and caters for learners with less severe needs.

A number of respondents suggested the changes to the IDP process to help promote the interests of children and young people, including:

- an overview and long term focus should be part of the IDP to help map out the progress of each individual child;
- wider developmental and environmental requirements should be included in the IDP;
- IDPs should have realistic outcomes and robust reviews in order that learners are fully prepared for progression;
- IDPs to be outcome focussed with interventions tracked and monitored to ensure a high level of quality assurance of provision;
- more clarity on the whole process of preparing, maintaining and reviewing IDPs;
- Children and young people with mild to moderate needs may benefit from a more specific or tailored plan rather than a full IDP;
- more detail around the young person's ability to decline an IDP and the need to ensure that they are fully informed and aware of the protection an IDP affords them; and
- development of an IDP template to ensure portability within and outside their local authority area.

Person Centred Practice

A majority of respondents commented that the focus on the use of PCP would ensure that the learner would be engaged throughout the decision making process and the model would help promote and protect the interests of children and young people.

Concerns were expressed by NDCS Cymru, Third Sector Additional Needs Alliance (TSANA) and Flintshire County Council that if the PCP model was to work then practitioners would need to have a range of skills and sufficient time to ensure that the model was implemented correctly and that children and young people were kept safe during the process. Flintshire County Council and Conwy County Council also noted that the PCP model may not be appropriate for all pupils, so flexibility in the system would be required.

Other legislation/UN conventions

A number of respondents suggested that the intention to achieve better outcomes and high aspirations for children and young people with ALN would be strengthened by aligning the Bill with recent legislation such as the Social Services and Well-being (Wales) Act 2014 and the Well-being of Future Generations (Wales) Act 2015. It was also proposed that the Bill should have due regard to the UNCRC and the United Nations Convention on the Rights of Persons with Disabilities.

ALN Coordinators

The introduction of a statutory ALNCo role was welcomed by a number of respondents, including Estyn and SENTW, with a recognition that it would help promote and protect the interests of children and young people with ALN.

A selection of respondents noted that the requirement for ALNCoS to obtain a specific qualification was a positive step and hoped that this would cover all areas of ALN including sensory development. This theme was reiterated by a number of respondents, including the AEP, who stated that the role would be crucial and must have the appropriate qualifications and undertake relevant training and professional learning.

Concerns were raised by respondents on the broad remit of the ALNCo role and the lack of clarity on how the role would work in early years settings. Clarity was also sought on the ability to recruit suitably qualified ALNCoS within the implementation timescales, and how the potential administrative burden of the role may affect the ability to provide support to pupils.

Educational Psychologists

It was commented that the draft Bill did not reflect the key role that EPs play in the current assessment process and in the coordination of arrangements to meet the needs of learners, especially of those with severe or complex needs. It was noted that the draft Bill did not ensure that this role would be identified and, as a consequence, local authorities may choose not to ensure funding of EPs to carry out such work.

A number of education professionals, including the AEP, suggested that consideration should be given to commissioning more university training places for EPs. It was also noted that the role of the EP is crucial in providing advice, training and on-going support to schools and will need to be properly resourced in order to continue this going forward, in particular given the larger cohort of learners that would be entitled to a statutory plan.

Dispute resolution

Respondents commented that the Bill provided a clear escalation process for all parties and the extension of the role of the Tribunal in respect of post-16 learners with ALN was welcomed. The emphasis in the Bill on advocacy and the concept of case friends was also well received and seen as a positive step. However, it was noted that the role and the functions of case friends and advocacy services would need to be clearly specified to ensure that they were working in the best interests of the child.

Mainstream education

A number of respondents highlighted concerns that the duty to favour education at mainstream maintained schools in the Bill was inconsistent with the principle that the best interests of the individual child or young person are paramount.

Definition of ALN

A number of respondents from local authorities and schools had concerns that the definition of ALN within the Bill would not protect or promote the interests of children and young people with ALN due to a lack of clarity around what constitutes an ALN. Some indicated that a narrow definition of ALN that focused on attainment would exclude many types of

needs. In contrast, other respondents had concerns that the term ALN covered a huge spectrum of needs which would result in pupils on the edge of the spectrum being overlooked.

Age range

A number of respondents, including NDCS Cymru and the SENTW, raised concerns around the potential removal of parental involvement in the decision making for post-16 learners. There was a call for appropriate statutory guidance and legal exceptions to ensure that this was not abused. A number of individuals expressed concern that this would not be in the best interests of the young person and would not help ensure those interests were protected or promoted.

A number of comments stated that the age limit of 25 and educational focus of the Bill did not promote the employment rights for young people with ALN or help with the transition into adulthood, with a link made to the ideals promoted in the Social Services and Well-being (Wales) Act 2014. It was also noted that the needs of learners in higher education or on training schemes would not be specifically provided for under the Bill.

Resourcing

The recognition of the importance of up-skilling teachers and workforce planning and development to improve capacity to identify and support children and young people with ALN was welcomed.

There were a number of concerns raised over practical delivery, funding and capacity to implement the demands of the new legislative regime, which it was suggested could lead to resources being overstretched rather than protecting and promoting the interests of children and young people. In particular, the expectation on teaching staff to assess learners' ALN under the new proposals and the capacity of key staff to liaise with partner agencies whilst carrying out other duties were noted.

There were a number of comments from respondents in local government and the education sector on the need for training within schools and FEIs to ensure that staff are sufficiently skilled to meet the needs of learners with ALN and to implement PCP and the IDP process robustly.

Respondents also argued that if the goal of improving outcomes for children and young people with ALN was to be achieved adequate funding would need to be provided.

Easy read responses

We want to make sure all staff think about what children and young people with ALN must have. We want their needs thought about in all planning for education. Will the new law do this?

| | |
|----------|-----|
| Yes | 66% |
| No | 17% |
| Not sure | 17% |

We want children, young people and their families to be involved in decisions about how to support their needs. Will the new law help children and young people have a say in the support they get?

| | |
|----------|-----|
| Yes | 83% |
| No | 17% |
| Not sure | - |

Respondents welcomed the way in which the draft Bill proposes children, young people and families would be involved in decisions under the new system, with learners at the centre of the process. A question was raised, however, on whether stronger legal requirements were needed to force a culture change.

