

Welsh Language Impact Assessment

Title: Additional Learning Needs and Education Tribunal (Wales) Act		WLIA Reference No (completed by WLU): 17/11/01			
Date:		Last reviewed July 2018			
Contact details:		SENReforms@gov.wales			
Programme/Project Type					
<input type="checkbox"/> Policy		<input type="checkbox"/> Project or programme			
<input checked="" type="checkbox"/> Legislation		<input type="checkbox"/> Research, evaluation			
<input type="checkbox"/> Grant		<input type="checkbox"/> Services			
<input type="checkbox"/> Business change		<input type="checkbox"/> Contracts, tenders			
<input type="checkbox"/> Infrastructure					
<input type="checkbox"/> Construction, Capital					
<input type="checkbox"/> ICT					
<input type="checkbox"/> Other (Please specify below)					
<p>Costs: How much is the projected whole life cost for the programme/project? If below £25k, then a full WLIA is not always required (see guidance).</p>					
Under £25k	£25k - £49k	£50 - £249K	£250K - £1m	Over £1m	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
<p>Of the above, please provide details if there are any identified costs directly associated with the Welsh language?</p> <p>A comprehensive consideration of the costs associated with these proposals forms part of a regulatory impact assessment, which forms part of the Explanatory Memorandum that accompanies the Act.</p>					
How long is the programme/project expected to run?					
Up to 1 yr	Up to 2yrs	Up to 5yrs	Up to 10yrs	More than 10 yrs	Unknown
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Key milestone dates for the programme/ project:					
<p><u>Key milestones for the ALN Transformation Programme</u></p> <ul style="list-style-type: none"> • 2012 – pre-legislative consultation – <i>Forward in Partnership for Children and Young People with Additional Needs</i>; • 2014 – White Paper – <i>Legislative Proposals for Additional Learning Needs</i>; • July – December 2015 – Consultation on the draft Additional Learning Needs and Education Tribunal (Wales) Bill; • September 2015 – first working draft of the Additional Learning Needs Code; • 28 June 2016 – First Minister announced the Additional Learning Needs and Education Tribunal (Wales) Bill ('the Bill') as part of year one of the Government's Legislative Programme; • 1 July 2016 – publication of the summary of consultation responses; • 21 November 2016 – announcement on Additional Learning Needs (ALN) 					

Transformation Programme and the package of measures to support transition to the new system, including successful ALN Innovation Fund projects;

- 12 December 2016 – introduction of the Bill into the National Assembly for Wales;
- 14 February 2017 – second working draft of the ALN Code shared with the Assembly’s Children, Young People and Education Committee to support scrutiny of the Bill;
- 22 February 2017 – easy read explanation of the Bill published;
- 27 February 2017 –consultation on options for implementing the new system – ended on 9 June;
- 28 February - 9 March 2017 –regional stakeholder engagement events in relation to the Bill and its implementation were held in Cardiff, Newport, Llandudno and Carmarthen;
- December 2017 – summary of responses to the consultation on options for implementation published and publication of a written statement on implementation plans; and
- 24 January 2018 – Royal Assent, the Bill became an Act.

The regional stakeholder events held in February and March 2017 were open to anyone with an interest in this legislative reform and were attended by parents, local authorities, third sector organisations, head teachers, teaching staff, further education institutions, special educational needs coordinators (SENCOs), early years practitioners, Special Educational Needs Tribunal Wales (SENTW) panel members, social workers and health professionals. Feedback from these events is being used to further develop the ALN Transformation Programme and plans for implementing the new system.

STAGE 1: PLANNING

What are the aims and objectives of the policy?

What are the desired outcomes/what constitutes ‘success’?

The Additional Learning Needs and Education (Wales) Act 2018 (‘the Act’) creates a new statutory framework for supporting children and young people aged 0 to 25 with ALN. The new framework will replace the existing statutory special educational needs (SEN) framework and the assessment and planning for young people with learning difficulties and/or disabilities (LDD) in post-16 education and training.

The objectives are to achieve:

- a unified legislative framework to support children of compulsory school age or below with ALN, and young people up to the age of 25 with ALN who are in school or further education;
- an integrated, collaborative process of assessment and planning that facilitates early, timely and effective interventions; and
- a fair and transparent system for providing information and advice, and resolving concerns and appeals.

To fulfil these objectives, the Act includes the following elements.

The introduction of the term additional learning needs

The Act provides for the term ALN to replace the existing terms SEN and LDD and allows for its use in relation children or young people with ALN who are of compulsory school age or below, or are over compulsory school age and in school or further education. For the purposes of the Act, a child is a person not over compulsory school age, while a young person is a person over compulsory school age but under the age of 25.

The use of a single term across the 0 to 25 age range will underline the new system's coherence and provide greater equity for learners. It will also help to avoid some of the stigma associated with the existing terms and will mark a clear break from the current systems.

A 0-25 age range

The Act provides for the same statutory plan to be given to learners with ALN aged 0-25, irrespective of whether they are of, or below, compulsory school age, or are in sixth form or a further education institution (FEI). It will, therefore, place the systems for supporting learners with ALN in schools and FEIs on an equal footing and should improve transition between school and post-16 education.

The Act places duties on local authorities and National Health Service bodies to have due regard in relation to the United Nations Convention on the Rights of the Child (UNCRC) and the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) when exercising functions in relation to the Act. This means that local authorities and NHS bodies' strategic decision making will have regard to the conventions in accordance with the ALN Code.

