

WELSH GOVERNMENT

CHILDREN'S RIGHTS IMPACT ASSESSMENT

Title of proposal:	Draft Additional Learning Needs Co-ordinators (Wales) Regulations 2020
Official(s) completing the Integrated Impact Assessment (name(s) and name of team):	Additional Learning Needs Transformation Team
Department:	Education and Public Services
Head of Division/SRO (name):	Chris Jones, Deputy Director, Support for Learners
Cabinet Secretary/Minister responsible:	Minister for Education
Start Date:	03 November 2020

1. Description and explanation of the impact of the proposal on children and young people

Effect of the proposal on lives of children

- 1.1 The statutory role of an ALNCo, supported by regulations that prescribe the qualifications an ALNCo must have, and the tasks which an ALNCo must carry out or arrange to carry out, will lead to an improvement in the way educational provision for children and young people with learning difficulties is co-ordinated. Unlike the current non-statutory role of SENCo, the tasks set out in the draft ALNCo regulations will ensure all children and young with ALN will receive consistent and timely support that will involve the individual in understanding their needs and the provision to be put in place to support them. The ALNCo role is a strategic one, with tasks that not only support the learner but include advising teachers, supporting staff training and preparation of published information from the education setting about ALN. This approach will help to foster a whole school/FEI approach to supporting those with ALN and in-turn support the child or young person's wellbeing and their ability to reach their potential.
- 1.2 The development of the proposals for the draft ALNCo regulations have been guided by giving effect to the policy intentions behind the Act and to the United Nations Convention on the Rights of the Child ('UNCRC').
- 1.3 A suite of impact assessments was completed during the development of the Additional Learning Needs and Education Tribunal (Wales) Bill ('the Bill'), which included an impact assessment on the rights of the child¹. The impact assessments were published in December 2016 upon introduction of the Bill and were revised throughout the period of legislative scrutiny on the Bill. As these regulations are being made under the 2018 Act, the potential impact of the provisions relating to the role of the ALNCo was considered as part of the development of the legislation and this is reflected in the respective impact assessments for the Act.
- 1.4 This children's rights impact assessment on the draft ALNCo regulations assesses the impact of the qualifications and functions of ALNCo's prescribed in the draft regulations, on children and young people.
- 1.5 The prescription that an ALNCo must be a qualified teacher or, in the case of schools only, an existing SENCo immediately prior to the regulations coming into force, will help ensure there is a sufficiently skilled workforce available to support the delivery of the new legislative framework and contribute to the overall objectives of the ALN reforms. This includes ensuring that children and young people with ALN are supported to overcome barriers to learning and can achieve their full potential and improving the planning and delivery of support for children and young people with ALN, placing their needs, views, wishes and feelings at the heart of the process.

¹ <https://beta.gov.wales/additional-learning-needs-and-education-tribunal-wales-act#Impactassessments>

- 1.6 The prescription of functions of ALNCoS in relation to provision for pupils or students with ALN will help foster a consistent approach to the co-ordination of additional learning provision (ALP) in education settings across Wales and therefore deliver an improved educational experience for these learners.
- 1.7 The overarching aim of the draft ALNCo regulations is to ensure children and young people with ALN have their needs identified early and receive appropriate ALP through effective co-ordination of such provision. The focus of the regulations is on preventing children and young people from missing out on educational opportunities and the chance to fulfil their potential, by ensuring that they receive the provision called for by their ALN in a timely and efficient way, enabling them to participate in and benefit from learning. Alongside investment in ALNCo training, this new statutory role should have a positive affect on children and young people.

Effect of proposal on different groups of children

- 1.8 These regulations apply only to children and young people with ALN. Children and young people with ALN are at a distinct disadvantage by comparison with those who do not have ALN. Educational attainment levels among those who have ALN are significantly below the average and their life chances are significantly impaired as a consequence. Furthermore. Children and young people currently recorded as having SEN are twice as likely to be eligible for free school meals as those who do not.
- 1.9 The 2018 Act's provisions and the secondary legislation contained in the draft ALN Code and proposed regulations (including the ALNCo regulations) provides children and young people with ALN with a system of support that puts them at the centre and which is designed to ensure that their needs are determined, and the provision necessary to meet those needs is planned for in a more timely, collaborative, consistent and equitable way than currently under the existing system. Our proposals aim to remove education inequalities by ensuring that all children and young people are able to achieve their educational potential and will have a have a disproportionately positive effect on children and young people from low income households.

Evidence used to inform assessment

- 1.10 The decision to reform the current special educational needs (SEN) system is based on a wide range of evidence from a series of reports and reviews as well as previous consultation and engagement with stakeholders outlined elsewhere in this integrated impact assessment.