Question 4: Increased collaboration

Do you agree that the draft Bill would provide the basis for an improvement in the way that agencies work together to deliver for children and young people with ALN?

| Consultation Response Form | |
|----------------------------|-----|
| Agree | 22% |
| Disagree | 49% |
| Neither Agree nor Disagree | 22% |
| Not answered | 7% |

49% of those that chose to respond to the closed question disagreed with the proposition that the Bill would improve multi-agency working in the context of the proposed ALN system. Supporting comments were generally much more positive, although included a range of concerns and requests for further information and clarity.

Overall

It was agreed by a number of respondents that the draft Bill provided the basis for increased collaboration between agencies. However, some respondents requested further detail on the arrangements to ensure effective partnerships, the requirements for information sharing and the role of the DMO/DCO. There were strong representations for a duty on agencies other than those in the education sector to assess and deliver provision when necessary or required and for the Tribunal to have jurisdiction to hold them to account.

Framework

A number of respondents from third sector organisations, health boards, local authorities, and the education profession agreed that the draft Bill provided the basis for increased collaboration and planning. In particular, respondents highlighted the development of a single plan, the greater clarity of the roles and responsibilities of other agencies in the development of IDPs, and the move to PCP as creating a more unified approach for all children and young people across Wales.

A number of respondents, including Estyn, requested further guidance within the Code on 'protocols, commissioning strategies etc that are needed to ensure effective working

partnerships'. On this theme, the College of Occupational Therapists highlighted that the draft Bill separated health and social care needs from educational needs, which could lead to disagreements over the provision of services as 'the distinction between a health need and an education need are unclear'.

The SENTW stated that the 'weakness in collaboration that has plagued the effectiveness of the current SEN and LDD assessment and support systems is likely to be imported into the new system' and it would 'undermine its overall effectiveness'. The SENTW questioned if the draft Bill was 'sufficiently robust or innovative in its approach to ensuring that services effectively collaborate and engage in supporting the needs of learners with ALN'. However, it added that 'there are many elements within the proposals that are innovative and could deliver real improvement to the education of learners with ALN if effective collaboration between services can be secured'.

Duties on other agencies

Respondents from local authorities, SENCo groups, and third sector organisations called for a statutory duty in the Bill on other agencies, in particular health bodies, to carry out assessments, provide information or deliver services when they are required to do so. A number of education professional groups, including the National Association of Principal Educational Psychologists (Wales), highlighted that the Tribunal should be able to hold other agencies to account during disputes around a learners ALN or ALP.

DMO/DCO and ALNCoS

On the proposed role for a Designated Medical or Clinical Officer, a number of respondents, including the Welsh Local Government Association (WLGA), welcomed it as positive move to help coordinate ALN functions between health boards and the education sector. Further clarity was requested on the role, including how it would work with other agencies and the education sector, and whether it would be clinical or administrative. The Children's Commission for Wales was unconvinced that the role would increase the level of collaboration with the education sector without the introduction of statutory duties upon health boards and NHS trusts on the face of the Bill.

A number of respondents, including Children in Wales, highlighted that there would be significant time requirements on the new ALNCo role to co-ordinate collaboration with other agencies in relation to IDPs, which was not compatible with a teaching timetable.

Resources

The ability to deliver multi-agency collaboration with limited resources was a concern for a number of respondents, including Hywel Dda University Health Board. In particular, the following points were made:

- appropriate resource must be provided to deliver a person centred approach and ensure the effective formation of IDPs;
- lack of resource may lead to disagreements between parents, schools, local authorities and other agencies over raised expectations and where responsibility lies for delivering provision;
- budget priorities are different across agencies with some resource led rather than needs led; and
- consideration should be given to pooling resources or the development of a multi-agency framework to ensure efficient use of local resources.

Information Sharing

The 'duty to share information across agencies was welcomed by a number of respondents, but there were requests for further clarification on the requirements and restrictions associated with it. It was noted that it would be necessary to ensure robust and secure systems were in place, with effective protocols and agreed, consistent formats for any data that would be shared. There were also calls for various agency systems to be aligned to improve joint working. However, Cwm Taf University Health Board stated that 'multi-agency working can be difficult due to the barriers within current IT systems' and that 'current Welsh Government plans for shared information systems between health and social services do not include education'.

Easy read responses

We want services to work together to support children and young people with ALN. Will the new law help everyone work together?

| | |
|----------|-----|
| Yes | 66% |
| No | 17% |
| Not sure | 17% |

Some concern was expressed about the role of parents in the process when a child turns 16 and primary responsibility shifts from the parent to the young person themselves. Clarity around 'who bears ultimate responsibility' was also requested.

Question 5: Avoiding disagreements, earlier disagreement resolution and clear and consistent rights of appeal

Do you agree that the draft Bill would provide an appropriate framework to support disagreement avoidance and resolution, and that the provisions relating to appeals are properly founded?

| Consultation Response Form | |
|----------------------------|-----|
| Agree | 20% |
| Disagree | 46% |
| Neither Agree nor Disagree | 24% |
| Not answered | 10% |

46% of respondents disagreed with the statement that the draft Bill proposes an appropriate framework to support disagreement avoidance and resolution. However, once again the supporting comments do not necessarily reflect such a negative response. Some concerns were expressed, but a large degree of support is also apparent from the comments.

Overall

The emphasis on early disagreement resolution, increased participation by children, young people and parents and the proposed framework were welcomed by respondents from a wide variety of groups. However, assurances were sought that independent advocacy services would remain independent from local authorities. There were concerns around the

potential increase in disagreements due to the extended age range, the lack of Tribunal powers to enforce other agencies to provide services, and the removal of a parent's ability to appeal on behalf of their child after the age of 16.

Framework

A number of respondents from third sector organisations, education professionals, and local authorities agreed that the draft Bill provided an appropriate framework to support disagreement avoidance and resolution. The Children's Commissioner for Wales welcomed the provisions in the draft Bill to support this and noted that 'it is important that arrangements are put in place to ensure that the quickest and most appropriate resolution is identified at the local level'.