A unified plan

The Act introduces a statutory individual development plan (IDP) for children and young people with ALN.

The IDP will describe the child or young person's ALN and the additional learning provision (ALP) required to meet those needs. IDPs will normally be prepared, maintained and reviewed by the governing body of the school or FEI in Wales that the child or young person attends, following a determination by that body that the child or young person has ALN. The ALP set out in the IDP will normally be delivered by that school or FEI.

Local authorities in Wales also have duties to prepare and maintain IDPs for children and young people in their area. For example, in cases where adequately determining the extent of the child's or young person's ALN, or adequately determining the necessary ALP, is beyond the school or FEI's capability; or where it would not be reasonable for the governing body of the school or FEI to secure the ALP that may be required; or the child or young person is not attending such a setting (including those attending non maintained schools and non maintained early years settings or children who are home educated), the local authority would be responsible for determining ALN, preparing and reviewing the IDP (if that is necessary in the case of a young person not attending a maintained school or FEI in Wales) and securing the ALP

within it. The intention is that the ALN Code will provide guidance on instances where it may not be reasonable for a school or FEI to determine the ALN of a learner or secure the ALP required by a learner.

Local authorities will be responsible for preparing, maintaining and reviewing IDPs for children with ALN who are looked after by them and are in the area of a local authority in Wales (whether their area or another local authority area).

As a minimum, IDPs would have to be reviewed at least once in every 12 month period, and may need to be reviewed more frequently depending upon the circumstances.

Where a learner with an IDP maintained by a local authority is registered or enrolled at a maintained school or FEI in Wales, the Act requires that the governing body of the school or FEI takes all reasonable steps to secure the ALP included in the IDP – but ultimate responsibility for securing that provision would rest with the local authority that maintains the IDP. Local authorities also must consider whether it is necessary to prepare and maintain an IDP for a young person who is not in a school or FEI, whether it is no longer necessary to maintain a plan for a young person; and whether it will be necessary for a plan to be maintained for a detained person, including a detained child, when the person is released.

The Act addresses when duties to maintain an IDP cease and when they transfer to another body. For example, a body may cease to maintain an IDP if it decides that the child or young person no longer has ALN, but in this case, before it ceases to maintain the plan, the learner has an opportunity to challenge the decision. There is also provision for duties to maintain an IDP to transfer to another body, for example when a child or young person moves to a different school or local authority area or transfers from school to an FEI.

There are particular duties on local authorities in relation to children or young people detained within relevant youth accommodation. If a child or young person is identified as having ALN during detention, the home local authority may be required to maintain an IDP. Where this happens and where a child or young person detained in relevant youth accommodation has an IDP when they enter detention, the home local authority must keep the IDP for him or her and arrange appropriate ALP. This will include detentions under the Mental Health Act where Welsh Ministers will be able, through regulations, to ensure that children and young people with ALN who are detained as a result of poor mental health continue to get the ALP they require. Appropriate ALP might differ from the ALP in the IDP due to the circumstances of their detention. Upon release, a local authority may need to maintain the IDP.

Increased participation of children and young people

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

This will give statutory underpinning to the Welsh Government's existing policy of

promoting a much more person-centred approach to identifying needs and appropriate actions to meet those needs, and help to ensure that IDPs are developed in accordance with the principles of person-centred thinking and planning. To facilitate this, the Act requires local authorities to make arrangements to provide children, young people and others with information and advice about ALN and the system set out in the Act. It further requires local authorities to make known those arrangements to those people and various others, thus ensuring that this information and advice is disseminated appropriately and is accessible for all those who need it.

In order that children and young people are able to fully exercise their right to appeal under the Act, or to engage in disagreement resolution procedures required by it, the Act places a duty on local authorities to make arrangements for the provision of independent advocacy services to be made available to children, young people and their case friends. These are services providing advice and assistance to a child, young person or a child's case friend who is making, or intending to make, an appeal to the Education Tribunal for Wales ('the Tribunal'), considering whether to appeal to the Tribunal, or taking part in, or intending to take part in, disagreement resolution arrangements.

Parents will ordinarily help children who lack capacity to understand their IDP and other documents and information presented to them, as well as the decisions being made in relation to their ALN. In order to cover situations where this may not happen, the Act provides for the appointment of a case friend for such learners. A 'case friend' may represent and support the child and take decisions on the child's behalf in relation to matters concerning their ALN and ALP (subject to any provision in regulations). Children who lack sufficient understanding will be able to use a 'case friend', where appointed by the Tribunal, to exercise their rights under the Act. The purpose is to ensure that the rights of these children can be exercised even where a parent is not acting in the best interests of the child.

The Act also enables regulations to make provision for a person to appear on behalf of a party in appeals or applications to the Tribunal. This would include a child or a young person who lacks capacity.

High aspirations and improved outcomes

Critical to the development of a culture of high aspirations and improved outcomes is the designation of an individual (or group of individuals) for each setting whose role is to co-ordinate planning and interventions around ALN and aim to consistently apply and drive up standards around planning, target setting, and outcome focus. To this end, the Act requires that all maintained schools (including maintained nurseries, and pupil referral units, but excluding maintained special schools who by their very nature are established to specifically deliver ALP) and FEIs in Wales have a designated Additional Learning Needs Co-ordinator (ALNCo). The ALNCo will replace the existing non-statutory SENCo role. It also extends the role to some education settings that may not currently have a SENCo or equivalent role.

