

Distribution Sub-Group (2017) Paper 02 – Post-16 LDD Specialist Placements

This discussion paper has been written by officials of the Welsh Government. Ministers have not had an opportunity to comment on the contents. Exemplifications of changes are provided simply to inform discussion by DSG members. They are not Welsh Government proposals or statements of Government policy for or against changes.

Post-16 Specialist Placements

Summary

1. This paper provides background information on the Welsh Government's consideration of the provision and planning arrangements for young people with Additional Learning Needs in Further Education and gives initial consideration to the distributional issues associated with inclusion within the settlement of funding for post-16 LDD specialist placements on transfer of the responsibility from Welsh Ministers to local authorities.

Views sought

2. Members are asked to provide their initial thoughts on the distributional implications of the possible transfer and to consider how best to take this work forward.

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Background

Policy history

3. The National Assembly for Wales has considered issues and concerns in relation to the provision and planning arrangements for young people with Additional Learning Needs (ALN) in Further Education (FE) on a number of occasions, each time making the case for significant change. Details of the policy history can be found in annex A.

Specialist Placements Process

4. The Special Educational Needs (SEN) Code of Practice for Wales¹ sets out the transition process for pupils with SEN.
5. In the individual's final year of school, using the information arising from the transition process, Careers Wales will compile an assessment of the young person's needs and identify suitable provision available to meet those needs (known as the Learning and Skills Plan). Careers Wales do this assessment on behalf of Welsh Ministers under Section 140 of the Learning and Skills Act 2000.
6. Where an assessment identifies a need for provision at a specialist FE establishment, the assessment is submitted to the Welsh Government with an application form and supporting evidence. In order to secure funding, an application must demonstrate, through robust evidence that specialist provision is essential to enable the young person to participate in post-16 education. This necessitates full and prior consideration of all local options.
7. The Welsh Government does not act alone in securing specialist provision for young people with learning difficulties. It takes account of evidence from a range of agencies involved in meeting the young person's needs. In circumstances where there are medical, domestic or social care reasons leading to a recommendation for a placement at a specialist FE establishment, the Welsh Government will look to the appropriate agency to enter into an arrangement for joint funding.
8. The full cost of a placement can vary according to individual support requirements and ranges between c£23,000 to c£197,000² per year.

Review of Specialist Placements Process

9. In September 2015, the Welsh Government issued a policy document '*securing provision for young people with learning difficulties*³' setting out the post-16 specialist placements policy. However, there have been challenges regarding the Welsh Government's expectations linked to requests for extensions to existing programmes of study and determination of whether a 2 or 3 year programmes of study is required for new applicants.
10. Subsequently, in 2016 a review of policy and practice was undertaken to examine existing systems and identify changes and improvements to the efficiency and

¹ <http://learning.gov.wales/docs/learningwales/publications/131016-sen-code-of-practice-for-wales-en.pdf>

² Based on funding agreed for new programmes of study in 2016/17.

³ <http://gov.wales/topics/educationandskills/publications/guidance/p-16-funding-for-learners-with-learning-difficulties/?lang=en&dfd>

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effectiveness of the processes that support Welsh Ministers decisions. The review highlighted a number of concerns, including a significant deviation over time to the stated Welsh Government policy, resulting in the majority of programmes being funded for 3 years rather than it being an exceptional occurrence. The review report was published in September 2016.

11. Action is being taken forward to address the review recommendations, including strengthening the existing policy document, introducing a new non-statutory appeals mechanism, and developing technical guidance for Careers Wales and specialist FE establishment on Welsh Government's expectations of their respective roles and responsibilities within the Section 140 assessment and any subsequent placement at a specialist FE establishment.

Statistics

12. The table in Annex B shows the related activity Careers Wales undertook for the financial year 2015/16.
13. The majority of young people with learning difficulties currently have their education and training needs met through colleges in the mainstream further education (FE) sector in Wales. This equates to approximately 14,750 young people⁴ currently accessing mainstream FEIs.
14. The Welsh Government secures provision for a significantly smaller number of young people than those supported through mainstream settings. There are currently 288⁵ young people funded by the Welsh Government. Of this total:
 - 179 young people attend 8 specialist FE establishments in Wales;
 - 109 young people attend 16 specialist FE establishments in England. Of these, 90 attend specialist FE establishments along the Wales border.
15. For the financial year 2016/17, the Welsh Government budget for funding post-16 specialist placements is £11.481m.