However, some respondents had concerns that extending the age range and introducing statutory rights for all learners with ALN without clear criteria and definitions for ALN and ALP would increase the amount of disagreements and create additional barriers between schools, local authorities and parents. Comments were also received that the potential increase in disagreements would have resource implications for FEIs, local authorities and health boards.

An anonymous response suggested that it was 'very difficult to ascertain whether the framework is appropriate to support disagreement avoidance and resolution until we have experienced some 'test' cases'.

Early disagreement resolution

The emphasis on early disagreement resolution was welcomed by respondents from local authorities, education professionals, parent forums and third sector organisations as a positive development that would remove immediate and unnecessary escalation to the Tribunal.

There was a suggestion from a number of respondents to include an obligation on all parties to engage in mediation or dispute resolution and prevent them from lodging an appeal with the Tribunal until this has been undertaken. However, a number of third sector organisations, including Children in Wales, advised that 'disagreement resolution should be able to run concurrently with appeal to the Education Tribunal for Wales' to 'ensure that children and young people who are appealing at local authority level about decisions made by school governing bodies will not experience delay in accessing the services of the Tribunal'. They compared this with the provision in the draft Bill that allowed learners in FEIs to bypass engagement with the local authority and appeal directly to the Tribunal.

Engagement

A number of respondents noted that the draft Bill recognised the importance of involving children, young people and parents throughout the planning process to help reduce or avoid disagreements. In particular, the response from head teachers, SENCOs, advisory teachers and local authority officers in Carmarthenshire highlighted the use of PCP with parents in two pilot schemes as being very effective in 'giving a voice to parents and learners, building trust, a feeling of inclusion and involvement in decision-making and enabling early problem solving'.

There were concerns from a number of respondents that for 16–25 year olds, the responsibility for appealing to the Tribunal resides with the young person and the ability for

parents to appeal on their behalf had not been included in the Bill. Sinclairs law noted that 'parents often have an important role to play and they can give sound advice to their children' and 'it is important to involve parents through the entire period within which young people are children (as referred to by the UN Convention on the rights of the child)'. An anonymous response highlighted that for children with certain disorders it 'would be incredibly stressful... to have to take this responsibility, which would be very detrimental' and parents are 'most likely to genuinely want what is in the best interests of the child/young person and the provision of a "case friend" or other advocate is not a substitute for their unique intimate knowledge of the child/young person'. They proposed that 'if a young person wishes their parent to make the appeal to Tribunal on their behalf this must be allowed'.

Independent advocacy

The provision in the draft Bill relating to access to independent advocacy services and case friends for children and young people was supported by a number of respondents including the Children's Commissioner for Wales and the National Association of Principal Educational Psychologists (Wales). However, the Children's Commissioner for Wales sought clarification that the draft Bill included a requirement to establish independent advice and information arrangements and on when independent advocacy services or case friends would be engaged in the dispute process.

Confirmation was sought by a number of third sector organisations that these services would be independent and run separately from local authorities. It was suggested that national guidelines be developed to ensure services 'are appropriately distinct, independent and of a consistent minimum standard and that there are guidelines for consistency in complaints mechanisms'.

A number of respondents including Guide Dogs Cymru/Blind Children UK Cymru also called for independent advocacy to be available to all children and young people with ALN throughout the processes and stages of the ALN framework. They noted that the draft Bill restricted access to advocacy services to those 'Making, or intending to make an appeal to the Education Tribunal for Wales under this Act; considering whether to appeal to the Tribunal, or Taking part in or intending to take part in arrangements made under section 37 [avoidance and resolution of disagreements]'

Appeals

Concerns were raised by a number of respondents from local authorities and third sector organisations that the new appeal framework did not resolve previous issues with the SENTW not being able to direct health bodies. Some noted that local authorities currently have to fund private assessments, reports and provision in order to resolve disputes over health provision, especially where parents have private assessment reports. The SENTW itself called for 'rights of appeal to be extended to cover provision by health and social care in addition to education services'. It also added that 'for the appeal system to be effective there needs to be a mechanism incorporated into the Bill for enforcing tribunal orders'. Both these points are reiterated by the Children's Commissioner for Wales.

A small selection of respondents suggested that membership of the Tribunal should include representation from other agencies that contribute to a child's ALN provision, including health.

The Public Services Ombudsman for Wales also suggested that if the delivery of ALN provision is to predominantly rest with schools and FEIs then they would need to be brought under the jurisdiction of the Ombudsman. This was due to the Ombudsman’s power to investigate complaints being restricted to the assessment and delivery of provision of SEN statements by local authorities and not schools or FEIs.

Easy read responses

We want to try to stop disagreements about the child's or young person’s plan and help sort things out quickly when there is a disagreement. Will the new law do this?

| | |
|----------|-----|
| Yes | 83% |
| No | - |
| Not sure | 17% |

Do you think the way to appeal is clear?

| | |
|----------|-----|
| Yes | 83% |
| No | - |
| Not sure | 17% |

One respondent commented that ‘a massive culture change is necessary’ if the statutory framework proposed in the draft Bill was to be effective. More detail on the appeals process was requested. A number of respondents also commented that the involvement of children and young people in the process would be a positive step.

Question 6: Supporting documents

Please provide any feedback you think would be useful in relation to the supporting documents published alongside this consultation, i.e. draft Explanatory Memorandum (including the Regulatory Impact Assessment), all Impact Assessments and the draft ALN Code (which will be published in the autumn).

Overall

There were a number of positive comments from respondents to the publication of the supporting documents alongside the consultation. The easy read documents were welcomed, providing a useful guide and helpful overview of the proposals. Respondents, including the NAHT Cymru, All Wales Paediatric Occupational Therapy Network, and Chartered Society of Physiotherapy, commented that the documents are comprehensive, well-structured and presented, and helped clarify the detail of the draft Bill.

However, a number of concerns were raised by respondents in relation to the lack of detail in the draft Bill and gaps in the supporting documents, specifically the working draft of the Code, which hampered their ability to comment on or understand how the system would work in practice.

In contrast, some respondents suggested that consideration should be given to the complexity and length of the supporting documents and the need to make the information accessible to all.

A number of respondents from local authorities, education and the third sector commented on the overall consultation process. This included suggestions on how to ensure effective engagement with children and young people, and comments that it was unfortunate that the draft Code was not available when the draft Bill consultation was launched in July. Others raised concerns around the timeframe and importance of a consultation specifically on the Code.