The Act also requires local authorities to designate an individual - an Early Years ALN Lead Officer - to coordinate its functions under the Act in relation to children under compulsory school age who are not yet in a maintained setting. It is anticipated that

this role will also have a preventative function, for instance by identifying young children with developmental delay, which could escalate to ALN if they didn't receive appropriate early intervention.

Local authorities may seek a placement for a child or young person at an independent school or independent special post-16 institution in Wales or England, in order to meet their reasonable needs. However, local authorities cannot place a learner with ALN at such an independent school unless they are satisfied that it is able to deliver the ALP, as set out in the learner's IDP. This will reduce the risk of inappropriate placements of learners with ALN at an independent school. Annual monitoring of independent schools in Wales is undertaken by Estyn, who will also have a role in ensuring that independent schools are able to deliver the ALP they are registered to deliver. The independent school must also be on the register of independent schools in Wales or the register of independent educational institutions in England.

Similarly, local authorities cannot place a learner at an independent specialist college in Wales or England unless the college is entered on a list of such colleges established under provisions set out in the Act.

Also, the Act largely replicates the existing legislative presumption in favour of those with ALN being educated in mainstream schools wherever possible. This not only supports the Welsh Government's general policy on inclusiveness, but it underlines our view that expectations of, and aspirations for, those with ALN should be as high as possible. However, the Act promotes a person-centred approach and acknowledges that in some instances attending a mainstream school may not be appropriate or in the child's best interests. Therefore, the duty to favour mainstream education does not apply in such circumstances.

To ensure that the overall learning provision made by the local authority continues to meet the needs of children and young people in their area, the Act requires local authorities to keep under review the arrangements made by them (and by the governing bodies of schools in their areas) for ALP. This includes a requirement on local authorities to have regard to the desirability of ensuring that ALP is available in Welsh.

A simpler and less adversarial system

In removing the current artificial and contentious divide between children and young people who receive a statement of SEN and the statutory protection that affords, and those who have needs that are not considered severe or complex enough to receive a plan with statutory protection, the Act will eliminate one of the principle causes of adversarial tension. The Act's emphasis on the participation of children, their parents and young people in the decisions that affect them, and in the development of IDPs, will result in a more consensual approach to planning. The Act's provisions on IDPs will also pave the way for a less bureaucratic and time consuming process for planning provision, which should prove simpler to understand and less confrontational.

Increased collaboration

The Act provides that where a local authority in Wales requests help or information from other bodies, including another local authority, a governing body of a maintained school or an FEI (amongst others), which it requires for the purpose of exercising their ALN functions that body must comply with the request unless it considers that doing so would:

- a) be incompatible with that body's own duties; or
- b) otherwise have an adverse effect on the exercise of its functions.

The Act provides for IDPs and other plans relating to the same learner to be prepared, reviewed or revised at the same time. This is aimed at avoiding (where appropriate) the duplication of effort and confusion that arise where multiple plans are produced for the same individual, and enabling the much closer alignment and integration of otherwise separate planning processes.

In relation to children who are looked after by a local authority in Wales in particular, and in recognition of the fact that a very significant proportion of such children are likely to have ALN, the Act places responsibility for ALN matters on the local authority that looks after the child (unless the child is in the area of a local authority in England) and requires the IDP to be included in the child's personal education plan (PEP), if any. The PEP will usually be required as part of their care and support plan under the Social Services and Well-being (Wales) Act 2014. This applies to most, but not all children (i.e. those of compulsory school age or under) who are looked after – see section 15 of the Act. These provisions will ensure that planning for the educational needs of this vulnerable group of learners are streamlined and better co-ordinated.

The Act includes a new duty on local health boards and NHS Trusts in Wales ('NHS bodies'). When asked, these bodies must consider whether there is a treatment or service that is likely to be of benefit to addressing the learner's ALN and, if so, the NHS body must secure that treatment or service. A description of the treatment or service must then be included in the learner's IDP. This duty represents a significant step forward in ensuring that there is greater clarity and certainty around who will be delivering what provision included within an IDP than is currently the case with statements of SEN. If the NHS body identifies that the treatment or service should be provided through the medium of Welsh, the Act requires the NHS body to take all reasonable steps to secure that service or treatment in Welsh.

The Act also includes a new duty on health boards in Wales to appoint a Designated Education Clinical Lead Officer (DECLO). The role of this officer will be to co-ordinate the health board's functions in relation to children and young people with ALN, which might include, for example, ensuring there are appropriate service models in place within the health board; providing leadership within the health board in support of meeting the relevant duties of the board; liaising with partners and serving as a primary point of contact for local authorities; and prompting and facilitating effective inter-professional working for the benefit of children with ALN. The DECLO, ALNCo and Early Years ALN Lead Officer roles will help to facilitate effective collaboration between education and health to improve services for learners.

There is also a specific power on various health bodies in Wales and England in the course of exercising any of their functions in relation to a child who is in the area of a local authority in Wales and under compulsory school age. That is, the body forms the opinion that a child has (or probably has) ALN, the Act will provide the health

body with the power to bring this to the attention of the local authority responsible for the child (or in the case of a looked after child, the authority that looks after the child) if they believe that to be in the child's best interests. Before doing so, they must inform the child's parent of their view and their power and give an opportunity to discuss.