Current statutory responsibilities

16. The legislation relating to young people in FE with Learning Difficulties and/or Disabilities (LDD) is included in the Learning and Skills Act 2000 ("the Act"). The Welsh Ministers currently have a general duty under sections 31 and 32 of the Act to secure 'proper provision' for the education and training of young people aged between 16 and 19, and 'reasonable facilities' for those over the age of 19. The Act also requires the Welsh Ministers to secure the provision of boarding accommodation for children and young people with LDD if they cannot otherwise secure provision of facilities for education and training which are sufficient in quantity and adequate in quality for 16 to 19 year olds or reasonable facilities for those aged 19 to 25.
17. Section 140 of the Act places a duty on the Welsh Ministers to make arrangements for the assessment of young people who have statements of SEN, where they are likely to leave school at the end of the last year of compulsory schooling to receive post-16 education or training. It also gives the Welsh Ministers a power to do so in

⁴ <https://statswales.gov.wales/Catalogue/Education-and-Skills/Post-16-Education-and-Training/Further-Education-and-Work-Based-Learning/Learners/Further-Education/uniquelearnersenrolledfurthereducationinstitutions-by-primarydisability-gender>

⁵ Based on Welsh Government figures for 2016/17

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relation to those up to 25 who do not have a statement of SEN but who appear to have a learning difficulty.

Planned legislative changes

18. The Additional Learning Needs and Education Tribunal Bill was introduced into the National Assembly for Wales on the 12 December 2016. It has three overarching objectives:
 - a. a unified legislative framework to support all children of compulsory school age or below with ALN, and young people with ALN in school or further education (FE);
 - b. an integrated, collaborative process of assessment, planning and monitoring which facilitates early, timely and effective interventions; and
 - c. a fair and transparent system for providing information and advice, and for resolving concerns and appeals.
19. In order to achieve these three overarching objectives, ten core aims have been established, within which the Bill's provisions have been developed. These are outlined in annex C.
20. The Bill includes two specific provisions in relation to post-16 LDD specialist placements:
 - *Where young people have a local authority maintained Individual Development Plan (IDP), responsibility for assessing need and securing post-16 specialist provision would be transferred to local authorities. The existing budget used by Welsh Ministers to plan and secure specialist post-16 provision would be transferred to local authorities when they take on these responsibilities; and*
 - *Welsh Ministers would be required to maintain, and publish, a list of specialist FE establishments.*
21. Transferring responsibility to local authorities would enable local authority education departments and local authority social services departments to collaborate when negotiating the development of, and cost of, provision. In this way, the local authority is better positioned than Welsh Government officials to encourage the development of local packages of support.
22. In addition, taking on a direct role would allow the local authority to work with local FEIs in developing local provision for young people with complex needs. This has potential to reduce out-of-county placements and to make associated savings. Young people and their families would benefit from the option of having local provision.
23. The Welsh Ministers' list of specialist FE establishments would provide assurance to local authorities and to young people regarding the standards of provision available at these settings.

Timing and transition

24. At this point in time there is no confirmed or planned schedule for transferring these responsibilities to Local Authorities or any decision taken on what will happen to those currently funded, although this transfer will most likely take place for 2019-20 at the earliest. This decision will be informed by the outcome of a consultation that is expected in March on the implementation options for The Bill.

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Analysis

25. Table 1 in annex D shows the Welsh Government contribution to post-16 LDD specialist placements, by financial year. This table shows how volatile expenditure is on this service, with authorities such as Anglesey, Conwy, Wrexham and Ceredigion seeing the cost of their placements increasing by over 160% over the 5-year period, with other authorities such as Gwynedd and Neath Port Talbot seeing reductions in excess of 50%.
26. Overall, the Welsh Government contribution to post-16 LDD specialist placements has increased steadily over the 5-year period. Placements in Cardiff made up the largest proportion of funding in the most recent year, at 13.1%, while placements in Gwynedd made up only 0.2% of the total contribution.
27. Table 1 also includes a breakdown of the 2017-18 special education IBA shares, for information. This is the pre-existing IBA that appears to best fit the purpose of the funding.
28. Table 2 in annex D shows the number of Welsh Government funded post-16 LDD specialist placements, by financial year. Cardiff has the highest number of Welsh Government funded placements for three of the five most recent years. Merthyr has the lowest number of Welsh Government funded placements across the five years, with a total of 4.
29. Table 3 in annex D shows the average Welsh Government contribution per post-16 LDD specialist placement. Gwynedd has the lowest cost per placement for the latest year (£25,000) and the lowest average cost over the latest five years (£28,000). Swansea has the highest cost per placement for the latest year (£59,000) and the highest average cost over the latest five years (£46,000).
30. Tables 1-3 combined show the variation between authorities and across time with regards to the number of placements and the total cost and unit costs per placement.