Draft Explanatory Memorandum

A number of respondents commented on the helpfulness of the draft Explanatory Memorandum (EM). Careers Wales, for example, highlighted that it 'provides a comprehensive overview of the rationale for the introduction of the Bill, including detail on current systems, costs of potential approaches, consultation that has been undertaken and an appraisal of the available options to transform the process'. However, the Children's Commissioner for Wales stated that the EM 'does very little to expand and provide detail on what is meant within the provisions of the Bill'. The Commissioner also noted that it 'has made it difficult to discern how provisions are to be interpreted and what the intended course of implementation would be'.

The SENTW supported the three main objectives of the draft Bill and, in broad terms, the 10 core aims that the draft Bill sets out to deliver, as set out in the EM.

A large number of responses from individuals, local authorities and the third sector commented that the draft Regulatory Impact Assessment, included within the draft EM, significantly underestimated the impact of the legislative proposals on the education sector in terms of workload and financial cost. They also expressed concerns that the suggestion that the reforms would be cost neutral once embedded was not realistic.

In particular, the following points were made:

- for the new system to work effectively it will need adequate resources and monitoring in place both during and after implementation;
- there would be wide ranging implications for the delivery of support in extending the age range to the 16–25 age group, including a larger workforce and sufficient funding to implement the draft Bill, including training, IDP implementation and provision mapping;
- the potential additional costs to local authorities will need to be considered for delivering ALN provision and services if schools and FEIs were of the opinion that an education matter was beyond their capability;
- clarification was requested on the arrangements for the delegation of funds between local authorities and governing bodies to deliver ALN provision and the monitoring of those spending arrangements to ensure that the needs of children and young people with ALN were being met;
- clarity was called for in relation to how the Welsh Government intends to meet the resource and governance implications to extending quality advocacy provision across the board; and
- there were concerns over an increased bureaucracy in respect of health body involvement in the preparation of IDPs.

Draft ALN Code

A number of individuals and third sector organisations commented on the usefulness of the working draft of the Code being made available for consideration alongside the draft Bill and the clarity that it provided around the intentions of the Bill and expected operational mechanics of the reforms. Assurances were sought from a number of respondents that there would be a further opportunity to consider and comment on the Code in the future to ensure that it would be fit for purpose.

A number of respondents identified specific areas of the draft Code that required further detail and clarification, including:

- responsibility for funding at different ages and stages, particularly from 16-25;
- the role, responsibilities and training requirements for ALNCOs and the functions of DMO/DCOs;
- the definitions of ALN and ALP;
- the process around and content of an IDP;
- the role and duties of local authorities for managing and developing IDPs, including school and FEI referrals and low-incidence conditions;
- the decision making process for a child's or young person's educational placement, including how their views will be taken into consideration;
- the expected support to be provided from all agencies during key transition points for a child and young person; and
- how the new system will support looked after children, cross border issues, learners who are home educated and those in youth custody.

There were also a number of suggestions put forward by respondents for improving the content of the draft Code, including:

- to set out the mandatory requirements upon all relevant persons exercising functions under the Act;
- a preference for the Code to say 'must' and 'should' rather than 'may' and 'might';
- outlining the responsibilities and requirements for engaging and communicating with children, their parents and young people during the development of an IDP;
- providing access to independent advice throughout the whole ALN process;
- using a Human Rights based approach in the provision and process;
- specifying that children and young people with certain specific disabilities should always be entitled to an IDP;
- creating disability specific provision pathways to support professionals during the assessment process, especially for low incidence needs;
- specific sections or guidance on how the new system will operate for early years and learners aged 16–25;
- strengthen the ability to seek contributions from external specialist services at all stages of the ALN process and for different levels of need rather than just severe or complex cases;
- inclusion of a specified role for Educational Psychologists in the process;
- ensuring that children and young people with ALN are supported to access and participate in the educational provision that best meets their needs, whether it is in mainstream or specialist provision; and
- ensuring that local authorities inform parties of access to disagreement avoidance and resolution arrangements and advocacy services throughout the process.

To accompany the Code, a significant number of respondents requested that a standard IDP template, case examples and flow diagrams were developed to help illustrate best practice and ensure consistency.

Welsh language

A number of respondents commented that the basic principle of the Welsh Language (Wales) Measure 2011 should be followed to ensure 'that the Welsh language should be treated no less favourably than English' and 'providing or administering services in Welsh should not entail any delay and should not result in a less satisfactory service for the users'.

To adhere to that principle, it was recommended that the following mandatory requirements were included within the Code in order to ensure clarity in relation to responsibilities, duties and rights:

- the right to Welsh language provision and to participate in all processes in Welsh, including multi-agency working;
- the language choice of the child, parent, or young person must be respected, with practical steps taken to ensure this occurs, such as providing the information and advice in Welsh either on paper, electronically or verbally;
- the mandatory information in the IDP should note (a) the language in which the child's or young person's education is currently being provided, and (b) the child, parent, or young person's preferred medium of communication; and
- the right to participate in the dispute resolution and appeals process in Welsh, including independent advocacy.

CYDAG highlighted that the draft Regulatory Impact Assessment should consider the costs of implementing the Bill fully bilingually.

There were concerns that references to the Welsh language standards in the draft Code and draft Welsh Language Impact Assessment did not apply to schools. A number of stakeholders sought clarification regarding the statutory duties that would be placed upon ALN providers to deliver ALP in Welsh and proposed that the draft Bill should rectify any gaps in those duties.

A number of respondents also commented that the Welsh Language Impact Assessment took 'a general approach to the draft Bill's impact on all learners with ALN' and did not specifically focus on the needs and requirements of learners with ALN for Welsh language provision, including how the legislative proposals would help to deliver this.

Implementation

There were a number of comments from respondents on the implementation timetable for the reforms. Both the SENTW and Merthyr Tydfil CBC raised concerns over how the phased implementation of the Bill and Code would work alongside the current system. In particular, the Tribunal noted that the effectiveness of the current system had already been undermined in the light of planned reforms and queried whether that would continue during transition.