The Act also enables the Tribunal to share with Welsh Ministers reports received from local authorities, FEIs and health bodies about their compliance with orders and on action taken to respond to recommendations along with other related information. Information about failure to comply with orders, or of health bodies' failure to take action in response to recommendations, could also be shared.

This information will ensure the system can be monitored and also action taken, where appropriate, in response to non-compliance. The monitoring and evaluation of the system in relation to compliance will be useful in establishing whether Tribunal recommendations to health bodies are effective.

Avoiding disagreements and earlier disagreement resolution

The Act requires local authorities to make arrangements for avoiding and resolving disagreements that might arise between children, their parents and young people on the one hand, and education bodies on the other (namely governing bodies and local authorities) or, in the case of disagreements about the ALP made, various educational institutions. This includes providing access to help in resolving a disagreement from an independent person. Local authorities will also be required to ensure that children, young people and parents are made aware of these arrangements.

The development and implementation of effective disagreement avoidance and resolution arrangements is key to improving the trust that children, young people and parents have in the system and minimising the extent to which they feel the need to exercise their rights of appeal at Tribunal level. Local authorities must, however, take reasonable steps to make children, their parents and young people aware that these arrangements do not affect their rights to appeal to the Education Tribunal for Wales.

Clear and consistent rights of appeal

The Act renames and expands the remit of the SENTW. SENTW will be renamed the Education Tribunal for Wales. The Act makes provision for the continuation of the Tribunal's constitution, membership and remuneration and expenses. The new name reflects not only its role in determining appeals in relation to ALN but also the role currently undertaken by SENTW in determining disability discrimination claims relating to schools, a function which the Tribunal will continue. Currently, only those young people (not yet 19 years old) who are registered at maintained schools have the right to appeal to SENTW in relation to their SEN. The Act will introduce more equitable rights of appeal by extending this right to all young people up to the age of 25 years who are in school or pursuing FE.

The Act also provides for a 'case friend' to be appointed by order of the Tribunal where a child lacks capacity.

The Act enables a child or young person up to the age of 25 years, or a child's parent, to appeal against particular matters to the Tribunal where a local authority or FEI governing body has taken a decision in relation to an individual's ALN, or prepared or maintains an IDP for that individual. In the case of a local authority, this would include reconsideration of school governing body decisions and revisions of plans maintained by a school governing body.

Although use of the Tribunal should be a last resort, the right of appeal to an independent tribunal whose decisions are binding will ensure the new system for supporting ALN is robust and has the confidence of children, their parents and young people. It will also help to ensure that the duties in respect of learners with ALN are properly discharged; this will safeguard the rights of children and young people and will provide for greater equity. The Act also creates the role of Deputy President which will enhance the operational efficiency, business continuity and sustainability of the tribunal.

The Welsh Language (No 4) Regulations 2016 made in March 2016 under the Welsh Language (Wales) Measure 2011 cover SENTW. The regulations specify standards and authorise the Welsh Language Commissioner to give compliance notices to SENTW. The Commissioner has the role of introducing Welsh language standards to the Tribunal by issuing a compliance notice.

A mandatory Code

The Act requires the Welsh Ministers to issue a Code on ALN. The Code will apply to those with functions under this Act and will be able to impose:

- mandatory requirements (in respect of particular matters specified in the Act) in accordance with which relevant bodies must act; and
- guidance to which those bodies and other providers of education and training must have due regard.

The creation of a Code of this nature will help ensure the new ALN system has a set of clear, legally enforceable parameters within which local authorities and governing bodies must act. The Code will be targeted towards practitioners so they understand and can implement the new ALN system. The Code will also include statutory guidance and best practice to enable practitioners to effectively operate the new system and adhere to their legal duties under the new regime, for example guidance on Welsh language considerations.

A bilingual system

The Act includes specific duties in relation to ALP through the medium of Welsh. Services must consider whether the child or young person needs ALP in Welsh. If they do, this must be documented in the IDP and services must take 'all reasonable steps' to secure the provision in Welsh. The Act includes a mechanism to remove by regulations the 'all reasonable steps' test so that the duties to provide ALP through the medium of Welsh become absolute.

The Act includes a series of strategic duties to drive improvements in the availability of Welsh language ALP, including a requirement on Welsh Ministers to review the sufficiency of ALP in Welsh every five years. These duties, taken alongside wider

initiatives, are intended to drive progress towards a truly bilingual ALN system.

The Act also ensures that the duty to consider whether Welsh language provision is appropriate should be continuous and not confined to the stage where an IDP has been prepared.

**What policy options have been considered?
and What impacts will there be if the policy is *not* implemented?**

The Regulatory Impact Assessment (see Explanatory Memorandum) set out consideration of each of the policy options and the associated costs and benefits considered for the two options proposed in the Bill, and includes information on the impacts if the policy is not implemented.