Conclusion

31. Members are asked to provide their initial thoughts on the distributional implications of the possible transfer and to consider how best to take this work forward.

Local Government Finance & Performance Welsh Government

Policy history

The National Assembly for Wales has considered issues and concerns in relation to the provision and planning arrangements for young people with additional learning needs (ALN) in further education (FE) on a number of occasions, each time making the case for significant change. For example:

- a. Part 3 of the Education, Lifelong Learning and Skills Committee Policy Review of Special Education Needs (SEN), which reported in March 2007, highlighted concerns around transition planning, limited opportunities and lack of information about options and the need for better liaison between schools and FE institutions (FEIs). It also reported that the system was overly complex and bureaucratic and was not sufficiently focussed on the young person.
- b. In 2009 the Enterprise and Learning Committee considered two petitions in relation to young people (post-19) with ALN. Amongst their findings was a statement that “there is a convincing body of evidence on the need for transition planning to happen earlier than currently appears to be the case in most instances” and a recommendation relating to the need to make and communicate decisions regarding funding far earlier than often happens.
- c. In 2010 a Ministerial Task and Finish Group was set up to consider options in relation to the following areas:
 - establishing an improved and unified system of transition to educational provision in school or FE for young people with ALN above the age of 16;
 - achieving better value for money in expenditure on post-16 education for young people with ALN, specifically against the context of financial challenge over next 3 years;
 - sharing more widely expertise that is currently in special schools and FEIs in providing for ALN post-16;
 - use of out of county and out of country placements.

The group reached a general consensus very early on in discussions that the present system could not continue and that the separation of the funding and management decisions was not sustainable. Some of the key issues identified included the need for consistency of approach across Wales; to be clear on the definitions of need; to ensure that schools and FEIs worked together in a collaborative way post-16; and to ensure there was a value for money approach taken in the commissioning process. Ultimately it was a clear message from the group that a young person could achieve benefits if better planning of provision took place, including an increase in options available at a local level. However, it was also clear that, for a few young people, specialist placements will remain the right option.

- d. Provisions relating to the assessment of the educational and training needs for young person with learning difficulties and/or disabilities (LDD), and specialist FE placements were included within the Education (Wales) Bill. However, in response to calls from the then National Assembly’s Children and Young People’s Committee to consider all SEN provisions in a single legislative vehicle, the provisions were removed from the Bill during Stage 2 proceedings in January 2014. At this time the previous Minister for Education and Skills announced that they would be brought forward in a separate Bill dealing with the full range of provisions relating to ALN.

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Drawing on the outcome of previous consultations and stakeholder engagement events, the Welsh Government published for consultation in May 2014, a White Paper entitled *Legislative Proposals for Additional Learning Needs*⁶. A summary of responses to the consultation was published in October 2014.

In July 2015, the former Minister for Education and Skills took the decision to publish a draft of the Additional Learning Needs and Education Tribunal (Wales) Bill for consultation. The draft Bill built upon the White Paper *Legislative Proposals for Additional Learning Needs*. However, in addition to providing the legislative detail of how the proposals set out in the White Paper might be realised, the draft Bill also included some new provisions. In particular, it set out new provisions that have the potential to significantly improve multi-agency working around the planning and delivery of provision for young people with ALN, especially across the education and health sectors.

The Additional Learning Needs and Educational Tribunal (Wales) Bill⁷ was introduced into the National Assembly for Wales on the 12 December 2016. The Bill includes provisions intended to address many of the recommendations set out by the Task and Finish group and the various Committee reports before it, as well as address the views of stakeholders arising from Welsh Government's previous consultations and engagement events.

⁶ <http://gov.wales/consultations/education/proposals-for-additional-learning-needs-white-paper/?skip=1&lang=en>

⁷ <http://senedd.assembly.wales/mgIssueHistoryHome.aspx?IId=16496>

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Annex B

Related activity undertaken by Careers Wales, financial year 2015/16

Transition/Annual Reviews attended with pupils with statements of SEN	3437
Transition/Annual Reviews attended with non- statemented pupils	1010
Number of reports prepared for Transitional/Annual reviews attended with statements of SEN	132
Number of reports prepared for Transitional/Annual reviews attended with non-statemented pupils	45
Learning and Skills plans for pupils with statements of SEN	1108
Learning and Skills plans for pupils with equivalent needs undergoing a TR process	256

Ten core aims, within which the Bill's provisions have been developed

The introduction of the term Additional Learning Needs (ALN): The Bill replaces the terms SEN and LDD with the new term ALN. This will help to avoid some of the stigma associated with the existing terms and will mark a clear break from the current systems, which is no longer fit for purpose. Using ALN as a single term which encompasses children and young people aged 0 to 25 reflects the move to a more equitable system for supporting young people with ALN across early years, schools and FE settings.