A number of respondents, including NCDS Cymru and TSANA, also made points relating to implementation, including:

- clarification on the phased introduction of IDPs across all settings over a two year period and whether certain groups of learners would be given priority;

- further detail on training on the statutory requirements and which professional groups would receive it;
- clarification on the ongoing programme of engagement and support;
- a proposal that Estyn should have a role in monitoring ALN provision, assessment, support systems, complaints and disputes within their inspection framework of pupil well-being; and
- local authorities, regional consortia and the Welsh Government should have duties in relation to collating data and quality assurance of the new system.

Other comments

A number of respondents indicated that further work was required to ensure that the draft Bill and Code joined up with other pieces of legislation including the Social Services and Well-being (Wales) Act 2014, the Well-being of Future Generations (Wales) Act 2015, the Local Government (Wales) Act 2015 and the Equality Act 2010.

Easy read responses

Many of the comments outlined above were also reflected in the easy read responses. Specifically, the responses called for more clarity, especially in the Code, including about where responsibility lies. There was a suggestion that the Code should impose more requirements and there was concern about the extent of the expectations of the ALNCo role, with one respondent commenting that it was 'extremely extensive'.

Question 7:

We have asked a number of specific questions. If you have any related issues which we have not specifically addressed, please use this space to report them.

A number of respondents, including CYDAG reiterated their views that there were many elements of the draft Bill to be commended, including the:

- principles of the Bill;
- improvement to the current framework and processes;
- extension of the age range for statutory rights and protections to 25; and
- increased involvement of children and young people to ensure their views are captured during the process.

However, some stakeholders took the opportunity to repeat their concerns with the draft Bill. In particular, the perceived removal of a graduated response; the ability and capacity of staff and services within the system to cope with the number of children and young people who would be entitled to receive a statutory IDP; and the removal of parents in the decision making process when the child reaches 16.

A number of respondents used the opportunity to put forward proposals that should be considered during any further development of the Bill. Some of which have already been outlined in response to specific consultation questions, including:

- ensuring the appropriate level of resource and capacity is in place across the education sector and other agencies to deliver the new system;
- providing the right for children, young people and parents to access any part of the ALN process in the medium of Welsh or English according to their preference;

- a duty on other agencies, such as health bodies, to assess and secure ALP for children and young people with ALN;
- strengthening enforcement/compliance powers for the Tribunal to ensure other agencies comply with their requirements to provide services; and
- the consideration of non-maintained schools and special schools to provide the ALP that best suits the child's or young person's needs or matches their views or wishes.

There were also requests for further clarification or detail on certain elements of the proposed reforms, including the:

- responsibilities and qualification requirements for the ALNCOs and DCO/DMOs;
- role of specialist services during the process, such as Educational Psychologists;
- training arrangements across the education sector and other agencies to ensure effective implementation of the reforms;
- duties on local authorities and other agencies for the development of IDPs during early years and for learners aged 16–25;
- arrangements and responsibilities for providing quality assurance of the new system during transition and beyond;
- list of core partners who are required to contribute to the development of an IDP;
- arrangements in respect of looked after children, cross border matters, home educated children and those educated otherwise than at school; and
- transportation arrangements for children and young persons.

5. Summary of campaign responses

The consultation received identical submissions from a number of respondents that were associated with two separate campaigns. The campaigns were to highlight Welsh Language matters and to support the consultation response provided by NDCS Cymru and Sense Cymru.

Welsh Language Campaign

A total of 31 identical responses were received using the Welsh Government's response form. All the respondents selected disagree for the five closed consultation questions although supporting comments provided positive as well as negative feedback as summarised below:

0–25 age range

The extension to the age range was welcomed in principle. However, there were significant concerns over the capacity and expertise within the workforce to deliver Welsh medium provision across the 0-25 age range.

Interests of children and young people

It was acknowledged that the draft Bill would help ensure that the interests of children and young people with ALN were safeguarded and promoted. However, concerns were raised relating to the lack of guarantee for children and young people who wished to communicate in Welsh and the possible risk of discrimination against this group.

Welsh language

The campaign response highlighted that, in terms of creating a robust legal framework, there was no reference in the draft Bill to the principles of the Welsh Language (Wales) Measure 2011, which states that Welsh should not be treated less favourably than English.

It suggested that there should be a statutory requirement on the face of the Bill to ensure every step of the process should be available through the medium of Welsh or English, according to the language preference of the child, their parents or the young person.

It was also suggested that the Code should list the mandatory requirements in relation to the Welsh language and clarify the responsibilities, rights and duties for each.

Capacity and resources

To ensure that schools are able to cope with the increased responsibility of assessing, developing and maintaining IDPs, adequate budgets, staffing levels, training and expert advice should be made available. It was also considered necessary to increase awareness and understanding of ALN amongst the relevant workforce as a whole.

The campaign response welcomed the description of the ALNCo role and responsibilities and agreed that it should be part of the Senior Management Team. It was suggested that the Code should also stipulate that the role is full-time and not to be undertaken alongside teaching duties. There was also a suggestion that for a cluster of smaller schools, an ALNCo should be appointed full time to cover all of them.

Multi-agency collaboration

The emphasis on collaboration was welcomed although it was commented that unnecessary duplication should be avoided and discussion encouraged between agencies to plan and deliver effectively for children and young people.

There were concerns over the considerable time required to co-ordinate multi-agency collaboration and the default use of English for information sharing or collaboration between agencies. The campaign response proposed that a duty should be included on the face of the Bill for agencies to work together and share information in Welsh if that was the preference of the child, their parent or the young person.

Dispute resolution

There was a suggestion that there should be a specific right for children, their parents and young people to engage with dispute resolution and appeals to the Tribunal through the medium of Welsh.

Other points

It was commented that none of the supporting documents recognised the problems of ensuring ALN provision or the general process was available in accordance with the chosen language of children, their parents or young people.

The reference to the Welsh language standards in the draft Code was considered to be inadequate. Schools were not subject to the Welsh language standards and there were concerns that the standards were not consistent from one local authority to another, so would not facilitate consistent delivery across Wales.

NDCS Cymru / Sense Cymru Campaign

A total of 73 identical responses were received through electronic mail in free text form and are summarised below:

The campaign acknowledged that there were aspects of the proposals that were a positive step forwards. However, there were concerns that parts of the draft Bill and draft Code would undermine the system and the rights of children and young people. It stated that it was essential that the new system for assessing and planning support for learners with ALN worked effectively for deaf learners.