Provision 1: Plans to support children and young people with additional learning needs

- Option one: do nothing
- Option two: replace existing support plans with a single plan for children and young people with ALN

Provision 2: Mandatory basis for the code relating to children and young people with ALN

- Option one: do nothing
- Option two: introduce a statutory code

Provision 3: Dispute resolution

- Option one: do nothing
- Option two: extend the scope of current arrangements

Provision 4: Responsibility for assessing need post-16 and securing specialist further education provision

- Option one: do nothing
- Option two: make local authorities responsible for planning and securing specialist further education provision for learners with ALN

Provision 5: Registration and approval of independent schools in respect of SEN

- Option one: do nothing
- Option two: reform the system for the registration and approval of independent schools in respect of SEN

Provision 6: Statutory basis of special educational needs support co-ordinators in education

- Option one: do nothing
- Option two: introduce a statutory ALN co-ordinator role

Provision 7: Statutory basis of strategic co-ordinators in health

- Option one: do nothing
- Option two: introduce a statutory role of designated education clinical lead

officer

Provision 8: Statutory basis of early years co-ordinators in local authorities

- Option one: do nothing
- Option two: introduce a statutory role of designated early years additional learning needs lead officer

Provision 9: Additional learning provision through the medium of Welsh

- Option one: do nothing
- Option two: introduce a requirement for Welsh Ministers to review additional learning provision delivered through the medium of Welsh

Provision 10: Determination powers in relation to disagreements about maintaining plans

- Option one: do nothing
- Option two: introduce a power for Welsh Ministers to determine who is responsible for maintaining an IDP.

In addition, in relation to independent special colleges' right to appeal a decision regarding the list of independent special colleges, two options have been considered:

A: that the Tribunal hears appeals about the list of independent special post-16 institutions in Wales and England; and

B: that the First-Tier Tribunal of England and Wales hears appeals from specialist colleges on this topic.

The impact of the Act not being implemented is that the deficiencies and disadvantages that exist under the current system would remain.

Welsh language provision

The draft Bill did not include any Welsh language provisions on the basis that securing Welsh language ALP in particular would be a matter that was covered in Welsh language standards. It was further considered that the ALN Code would provide guidance to local authorities, governing bodies and others about the need to ensure that the Welsh language requirements of learners in this area were met.

However, as a result of the consultation on the draft Bill and further consideration, this policy option was rejected on the basis that it would not necessarily secure appropriate access to Welsh language ALP by all learners across all settings. This would have meant that existing deficiencies in relation to delivering Welsh medium ALP would be perpetuated. The Act now includes provisions (as outlined in 'stage 3' below) that impose certain requirements on local authorities, governing bodies and NHS bodies in respect of the consideration and securing of ALP through the medium of Welsh as well as continual review of the appropriateness of Welsh Language provision. The provisions were welcomed during Stage 1 of the legislative process, including by the Welsh Language Commissioner.

Does the programme demonstrate a clear link with the Welsh Government's strategy for the Welsh language – Cymraeg 2050 – A million Welsh speakers?

The Welsh Government's strategy, *Cymraeg 2050 – A million Welsh speakers*, states:

'Education is central to our vision, but we must ensure our young people come out of the education system ready and proud to use the language in all contexts as set out in Welsh in Education Action plan 2017-2021.'

The Welsh Government's *Welsh Medium Education Strategy* sets out the ambition for a country where Welsh medium education and training are integral parts of the education infrastructure. It aims to ensure that our education system makes it possible for more learners of all ages to acquire a wider range of language skills in Welsh. This will enable them to use the language in their personal lives, socially and in the workplace.

The first strategic objective which it seeks to advance is:

'To improve the planning of Welsh-medium provision in the pre-statutory and statutory phases of education, on the basis of proactive response to informed parental demand'

As part of this the Welsh Government will be seeking:

'To expect improved planning of Welsh-medium education provision and services for learners with additional learning needs (ALN) as an integral part of education provision at national, regional and local levels.'

The Act provides that the needs of learners with ALN, including those in Welsh medium education, are fully considered by governing bodies of schools, FEIs and local authorities and that needs are better planned for. As part of the wider ALN Transformation Programme, work is underway to ensure that the education workforce is up-skilled and equipped to deliver the new system. This includes consideration of Welsh language requirements, including in respect of workforce planning. The Act also makes amendments to the Learning and Skills Act 2000, so that when planning the provision of post-16 education, the Welsh Ministers take into account the capacity of the FE workforce to deliver ALP in Welsh and availability of facilities for assessing through the medium of Welsh whether persons have ALN.

The Act includes duties on local authorities and governing bodies of schools and FEIs when preparing IDPs to consider whether a child or young person should receive ALP in Welsh, and specify in the IDP what ALP should be delivered in Welsh. There is a further duty to take all reasonable steps to secure that the specified ALP is provided to the child or young person in Welsh. This also applies to children and young people with ALN who are detained. The Act ensures that the duty to consider whether Welsh language provision is appropriate should be continuous and not confined to the stage where an IDP has been prepared.

In addition, where NHS bodies deliver ALP, they must decide whether the treatment or service should be provided to the child or young person in Welsh, and if so, take all reasonable steps to secure the treatment or service is provided in Welsh. If the NHS body identifies that a child or young person requires ALP through the medium of Welsh, this must be recorded in the IDP.

The Act places a duty on local authorities to consider the sufficiency of Welsh

language provision when reviewing the arrangements for ALP in their respective areas.

The Government's ambition is to move from a position where taking "all reasonable steps" is sufficient to one where there is an absolute duty to provide ALP in Welsh across Wales. There are two elements of the Act aimed directly at facilitating this.