A 0 to 25 age range: The Bill brings together the existing and different legislative systems for supporting:

- a) children and young people of compulsory school age who have SEN; and
- b) young people in FE who have LDD.

There will be a single legislative system relating to the support given to children and young people aged 0 to 25 who have ALN. As a result, transition of young people between school and post-16 education will be improved to allow greater equity in terms of support and rights for this group of young people.

A unified plan: The Bill creates a single statutory plan (the individual development plan (IDP)) to replace the existing variety of statutory and non-statutory SEN and LDD plans for young people in schools and FE – including statements of SEN, individual education plans for children supported through school/early years action or school/early years action plus, and learning and skills plans for young people carried out via assessments under section 140 of the Learning and Skills Act 2000. This will ensure greater consistency and continuity and, unlike the current system, ensure that provision and rights are protected regardless of the severity or complexity of needs. For most children with ALN who are looked after, the Bill will require their IDP to be incorporated into the personal education plans (PEPs) made for these young people as part of their care and support plans (CSP). This will eliminate duplication of effort and ensure that the educational needs of a child who is looked after are considered in a holistic way.

Increased participation of children and young people: The Bill requires that the views of children, their parents and young people should always be considered as part of the planning process, along with those of their parents. It is imperative that children and young people see the planning process as something which is done with them rather than to them. They and their families will, therefore, be supported to participate through the provision of clear and impartial information, advice and advocacy. The Bill provides children and young people with various rights to receive information in relation to ALN and decisions being taken about them, and to make their own decisions in certain circumstances. For children who lack sufficient understanding to make their own decisions, these rights can be exercised by their parent or through the use of a 'case friend' appointed by the Education Tribunal.

High aspirations and improved outcomes: The emphasis of IDPs will be on making provision that delivers tangible outcomes that contribute in a meaningful way to the child's or young person's achievement of their full potential.

A simpler and less adversarial system: The process of producing and revising an IDP will be much simpler than is currently the case with statements of SEN and should avoid the adversarial nature of the existing, overly bureaucratic approach.

Increased collaboration: The new system will support a strong focus on collaboration. All services involved in working with children, young people and their families, including

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education, health and social services, will have a crucial role to play in working together to deliver efficient, effective, child-centred support for young people with ALN. Whilst most children with ALN will not require any specific health involvement because their ALN will not be health related, where it is relevant and appropriate, advice and assistance may be sought from health professionals. In particular, local health boards (health boards) or NHS Trusts will be under a duty to consider whether there is a treatment or service that is likely to be of benefit to addressing the young person's ALN and, if so, secure the provision of that treatment or service. That treatment or service will need to be included in the young person's IDP. The reforms will encourage improved collaboration and information sharing between agencies, which are essential to ensuring that needs are identified early and the right support is put in place to enable children and young people to achieve the best possible outcomes.

To support improved collaboration, the Bill places a new duty on health boards to appoint a Designated Education Clinical Lead Officer (DECLO). DECLOs will play a pivotal role in improving the extent and effectiveness of collaboration between health, education and social care in the delivery of services for children and young people with ALN. In addition, maintained schools, including maintained nurseries, pupil referral units and further education institutions (FEIs), will be required to have a designated Additional Learning Needs Co-ordinator (ALNCo). These roles will help to facilitate effective multi-agency collaboration to improve services for young people.

Avoiding disagreements and earlier disagreement resolution: The new system will focus on ensuring that where disagreements occur about an IDP or the provision it contains, the matter is considered and resolved at the most local level possible.

Clear and consistent rights of appeal: Where disagreements about the contents or provision of an IDP cannot be resolved at the local level, the Bill ensures that children and young people entitled to an IDP, or those who believe that they should have an IDP (and their parents in the case of those under 16) have a right of appeal to the Education Tribunal for Wales, currently the Special Educational Needs Tribunal for Wales (SENTW) but which is renamed by the Bill. The Bill extends the right of appeal to young people with ALN up to the age of 25 who are pursuing FE. Children who lack sufficient understanding to make their own decisions, will be able to exercise their right of appeal through the use of a 'case friend' appointed by the Tribunal (as well as by a parent).