- 1.11 Between 2003 and 2007, a three-part review of SEN was undertaken by the former Education, Lifelong Learning and Skills (ELLS) Committee of the National Assembly for Wales and associated reports were published in the following order:
- a) Early Identification and Intervention, November 2004
 - b) Statutory Assessment Framework (Statementing), May 2006
 - c) Transitions, March 2007.
- 1.12 The evidence presented in the Committee reports was informed by earlier reports from the Audit Commission (Special educational needs: A mainstream issue, 2002) and Estyn (Support for Children with Special Educational Needs: An Estyn Overview, 2003). Taken together, these reports concluded that in relation to the current system of SEN:
- the assessment process associated with statements is inefficient, bureaucratic, costly and insufficiently child-centred or user-friendly;
 - needs are often identified late and interventions are not sufficiently timely or effective; and
 - families feel that they often have to battle to get the right support for their child and do not know where to turn for information and advice.
- 1.13 In response to the Committee report, the then Welsh Assembly Government conducted a wide-ranging preliminary consultation on possible reforms to the existing system of support for SEN and LDD (Statements or Something Better, 2007). Subsequently, a number of projects were set up to develop and trial new systems and approaches to help shape future policy and legislation.
- 1.14 The responses to the Welsh Government's consultations on the Forward in Partnership for Children and Young People with Additional Needs (2012), the White Paper (2014) and the draft Bill (2015), the considerations and comments made in relation to the 2018 Act during its scrutiny by the National Assembly and the wider engagement with stakeholders have supported the development of the Act, the draft ALN Code and the wider ALN Transformation Programme.

Consultation with children and young people

- 1.15 The principal consultation conducted in relation to the new ALN system was that conducted in relation to the draft Additional Learning Needs and Education Tribunal (Wales) Bill. The consultation ran from 6 July to 18 December 2015.
- 1.16 A consultation document for children and young people was published along with an easy read explanation of the draft Bill. These documents supported the delivery of bespoke participation workshops with children, young people and their parents/carers. A total of 23 workshops took place.
- 1.17 During the workshops the views of children and young people were elicited separately from those of their parents/carers to ensure that their views were accurately recorded. There were 19 workshops for children and young people, held at 16 settings,

with a total of 222 participants. Workshops took place at special schools, primary schools, secondary schools, FE settings and a pupil referral unit, as well as with a group of looked after children and home educated children.

- 1.18 There were four workshops for adults with a direct interest in the legislation; a total of 45 adults participated. The sessions included a group of foster carers, a support group consisting of parents with statemented children, an early years group and a group of home educating parents.
- 1.19 In addition to the series of workshops with children, young people and their carers, the Welsh Government hosted two national events in North and South Wales, which were attended by 158 people; and delivered a programme of informal, targeted sessions with key stakeholders from across the public services and third sector.
- 1.20 An easy read and a children and young people's version consultation document on the draft ALN Code and draft regulations, including the draft ALNCo regulations, was developed by the Welsh Government for publication during 2019. In addition, a series of bespoke participation workshops with children, young people and their families took place during the consultation period. All comments and feedback received from children and young people during the consultation period was considered and have been used to inform the latest draft ALNCo Regulations and the ALNCo chapter of the ALN Code. The majority of those who responded the children and young people's consultation, and all of those who responded to the easy read consultation, agreed with the tasks set out in the draft ALNCo Regulations. All those who attended the workshops for children and young people agreed. A majority of parents at these workshops also agreed. There was less support about the proposals for ALNCoS being a qualified teacher as it was felt teachers do not have enough time for this role. Despite that the majority of SENCoS are currently teachers, this concern, along with others received during the consultation exercise, has resulted in amendments to the ALNCo chapter of the ALN Code to provide further clarity on the support ALNCoS should receive to be able to fulfil the tasks set out in law.

2. Explanation of how the proposal is likely to impact on children's rights

Overall impact on children's rights

- 2.1 As required by the Rights of Children and Young Persons (Wales) Measure 2011, the draft ALNCo regulations have been developed by the Welsh Ministers with due regard to the requirements of the UNCRC and its Optional Protocols.
- 2.2 The 2018 Act itself aims to significantly improve services for children and young people and improve the rights of the child with regards to their education and learning. The provisions set out in the draft ALNCo regulations were developed with the rights children and young people in mind. For example, the task of liaising with and providing information to the pupil and parent of the pupil/student about a pupil's/student's ALN, IDP and the ALP being made, will help to ensure the child/student is engaged in the system and fully understands the support being provided to them.

2.3 The principles of the Conventions are given effect in the 2018 Act, the ALN Code and regulations made under them, and therefore in exercising their functions under the 2018 Act and in compliance with the 2018 Act, local authorities, schools, FEIs and NHS bodies are likely to be giving effect to relevant articles under the Conventions. In addition, the development of the draft ALN Code has also taken into account the requirements of the United Nations Convention on the Rights of Disabled People (UNCRDP).