First, Welsh Ministers will be required to review the sufficiency of Welsh language provision every five years and publish reports following these reviews. The evidence from these reviews will be used to inform the second element, which is the power to make regulations to place an absolute duty to provide ALP in Welsh. These regulations can remove "all reasonable steps" from the various Welsh language ALP duties in the Act, making the duties absolute. The regulations will work in a comparable way to the Welsh Language Standards so that particular geographical challenges can be reflected. These elements of the Act will ensure both that the legal requirements it contains keep pace with the developments in the ability of services to deliver bilingually and also that they drive and encourage those developments.

Furthermore, under the School Standards and Organisation (Wales) Act 2013, all local authorities are now required to prepare a Welsh in Education Strategic Plan (WESP) for approval (or otherwise) by Welsh Ministers. These are 3-year Plans that local authorities are required to review each year. The current approved Plans cover the period 2017-2020.

In drawing up their Plans, a local authority is required by the Welsh in Education Strategic Plans and Assessing Demand for Welsh medium Education (Wales) Regulations 2013 to include, amongst other things:

'a statement setting out the local authority's strategy as to how it will improve Welsh-medium education for pupils who require additional learning support arising from any difficulty that pupil has in learning in relation to pupils of the same age who do not have any difficulty in learning'.

Following a review of the first WESPs, Welsh Ministers issued revised guidance to local authorities to support the preparation of their 2017-2020 WESPs. The guidance states:

Welsh-medium provision for learners with additional learning needs (ALN)

The focus here is on extending capacity to provide appropriate ALP through the medium of Welsh during all stages of education. In particular, local authorities are asked to note how they measure and meet demand and work with parents seeking Welsh-medium ALN provision, and how they work collaboratively with other local authorities to provide Welsh medium ALN provision.

Local authorities were specifically asked to consider the following:

- in the light of your most recent annual audit of the additional needs of pupils in Welsh medium education, support for what type of need is the authority unable to provide through the medium of Welsh;
- how does the authority propose to bridge the gap between identified needs and the support available; and

- provide an estimate of how many pupils are unable to access Welsh medium education because the authority cannot provide the appropriate support through the medium of Welsh.

The WESP requirements establish a statutory framework within which local authorities can improve both the planning and delivery of the ALP for pupils in Welsh medium education. As such, they are entirely complementary to the objectives of the Act.

What are the impacts/ effects (both positive and/or adverse) on the Welsh language you have identified at the initial planning stage

i.e. Welsh speakers, Welsh language communities, Welsh medium education, Welsh learners, services available in Welsh?

The Act will have a positive impact on learners with ALN in Welsh medium education. All those with ALN who are of compulsory school age or below, or are attending FE, will have access to a unified legislative framework from 0 to 25 years of age. This framework provides for an integrated, collaborative process of assessment, planning and monitoring, which facilitates early, timely and effective interventions and a fair and transparent system for resolving concerns and appeals. At the core of the Act and wider ALN Transformation Programme is a drive to place the views, wishes and feeling of the learner at the heart of the decision making and planning process – so the child or young person is at the centre of everything when it comes to their ALN and ALP.

The new duties on local authorities, governing bodies and NHS bodies to consider whether a child or young person should receive ALP in Welsh, ensure that any Welsh medium ALP is recorded in the IDP and take all reasonable steps to secure the specified ALP is provided in Welsh, will support Welsh speaking learners and their families improve their experience and ultimately the educational outcomes of the learner. The Act will have no identifiable, negative impacts on Welsh speakers, Welsh language communities, Welsh medium education, Welsh learners, or services available in Welsh.

In addition, the duty on local authorities and governing bodies to consider the sufficiency of Welsh language ALP, when reviewing the arrangements for ALP in their respective areas, will help to improve Welsh medium provision. As will, the duty on Welsh Ministers to take into account the capacity of the FE workforce to deliver ALP in Welsh and the availability of facilities for assessing through the medium of Welsh whether persons have ALN should also support improved Welsh language provision. These measures will help drive change and improve the landscape as regards Welsh medium provision by ensuring it is a consideration at the fore for decision makers.

The requirement for Welsh Ministers to review the sufficiency of Welsh language provision every five years and power, through regulations, to move from a position of “all reasonable steps” to one of absolute duties to provide Welsh ALP will further drive change, encouraging and pressing progress towards a truly bilingual ALN system.

These duties have been considered in the context of the Welsh Language (Wales) Measure 2011 and the Welsh Language Standards (No 1) Regulations 2015 made thereunder in March 2015. The Welsh Language Commissioner has issued

compliance notices on local authorities and on the Welsh Ministers pursuant to her powers under the regulations. The Welsh language standards relate to matters such as correspondence, meetings, displaying material in public and websites amongst other matters.

Who are the stakeholders? Are the needs of Welsh speakers and learners addressed? To what extent are Welsh language interest groups likely to respond positively to the proposals?

The stakeholders include all beneficiaries of the reforms and those involved in the delivery of the reforms: learners, parents, teachers, SENCos/ALNCos, educational psychologists and health, social services and education providers, as well as third sector organisations assisting learners and their parents.

The learner will be placed at the heart of the system and this will benefit those who are educated in the medium of Welsh as well as those who are not. As outlined above, every learner with ALN will have their Welsh language preferences and needs considered and, if ALP should be provided through the medium of Welsh, this will be noted in their IDP and all reasonable steps to secure that Welsh language provision will be taken. This “all reasonable steps” duty will move to an absolute duty over time.

The draft Bill, which was consulted on in 2015, was subject to a formal public consultation. A comprehensive programme of stakeholder engagement took place throughout the consultation period, including with those who represent the interests of the Welsh medium sector, and full consideration was taken of their views. Extensive consideration of the development of the Bill and wider reforms has been undertaken in the light of the responses received.