0–25 age range

The submission noted that there was a lack of clarity around the process and responsibilities for preparing and maintaining an IDP, particularly within the early years context. It stated that it was crucial that children with sensory impairments and their families had appropriate support at all times through the process.

Disappointment was expressed that IDPs for the 16-25 age group were to be restricted to those in further education. It was noted that other deaf and deafblind learners within this age group in apprenticeships or at university would benefit from access to an IDP.

Draft Code

There was a request for the Code to clarify that deaf and deafblind children must be eligible for an IDP as they would need to have ongoing support throughout their education. It was also felt that the Code must clearly outline the involvement of specialist professionals in assessments for children with low incidence needs such as a sensory impairment, especially with schools taking on more responsibility for preparing IDPs. Concerns were also expressed that the current guidance on IDPs and the legal rights and entitlements to specialist support did not sufficiently outline a child's key ongoing support needs.

ALNCo

The submission stated that ALNCo should receive training in a number of areas including the IDP process, person centred planning, and specific deaf and deafblind awareness training.

Dispute resolution

It was commented that there was a need for clarification of the dispute resolution systems, including advocacy services, to ensure they would meet minimum national standards. Information on how to access these services should also be clearly available from the outset.

Multi-agency collaboration

The duties on health authorities to work collaboratively on IDPs were not considered to be strong enough.

6. Summary of stakeholder events

Formal stakeholder events

158 people attended the formal consultation events in North and South Wales. Each event consisted of four workshops focusing on the following themes:

- definition of ALN and the 0-25 age range;
- IDPs and increased participation by children and young people;
- high aspirations and improved outcomes; and
- collaboration and multi-agency working.

The key points raised from the workshops are summarised below:

Definition of ALN and the 0-25 age range

Attendees broadly agreed that the focus of the definition of ALN should be on meeting a child or young person's educational and training needs. However, there was a request for more detail on the ALN definition with consideration given to expanding it beyond educational needs to include social care and health.

There was broad agreement in principle to the proposed age range. Attendees highlighted that it would help ensure continuity for the learner, particularly during the transition from school to post-16 education. Some concerns were expressed as to how the 0-25 age range would align with the current age classification for a child and adult used by the health service.

Attendees indicated that consideration needs to be given to ring-fencing ALN funding. There were also concerns raised over capacity and existing staffing skills across local authorities, FEIs and schools to implement the changes to the system.

IDPs and increased participation by children and young people

There was broad agreement that schools, FEIs and local authorities should have specific responsibilities for preparing IDPs. It was noted that clear guidance in both the Bill and the Code was required to outline the roles and responsibilities of all agencies involved in the process to ensure a consistent approach. This was particularly prevalent for early years arrangements. Attendees also requested that health boards should have specific statutory duties for preparing, maintaining and reviewing IDPs.

Again, attendees expressed that appropriate funding and training arrangements should be made available to ensure effective implementation.

High aspirations and improved outcomes

Attendees were keen to ensure that the right balance was struck in the Bill between ensuring that the needs and wishes of learners with ALN were met and taking into account the needs of other learners. There were concerns that the collaborative working between agencies would be inconsistent across Wales and there needed to be clarification on the responsibilities for delivering provision throughout each stage of the process.

The designation of an ALNCo to co-ordinate ALN provision in schools and FEIs was welcomed by attendees. Clarification was called for on the expected responsibilities and

workload for the role. It was also noted that ALNCOs should be suitably qualified and have a high level of experience, and that priority should be given to developing specific training for the role.

Collaboration and multi-agency working

While the principle of increased collaboration was welcomed, attendees did not feel that sufficient clarity had been provided in the draft Bill for specialist services offered by particular agencies, such as health boards. It was commented that a clear definition of the statutory roles, duties and responsibilities for all agencies providing specialist services was required. It was suggested this should include protocols for information sharing, agreed funding arrangements for ALN provision, development of a standardised IDP template, and the availability of bilingual provision, resources and support throughout the process. In particular, attendees called for the duties on the health service to be strengthened to secure the involvement of health professionals throughout the preparation, maintenance and review of IDPs.

The creation of a DMO/DCO within health boards to co-ordinate health based provision was welcomed by attendees in principle. However, there were concerns around the potential workload associated with the role and the funding implications for delivering health based provisions agreed in an IDP. Attendees requested that further clarification be provided on the role and its responsibilities to avoid inconsistent interpretation.

Children and young people workshops

The Welsh Government commissioned an external facilitator, *Cognition Associates*, to consult specifically with children and young people in Wales on their opinions regarding the draft Bill.

A total of 267 children, young people and parents/carers participated in 23 engagement workshops in the autumn of 2015.

There were 19 workshops for children and young people with a total of 222 participants. The workshops were held in a number of settings including special schools, primary schools, secondary schools, FE settings, a pupil referral unit, and with a group of looked after children and home educated children.

There were also four workshops for adults with a direct interest in the legislation, with a total of 45 participants. This included foster carers, a support group consisting of parents with statemented children, an early years group and a group of home educating parents.

At these workshops, participants were asked to respond to ten set consultation questions which reflected the core aims of the reform proposals. The response by children and young people to the questions indicated a very high level of support for the proposals, with 92% in favour.

A full breakdown of the outcomes of the children and young people workshops is available as a separate report on the draft Bill consultation webpage:

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

7. Next steps

On 28 June 2016, the First Minister announced the intention to bring forward an Additional Learning Needs and Education Tribunal (Wales) Bill during the first year of this Government's Legislative Programme:

<http://gov.wales/newsroom/firstminister/2016/160628legprog/?lang=en>

The responses received to this consultation are being considered and used to inform the development the next iteration of the Bill and the wider ALN Transformation Programme. Further announcements will be made in respect of the timing of legislation and introduction of wider reforms.

The Welsh Government will continue to work in partnership with stakeholders to develop the draft ALN Code, further drafts of which will be published for comment before a version is finalised for formal consultation in due course.

In the meantime, we will continue to develop the ALN Transformation Programme and plans for implementation through our extensive engagement programme with stakeholders and delivery partners, including through the recently convened multi-agency ALN Strategic Implementation Group.