Relevant UNCRC articles and way in which rights under these articles are supported

2.4 The draft ALNCo regulations support a range of UNCRC articles. The following are most relevant:

Article 3 - All organisations concerned with children should work towards what is best for each child

2.5 The new ALNCo role, along with the range of new roles prescribed under the 2018 Act, will help to foster improved working relationships and practices between agencies who work with children to get the best outcome for the child or young person. The draft ALN Code provides further guidance to professionals to support effective multi-agency working. Prescribed functions within the ALNCo regulations include the requirement for ALNCoS to secure relevant services that will support a pupil's ALP as required.

Article 12 - Children have the right to say what they think should happen, when adults are making decisions that affect them, and to have their opinions taken into account

2.6 One of the objectives of the ALN reforms is improving the planning and delivery of support for children and young people with ALN, placing their needs, views, wishes and feelings at the heart of the process. Adopting a person-centered approach in identifying the needs and support required will assist children and young people in accessing suitable educational provision. In line with prescribed functions, ALNCoS will play a pivotal role in the identification of needs and co-ordination of such provision. In doing so, they will be required to liaise with and provide information to the pupil/student and their parent (of the pupil) about a learner's ALN and the ALP being made. The participation and views of the child and young person supports this Article.

Article 13 - Children have the right to get and to share information as long as the information is not damaging to them or to others

2.7 The 2018 Act provides that local authorities will be required to make arrangements for providing children, young people and others with information and advice about ALN

and the system set out in the 2018 Act. Local authorities will be required to take reasonable steps to make known these arrangements to various people. There are also duties on governing bodies to make these arrangements known to their learners and others. The draft ALN Code proposes various points at which details of these arrangements must be given to children and young people. The ALNCo regulations require ALNCoS to liaise with and provide information to the pupil/student and their parent (of the pupil) about a learner's ALN and the ALP being made.

- 2.8 These arrangements will support children and young people to have a say about what they think should happen (see article 12). In broad terms, such information has to be given to children with capacity to understand the subject matter and there is provision for giving it to case friends in instances where the child lacks that capacity.

Article 23 - Children who have any kind of disability should have special care and support so that they can lead full and independent lives

- 2.9 The 2018 Act provides that a person will have ALN if he or she has a learning difficulty or disability that calls for ALP. Where a child has ALN, a school or local authority will be required to prepare and maintain an IDP for them and secure the ALP it includes, as well as, if necessary, a place at a particular school or other institution, or board and lodging. The draft ALN Code provides guidance on the identification of ALN and ALP (in Chapter 7) and prescribes or describes a large number of requirements on local authorities, schools and FEIs in relation to preparation and maintenance of IDPs and the provision of ALP for children with ALN. Under the ALNCo regulations, ALNCoS are required to identify a learner's ALN and co-ordinate the making of ALP that meets a learner's ALN. Furthermore, ALNCoS are required to monitor the effectiveness of such provision, thus ensuring the ALP is still appropriate to meeting the learner's ALN and helping them work toward independence and reach their full potential.

Article 28 - Children have a right to an education. Discipline in schools should respect children's human dignity. Primary education should be free. Wealthy countries should help poorer countries achieve this

- 2.10 A person-centred approach will help professionals understand the views and wishes of the learner. Coupled with the improved co-ordination of suitable ALP, this will help ensure access to education for children and young people with ALN and unlock their potential. The prescribed function within the ALNCo regulations of promoting the pupil/student with ALN's inclusion in the school/FEI and access to the school/FEI's curriculum facilities and extra-curricular activities will help give equal opportunity to the child/young person to receive education.

Article 29 – Education should develop each child's personality and talents to the full. It should encourage children to respect their parents, and their own and other cultures.

- 2.11 The provisions in the 2018 Act are based on the principle that every child and young person should be supported to achieve their educational potential. The statutory IDP will help to ensure that every child and young person with ALN in compulsory and further education will receive the provision they require to do so. The functions for ALNCoS prescribed by the ALNCo regulations will support the delivery of ALP for children and young people with ALN. As well as co-ordinating and monitoring the ALP of learners with ALN, ALNCoS are required to supervise and train school learning support workers who work with learners with ALN. Furthermore, ALNCoS will be required to contribute to the in-service training for teachers to assist them in carrying out tasks. This will help to foster a whole school/FEI approach to supporting those with ALN and in-turn support the child to reach their potential, both educationally and socially.

Negative impact on children's rights arising from the proposal

- 2.12 We have identified no negative impacts of these proposals on children and young people.