It is hoped that Welsh speaking learners and their families, as well as Welsh language interest groups, will respond positively to the provisions within the Act that aim to improve Welsh language provision for learners with ALN. This has been the case to date.

Work has been ongoing through the ALN Transformation Programme supporting delivery partners for the implementation of the new system prescribed in the Act. Specifically, the ALN Strategic Implementation Group (ALN SIG), a group consisting of key delivery partners, was established to advise the Welsh Government on how the new system should be implemented and how delivery partners could best prepare for and be supported ahead of, and throughout, the implementation period.

Consideration of Welsh language matters was integral to the work of ALN SIG, which was considered a priority by members of the Group.

Following on from the work of the ALN SIG, expert groups have been established to advise the Welsh Government on implementing specific aspects of the Act.

In addition, regional transformation leads have been appointed to support organisations to implement the Act. Working with organisations with responsibilities under the Act, the transformation leads will draft an implementation plan for their region. The plan will set out how organisations will plan for, and implement, the Welsh language requirements set out in the Act.

The interests of Welsh speakers, and in particular those with ALN who are learning through the medium of Welsh, will be addressed further through guidance set out in the ALN Code. The second iteration of the draft ALN Code was made available in February 2017 to support the Assembly's scrutiny of the Bill. This iteration of the Code was developed in collaboration with key delivery partners and stakeholders via a Code Content Development Group. Further consideration of Welsh language matters took place during its development.

Development of the ALN Code is an iterative process and a formal public consultation will take place. The Act requires Welsh Ministers to consult with appropriate persons, as specified in the Act, before issuing or revising a Code. The Welsh Language Commissioner is specified on the list of those persons who must be consulted with.

Where an assessment was not completed, or no impacts were identified, please provide a full account for record keeping purposes?

(This could be used in the Welsh Language Tribunal in future)

An impact assessment has been fully completed.

What actions/ further work has been identified at the initial planning stage?

e.g. data requirements, need for peer review, external engagement with Welsh speaking groups, identify stakeholders or consultation list, need to contact Welsh Language Unit for advice?

The publication of the draft Bill in July 2015 and the draft Code in September 2015 provided stakeholders with an opportunity to comment on the likely impact on our proposals on the Welsh language. Specific engagement with those with an interest in improving Welsh language provision, including the Welsh Language Commissioner's Office, took place during the consultation period and has continued since.

The comments received from stakeholders have been used to inform the refinement of the Act and the wider Transformation Programme. Officials from the Support for Learners Division and the Welsh Language Division have worked closely on developing the Welsh language provisions within the Act, taking account of the existing legislative context (including consideration of alignment with the Welsh Language Standards (no.1) Regulations 2015) and existing policies in relation to Welsh language provision.

The Bill received Royal Assent in January 2018. The draft ALN Code was made available to the Assembly in February 2017 to support the scrutiny process.

Proposed plans for implementation of the new system were subject to public consultation from 27 February to 9 June 2017. Responses to the consultation have been used to inform plans for the implementation of, and transition to, the new system. The ALN Code will be subject to a consultation before being laid in the National Assembly for Wales.

STAGE 2: IDENTIFYING AND ASSESSING IMPACTS

Impact Assessment Summary

Summarise the detailed impact assessment carried out together with the scores assigned.

Positive effects/ impacts:

The Act will have a positive impact on learners with ALN as it will ensure more timely and effective access to interventions that are planned with the learner at the centre.

The duties set out in the Act to support Welsh speaking learners with ALN will help to improve the experience for those learners and drive improvements in the availability of ALP through the medium of Welsh.

Adverse effects/ impacts:

The Act will have no adverse impact on Welsh speaking children and young people with ALN.

Opportunities to promote the Welsh language e.g. status, use of Welsh language services, use of Welsh in everyday life, Welsh at work increased?

As noted in 'stage 1' of this document, the new duties the Act places on local authorities, governing bodies and NHS bodies to continually consider whether a child or young person should receive ALP in Welsh, ensure that any Welsh medium ALP is recorded in the IDP and take all reasonable steps to secure the specified ALP is provided in Welsh will help to promote the use of Welsh language services and the use of Welsh in everyday life.

The strategic duties provided for in the Act will drive improvements in the capacity of services to deliver through the medium of Welsh, ensuring progress towards a truly bilingual ALN system.

Evidence/ data used including demographic profile when considering the effects/ impacts:

Evidence used:

Acknowledging Need report by Bangor University, commissioned by the Welsh Language Board, into Welsh medium and bilingual special educational needs.

- Statistics on the number of learners with SEN studying through the medium of Welsh were used to determine the potential impact.
- Statistics on the number of Welsh language teachers in mainstream education, early years education and further education
- Statistics on the number of SENCos in Welsh medium education

The Welsh Government's Action Plan in response to the Welsh Language Board's *Survey of Welsh Medium and Bilingual Provision for Pupils with Special Educational Needs in Wales*. This Action Plan was produced in 2006.

The proportion of learners with SEN learning through the medium of Welsh is slightly lower than the proportion of learners with SEN studying through the medium of English.

What is the overall anticipated likely impact on the Welsh language if this policy is taken forward based on the impact assessment/ risk assessment?