Annex: List of respondents

| | | |
|----|--|---|
| 1 | | Governors Wales |
| 2 | Hayden Llewellyn | Education Workforce Council |
| 3 | Owen Hathway | NUT Cymru |
| 4 | Dr Veena Bisht | Dept. of Community Child Health, Abertwae Bromorgannwg University Health Board |
| 5 | Respondent requested anonymity | |
| 6 | Respondent requested anonymity | |
| 7 | | St Julian's School |
| 8 | Keith Jones | Hywel Dda University Health Board |
| 9 | Angharad Williams | Ysgol Gynradd Gymraeg Pont-Sion-Norton |
| 10 | Huw Davies | Estyn |
| 11 | Rob Williams | NAHT Cymru |
| 12 | Respondent requested anonymity | |
| 13 | Respondent requested anonymity | |
| 14 | Ceri-Louise Bater | Monmouthshire LA |
| 15 | Respondent requested anonymity | |
| 16 | Respondent requested anonymity | |
| 17 | | YOT (Youth Offending Teams) Cymru |
| 18 | Jennifer Hill | Vale of Glamorgan Council |
| 19 | Ruth Crowder / Karina Dancza | The College of Occupational Therapists |
| 20 | Victoria Evangelinou Springall | AEP/ Vale of Glamorgan |
| 21 | No personal details included | |
| 22 | Claire Protheroe | PACEY Cymru |
| 23 | Miss Hilary Evans | Cowbridge Comprehensive School |
| 24 | Rhian Bennett (on behalf of the Bridgend Young Adult Carer Voice Group – a forum for young adult carers aged 16 – 25) | Action for children/ Bridgend Carers Centre |

| | | |
|----|--|--|
| 25 | | Governors Wales |
| 26 | Christine Thomas (on behalf of the SENCo Consultation Group) | Secondary SENCo Consultation Group, Caerphilly County |
| 27 | Carmarthenshire head teachers (including primary, secondary, special school); SENCos (including primary, secondary, special school); Advisory Teachers and LA officers | Carmarthenshire Local Authority |
| 28 | Hayli Gibson | Pembrokeshire Parent Partnership Service |
| 29 | Mark Owen | Careers Wales |
| 30 | Respondent requested anonymity | |
| 31 | Mair Roberts on behalf of Primary SENCo Consultation Group | Primary SENCO Consultation Group, Caerphilly Borough County Council |
| 32 | Nigel Pattinson | National Association of Principal Educational Psychologists (Wales) |
| 33 | Gail John | |
| 34 | Respondent requested anonymity | |
| 35 | Respondent requested anonymity | |
| 36 | Julia Green | Coleg Sir Gar |
| 37 | Liz Cole | Tiddlywinks Childcare Centre |
| 38 | Mike and Chris Newman | Socialist Educational Association Cymru |
| 39 | Carolyn Evans | Welshpool High School |
| 40 | Kate Fallon | The Association of Educational Psychologists (AEP) |
| 41 | Heather Duncan | Lewis Girls' School |
| 42 | Dr Alun Flynn | Powys Educational Psychology Service |
| 43 | | Serennu Care Coordination Forum (A group of families and professionals from the Aneurin Bevan Health Board region) |
| 44 | Yvonne Evans | Brynmill Primary School |
| 45 | Zein Pereira | Afasic Cymru |
| 46 | Keith Brelstaff | Powys County Council ALN Managers |
| 47 | | Bridgend Educational Psychology Service |

| | | |
|----|--------------------------------|--|
| 48 | Gareth Payne | Special Educational Needs Joint Committee (Gwynedd and Anglesey) |
| 49 | Peter Jones | Guide Dogs Cymru / Blind Children UK Cymru |
| 50 | Ruth Thomas / Louise Keevil | Derwen College |
| 51 | Rev Dr Philip Manghan | Catholic Education Service |
| 52 | Kirsten Jones | Coleg Elidyr |
| 53 | | SEN Team, Ceredigion LA |
| 54 | Respondent requested anonymity | |
| 55 | Judith Rees / Judith Sargeant | Fitzalan High school |
| 56 | Respondent requested anonymity | |
| 57 | Claire Dorer | National Association of Independent Schools & Non-Maintained Special Schools (NASS) |
| 58 | Meleri Thomas | National Autistic Society Cymru |
| 59 | | Inclusion Service, Education and Transformation Directorate, Bridgend. |
| 60 | Respondent requested anonymity | |
| 61 | Jennie Hughes | Inclusion Service, Schools and Lifelong Learning, Cardiff Council - Cyngor Caerdydd, Education and Lifelong Learning |
| 62 | | All Wales Forum of Parents and Carers of People with Learning Disabilities |
| 63 | Mary Van Den Heuvel | ATL Cymru – the education union |
| 64 | John Davies | Wrexham County Borough Council (with contributions from the Education Inclusion Team, SENCo Forum and Educational Psychology Service). |
| 65 | Dr Lisa Hurt | On behalf of the Autism Collaborative Research group |
| 66 | Debbie Thomas | National Deaf Children's Society (NDCS) Cymru |
| 67 | Rhia Favero | ERIC, The Children's Bowel and Bladder Charity |
| 68 | Alison Boulton Ruth Thomas | Natspec |
| 69 | Ellis Peters | On behalf of All Wales Paediatric Occupational Therapy Network |