A mandatory Code: Responding to calls for a stronger Code that can be enforced, the provisions included in the Bill will be supported by a new statutory ALN Code. The Code will facilitate national consistency by ensuring that the new ALN system has a set of clear, legally enforceable parameters within which local authorities and those other organisations responsible for the delivery of services for children and young people with ALN, must act. It will, therefore, be a type of subordinate legislation, and confer duties and rights on those subject to it. The Code will also set out practical guidance on how the statutory duties will be carried out, which will be supported by best practice illustrations.

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Annex D

Table 1: Welsh Government contribution to post-16 LDD specialist placements, by financial year and 2017-18 special education IBA share

Unitary Authority	£000s						2017/18 Special Ed IBA % share
	2012/13	2013/14	2014/15	2015/16	2016/17	2016/17 % share	
Anglesey	40	13	0	81	142	1.1%	2.3%
Gwynedd	99	115	138	96	25	0.2%	3.8%
Conwy	517	582	692	1,052	1,447	11.3%	3.6%
Denbighshire	850	762	856	858	811	6.3%	3.2%
Flintshire	579	775	1,090	1,143	1,165	9.1%	5.2%
Wrexham	366	415	580	839	1,005	7.9%	4.6%
Powys	926	995	904	879	763	6.0%	3.9%
Ceredigion	153	166	193	341	402	3.1%	2.0%
Pembrokeshire	525	409	330	525	638	5.0%	4.0%
Carmarthenshire	599	548	490	346	400	3.1%	6.0%
Swansea	162	187	259	247	117	0.9%	7.2%
Neath Port Talbot	312	266	272	235	138	1.1%	4.7%
Bridgend	227	172	239	337	259	2.0%	4.5%
Vale of Glamorgan	737	661	534	576	767	6.0%	4.1%
RCT	248	194	146	174	260	2.0%	8.3%
Merthyr	45	33	11	35	48	0.4%	2.1%
Caerphilly	458	480	429	431	417	3.3%	6.3%
Blaenau Gwent	263	294	278	350	383	3.0%	2.4%
Torfaen	769	762	490	396	533	4.2%	3.2%
Monmouthshire	392	520	557	587	633	5.0%	2.8%
Newport	467	847	1,199	1,117	756	5.9%	5.0%
Cardiff	960	1,161	1,442	1,408	1,669	13.1%	10.8%
Total Wales	9,695	10,359	11,129	12,054	12,779	100.0%	100.0%

Table 2: Number of Welsh Government funded post-16 LDD specialist placements, by financial year

Unitary Authority	2012/13	2013/14	2014/15	2015/16	2016/17
Anglesey	1	0	0	2	4
Gwynedd	3	4	5	4	1
Conwy	13	13	16	25	31
Denbighshire	21	18	21	21	21
Flintshire	22	27	35	35	32
Wrexham	8	8	12	19	24
Powys	31	33	28	24	19
Ceredigion	4	4	6	9	9
Pembrokeshire	12	8	8	13	17
Carmarthenshire	17	16	14	10	9
Swansea	4	5	6	5	2
Neath Port Talbot	8	7	6	5	3
Bridgend	6	5	6	8	6
Vale of Glamorgan	18	17	14	14	17
RCT	8	6	4	4	5
Merthyr	1	1	0	1	1
Caerphilly	11	12	10	10	9
Blaenau Gwent	6	7	6	8	9
Torfaen	18	18	12	10	11
Monmouthshire	11	13	13	13	13
Newport	11	19	26	25	16
Cardiff	27	32	40	37	35
Total Wales	262	273	289	298	293

Table 3: Average Welsh Government contribution per post-16 LDD specialist placement, by financial year

	£000s					
Unitary Authority	2012/13	2013/14	2014/15	2015/16	2016/17	Average
Anglesey	40	40	N/A	41	39	40
Gwynedd	33	29	28	26	25	28
Conwy	40	44	42	43	46	43
Denbighshire	40	42	41	41	39	41
Flintshire	26	28	31	33	36	31
Wrexham	46	50	47	45	41	45
Powys	30	30	32	37	40	33
Ceredigion	35	42	32	38	46	39
Pembrokeshire	45	49	43	39	38	42
Carmarthenshire	35	34	34	35	46	36
Swansea	37	40	46	53	59	46
Neath Port Talbot	39	38	45	50	52	43
Bridgend	36	37	40	40	41	39
Vale of Glamorgan	42	40	38	42	46	42
RCT	32	32	40	48	49	39
Merthyr	45	33	33	53	48	43
Caerphilly	43	41	43	45	48	44
Blaenau Gwent	41	44	44	44	43	43
Torfaen	43	43	42	41	50	44
Monmouthshire	37	40	44	46	49	43
Newport	41	44	46	45	46	45
Cardiff	35	37	36	38	48	39
Total Wales	37	38	39	40	44	40