Positive:
 Adverse:
 Neutral:
 Unknown:

Decision following IA

- | | |
|---|--------------------------|
| 1. No major change | X |
| 2. Adjust the policy to improve impacts | <input type="checkbox"/> |
| 3. Continue the policy with mitigation measures | <input type="checkbox"/> |
| 4. Stop and remove the policy | <input type="checkbox"/> |

If answered 2,3, or 4 above – then answer the following:
How will you address these impacts in order to improve the outcomes for the Welsh language? Details of mitigation measures/ action points/ alternative options to reduce adverse impacts and increase positive outcomes:

If engaging or consulting, what are your plans? What questions do you wish to ask stakeholders about the Welsh Language Impact Assessment and Welsh language related issues?

An impact assessment was published alongside a draft version of the Bill in July 2015.
 A revised impact assessment was published to coincide with introduction of the Bill into the National Assembly for Wales. Further revisions have been made to this impact assessment to reflect amendments made to the Bill during Stage 2 and stage 3 of the Bill's passage through the Assembly. The final version of the impact assessment can be accessed from the Welsh Government website:

<http://gov.wales/topics/educationandskills/schoolshome/additional-learning-special-educational-needs/transformation-programme/legislation-and-statutory-guidance/>

The Act was passed by the National Assembly for Wales in December 2017 and received Royal Assent in January 2018.

Engagement events with stakeholders took place during 2017 to brief stakeholders on the proposals contained within the Bill and Code and to seek views on options on implementing the new system.

In addition, proposed plans for implementation of the new system set up by the Act were subject to formal public consultation from 27 February to 9 June 2017.

There will be a consultation on the ALN Code and some of the regulations required for the new ALN system.

STAGE 3: POST CONSULTATION AND PREPARING FOR PUBLICATION, MONITORING AND EVALUATION

Following consultation, what changes have you made to address any Welsh language issues that were raised?

All of the responses to previous consultations were taken into account in the development of the Bill. Any feedback on the Bill, draft Code and accompanying documents have been be considered and used to inform policy development.

The Act now contains Welsh language provisions, specifically requiring governing bodies of schools and FEIs, and local authorities, to decide whether ALP should be provided to the child or young person in Welsh, and if it decides that it should, specify in the plan that it should be provided in Welsh. All reasonable steps to secure that the ALP is provided in welsh must be taken.

Where NHS bodies informs a body maintaining an IDP that a relevant treatment or service should be provided to a child or young person in welsh, the body that maintains the plan must specify that within the plan.

Local authorities must keep under review the arrangements made by the authority and by governing bodies of maintained schools in its area for children and young with ALN people in its area, and in doing so have regard to the desirability of ensuring that ALP is available in Welsh.

There are duties on the Welsh Ministers to take account of education and training required to ensure employees and potential employees are available to deliver ALP in Welsh and to take account of the education and training required to ensure facilities are available for assessing through the medium of Welsh whether persons have ALN.

Amendments to the Act to further strengthen its Welsh language elements have been made in response to feedback received during the scrutiny Stages of the legislative process. These include, for example, the requirement for Welsh Ministers to review the sufficiency of Welsh language ALP every five years and when Welsh language provision is considered appropriate ALP that process should be continuous and not confined to the point where an IDP has been prepared.

How will you monitor the ongoing effects during the implementation of the policy?

The impact on the Welsh language has been kept under review throughout the Assembly scrutiny process.

As policies around our reform agenda are developed there will be further consideration of the impact on the Welsh language and addressing the needs of Welsh speaking learners.

The Act places a requirement on Welsh Ministers to review the sufficiency of Welsh language provision every five years and publish reports following these reviews. The evidence from these reviews will be used to inform the second element, which is the power to make regulations to place an absolute duty to provide ALP in Welsh. These regulations can remove “all reasonable steps” from the various Welsh language ALP duties in the Act, making the duties absolute. The regulations will work in a

comparable way to the Welsh Language Standards so that particular geographical challenges can be reflected. These elements of the Act will ensure both that the legal requirements it contains keep pace with the developments in the ability of services to deliver bilingually and also that they drive and encourage those developments.

As part of the post implementation review an evaluation of the impact of the Act will be undertaken to monitor the extent to which the legislative and wider policy changes are being embedded and making an impact. This includes the impact on support for children and young people with ALN through the medium of Welsh. A baseline study, against which future impact can be assessed, is currently being undertaken.

Please outline how you will continue to capture effects/ impacts in future monitoring and evaluation?

There will be continued consideration on the impact of the Welsh language now the Act has received Royal Assent and throughout the wider ALN Transformation Programme as it is developed and implemented.

Any other comments – ongoing results of evaluations, emerging impacts

Declaration

Policy lead: Karen Bathgate

The policy does have an impact upon the Welsh language. Where there were identified adverse impacts or missed opportunities, the appropriate amendments and actions have been put in place.

Department:

Additional Learning Needs Legislation Branch, Education and Public Services Group

Date (s):

Last reviewed: July 2018

SRO ENDORSEMENT and REVIEW

I am satisfied that the WLIA is an accurate reflection of the programme/project at this stage of development. By signing, I am able to confirm that the Welsh Language Standards have been given the appropriate attention. I will re-assess the programme/project at key stages throughout the life of the programme/ project, including policy reviews.

Signed Senior Responsible Owner

Date

Signed Ruth Conway
(Senior Responsible Owner)

Review Date July 2018