| | | |
|----|--------------------------------|---|
| 70 | Dr Meg Shepherd | Newborn Hearing Screening Wales, Screening Division, Public Health Wales |
| 71 | Respondent requested anonymity | |
| 72 | Arwel George | CYDAG |
| 73 | Bernadette Byrne | Wales Pre School Providers' Association |
| 74 | Philip Harding | Cardiff and Vale Parents Federation |
| 75 | Sallie Durbridge | On behalf of British Association of Teachers of the Deaf Wales Region (BATOD Wales) |
| 76 | Sallie Durbridge | Sensory Impairment Service, Carmarthenshire County Council |
| 77 | Zoe Richards | Learning Disability Wales |
| 78 | Helen Williams | St Cyres School |
| 79 | Kelly Robinson | British Academy of Childhood Disability (BACD) |
| 80 | Lindsay Harvey | City and County of Swansea Education Department |
| 81 | No personal details included | |
| 82 | Julian Hallett | The Down's Syndrome Association |
| 83 | Sian Jones | Neath Port Talbot College Group |
| 84 | Dr Chris Llewelyn | Welsh Local Government Association/ADEW |
| 85 | Professor Sally Holland | Children's Commissioner for Wales |
| 86 | Roger Thurlbeck | On behalf of South East Wales Sensory and Communication Support Service |
| 87 | | The Special Educational Needs Tribunal for Wales |
| 88 | Denise Inger | SNAP Cymru (with contribution from the Challenging Behaviour Group, RCT; RCT Asperger's Group; Ysgol y Moelwyn Secondary, Gwynedd; Ysgol Brynrefail Secondary, Gwynedd; Diversity Group, Swansea, Ceredigion Parents & Carers Forum; Stepping Stones, Swansea; Pembrokeshire Association of Voluntary Services, Pembrokeshire; Ysgol Bod Alaw Primary, Conwy; Jigsaw, Swansea; Pentrebane Primary School, Cardiff; Home Educators, Swansea; Roath Park Primary School, Cardiff; Ysgol Glan Clwyd Secondary, Denbighshire; Cardiff and Vale National Autistic Society Parent Support Group; SNAP Cymru Family & Young Person Officers; SNAP Cymru beneficiaries) |

| | | |
|-----|--------------------------------|---|
| 89 | Lisa Rapado | Branch Officer, NAS Ystradgynlais and District Founding Member HOOSUP |
| 90 | Tracey Pead | Torfaen Education Services, TCBC |
| 91 | Ceri Jones | Rhondda Cynon Taff County Borough Council |
| 92 | Michelle Jones | The Parent Network |
| 93 | | Cwm Taf Therapies and RCT Education Partnership Forum |
| 94 | Respondent requested anonymity | |
| 95 | Gavin Metheringham | Blaenau Gwent Education Department |
| 96 | Catherine M. Lewis | Third Sector Additional Needs Alliance (TSANA) |
| 97 | | Neath Port Talbot Council for Voluntary Services |
| 98 | Kevin Tansley | Tŷ Gwyn School |
| 99 | Rev Dr Philip Manghan | Catholic Education Service |
| 100 | Respondent requested anonymity | |
| 101 | Catherine M. Lewis | Children in Wales |
| 102 | Respondent requested anonymity | |
| 103 | Ceri Owen | RhAG |
| 104 | | Paediatric Speech and Language Therapy Department, Cardiff and Vale University Health Board |
| 105 | Philippa Ford | The Chartered Society of Physiotherapy |
| 106 | Darrell Clarke | Cwm Taf University Health Board |
| 107 | Jenny Archer | Independent Special Educational Needs advocate |
| 108 | Dave Williams | Aneurin Bevan University Health Board Children's services |
| 109 | Haf Eleri Williams | Ysgol Deganwy |
| 110 | Vanessa Griffin | Newport City Council |
| 111 | Heather Vaughan / Helen Bishop | St Woolos Primary School |
| 112 | Dr Greg Walker | ColegauCymru |
| 113 | (Ms) Chris Keates | NASUWT Cymru |
| 114 | Dr. Alison Stroud | Royal College of Speech and Language Therapists |

| | | |
|-----|-----------------------------------|---|
| 115 | Kathryn Williams | |
| 116 | Steph Shobiye | |
| 117 | | Sinclairslaw |
| 118 | Mrs Sandra Welsby | National Day Nurseries Association (NDNA) Cymru |
| 119 | Respondent requested anonymity | |
| 120 | Ann Sivapatham | Epilepsy Action Cymru |
| 121 | Derek Tilley | Cardiff School of Law and Politics |
| 122 | Respondent requested anonymity | |
| 123 | | Merthyr Tydfil CBC |
| 124 | | Cymdeithas yr Iaith Gymraeg |
| 125 | Lucy Proctor | The Royal National College for the Blind |
| 126 | Jeanette Rock | Flintshire County Council |
| 127 | | Carmarthenshire Educational and Child Psychology Service, Carmarthenshire LA |
| 128 | Nerys Williams | Ysgol Gymraeg Sant Baruc |
| 129 | Kathryn Rudd | National Star College |
| 130 | M Jenkins | |
| 131 | Respondent requested anonymity | |
| 132 | Respondent requested anonymity | |
| 133 | Nicholas Davies | |
| 134 | Respondent requested anonymity | |
| 135 | Emily Cole | Mentrau Iaith Cymru |
| 136 | Keri Cole | Caerphilly CBC |
| 137 | Respondent requested anonymity | |
| 138 | Respondent requested anonymity | |
| 139 | Respondent requested anonymity | |
| 140 | Respondent requested anonymity | |
| 141 | Rachel Vaughan Jones | AEP/Vale of Glamorgan Educational Psychologist |
| 142 | No personal details | |

| | | |
|-----------|--|--|
| | included | |
| 143 | Meri Huws | Welsh Language Commissioner |
| 144 | Bethan Davies | Ysgol y Wern |
| 145 | Respondent requested that submission should not be published | |
| 146 | John Paul Jones / Karen Thomas | Ysgol Glanwydden |
| 147 | Bethan G. Payne | Ysgol Bro Pedr |
| 148 | Jo McEvoy | Cardiff and Vale College |
| 149 | Respondent requested anonymity | |
| 150 | | Coleg Cambria |
| 151 | Catrin Davies | Ysgol Gymraeg Bro Morgannwg |
| 152 | Ruth Davies | Ysgol Gyfun Gymraeg Plasmawr a'i chlwstwr o ysgolion cynradd. |
| 153 | Respondent requested anonymity | |
| 154 | Ruth Richards | Dyfodol i'r Iaith |
| 155 | John Bramley | |
| 156 | | RNIB Cymru and Sense Cymru |
| 157 | Nick Bennett | Public Services Ombudsman for Wales |
| 158 | Carl R. Hussey | |
| 159 | Rebecca Williams | UCAC |
| 160 – 232 | | NDCS Cymru / Sense Cymru Campaign Responses |
| 233 - 263 | | Welsh Language Campaign Responses |