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Bwrdd Iechyd Prifysgol
Bae Abertawe
Swansea Bay University
Health Board



Meeting Date	26 July 2022	Agenda Item	5.1
Report Title	The Additional Learning Needs and Education Tribunal (Wales) Act 2018: Update Report July 2022		
Report Author	Dr Luke Jones, Designated Education Clinical Lead Officer (DECLO)		
Report Sponsor	Christine Morrell, Director of Therapies and Health Sciences		
Presented by	Dr Luke Jones, Designated Education Clinical Lead Officer (DECLO)		
Freedom of Information	Open		
Purpose of the Report	This report provides an update to the Quality and Safety Committee regarding Health Board activity in relation to the Additional Learning Needs and education Tribunal (Wales) Act 2018 (the ALN Act) and articulates key quality and safety opportunities, risks and mitigating actions, in anticipation of the next phase of the Act's implementation, commencing September 2022.		
Key Issues	<ul style="list-style-type: none"> • Activity to support implementation of the Act, including developments in collaborative working • Breaches in statutory duties under the Act • Multiple risks caused by lack of staffing resource needed to meet additional requirements under the Act 		
Specific Action Required (please choose one only)	Information	Discussion	Assurance
	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Recommendations	Members are asked to: <ul style="list-style-type: none"> • NOTE THE REPORT 		

The Additional Learning Needs and Education Tribunal (Wales) Act 2018: Update Report July 2022

The Additional Learning Needs and Education Tribunal (Wales) Act 2018: Update Report, July 2022

1. INTRODUCTION

In March 2022, a paper introduced Committee members to the ALN Act. This included the Health Board's duties under this new legislative framework; implementation and key activity to date; opportunities and risks; and next steps to ensure effective delivery. The Committee agreed that updates should be provided quarterly, to ensure appropriate oversight of the quality and safety implications of the Act.

2. BACKGROUND

2.1 Implementation of the ALN Act

The ALN Act is a transformative piece of legislation that replaces an outdated Special Education Needs (SEN) system with one that aims to be unified for all learners with additional needs age 0-25, enabling better outcomes at key points of transition; responsive to need; and focused on person-centred practice and supporting children and young people to achieve outcomes that will support them towards their longer-term aspirations. While the Act is primarily education legislation, collaboration between with Health Boards is a central underlying principle of the Act, which places a number of new statutory duties on Health Boards, in order to facilitate collaboration.

The ALN Act has been 'live' from September 2021, though with a phased implementation plan that means the SEN and ALN systems are at present operating concurrently, with cohorts of learners progressively moving over from the SEN to the ALN system. Welsh Government finalised plans for the next phases of implementation in April 2022, (appendicised). The period of phased implementation will run, as per the attached guidance documents, until July 2024, following which the status of the Act will change from 'in implementation' to 'business as usual'.

2.2 Key activity over the last period and next steps

In the period following the March 22 ALN report:

- SBUHB has established an ALN Operational Group, working under the governance of the ALN Steering Group, chaired by the DoTHS. Terms of reference for both groups have been developed
 - The Operational Group is currently developing a workplan to support implementation over the 2022/23 school year. Activity is being progressed, with the support of Steering Group member, to ensure an appropriate distribution of leadership for individual workstreams between staff from impacted operational areas
- Key senior Health Board and Local Authority officers met for a facilitated session to establish a shared vision and principles to underpin collaborative work for children and young people with ALN. At the heart of what was

discussed was how services can adopt a 'one child, one approach, one life' approach, supporting truly integrated working.

- A follow-up session to 'firm up' this vision statement and to identify priorities for collaborative working is being set up. The draft vision statement is appendicised.
- A multi-agency operational group to support collaboration at an operational level, and to ensure that operational processes support person-centred practice, has been established. It is expected that this group will also drive work to progress priorities to deliver the shared strategic vision. Links between this group and the Children and Young People Programme Board of the West Glamorgan RPB are currently being established.
- Links with SNAP Cymru, a national charity who provide advocacy and facilitate dispute resolution, have been established. This will help bring the voice and perspectives of children, young people and their parents / carers into the Health Board's planning around ALN.

As a result of the phased implementation of the ALN Act, levels of demand have been relatively low. These will increase significantly from September 2022. To date:

- 316 requests for information or help (under Section 65 of the ALN Act) have been received by individual services, for 106 children in total (information or help is typically required for more than one service per child). Responses have been completed by the Health Board within the statutorily-required six-week timescale for 127 requests (40.19%), while for 189 (59.81%) the request has breached the statutory timescale.
- 115 requests for consideration for a relevant treatment or service (under Section 20 of the ALN Act) have been received individual services, for 63 children in total. Responses have been within the statutory 6-week timescale for 42 requests (36.52%), with 73 (63.48%) breaching the statutory timescale.

Data indicates that the Health Board is currently breaching its legal duties under the Act for a large number of cases. From a quality and patient care perspective, non-compliant Health Board responses are resulting in delays in Education being able to develop and finalise person-centred Individual Development Plans (IDPs) for children and young people. The intention of the Act to create a more responsive system to meet learners needs is not being realised.

The early performance challenges that this data shows in part reflects new operational processes being embedded, and it should be noted that there are data quality issues that are currently being addressed. However, data indicates that compliance has been worsening rather than improving and the data highlights the significant challenge being faced by ALN- impacted operational services. The requirements of the Act are compounding the demand / capacity pressures already being experienced by services which are working to address waiting time challenges and to produce cost improvement plans.

3. GOVERNANCE AND RISK ISSUES

There are risks to the Health Board's ability to meet its statutory duties and establish the effective collaborative arrangements required by the ALN Act, which is

being implemented through a phased approach. The main cause of this risk is a lack of staffing resource required to meet the additional demands associated with the Act: the Act has been implemented with no additional resource available to support operational services, though there is a clear consensus that additional resource will be required in order for the aspirations of the Act to be realised. Additional requirements associated with the ALN Act are recognised in the IMTP as a 'Tier 3' priority. Additional resource from Welsh Government to support the implementation of the Act is not anticipated at this stage.

Consequences of the risk, which is captured on the Health Board's Corporate Risk Register (score = 20), include children failing to access the multi-agency support that they need with their learning needs, leading to poor outcomes; breach of legal duties; parent / carer and young peoples' dissatisfaction leading to complaints, Educational Tribunals and Judicial Reviews; and reputational impact.

The DECLO and the Interim Head of Speech and Language Therapy have produced an initial paper articulating the demand / capacity challenges that the ALN Act presents. This paper, which was taken to the ALN Steering Group, has identified and provisionally quantified additional demands in four key areas:

1. An increase in the number of children and young people requiring provision to be secured by the Health Board because of changes to operational arrangements within Education and changing SLA arrangements
2. Participation in person-centred review meetings (PCRs)
3. Responding to statutory requests for 'information and help' and to referrals for a relevant treatment or service, and making notifications of suspected ALN to partner LAs
4. Activity required to mitigate a potential increase in demands on services

The ALN Operational Group's workplan, when finalised, will comprise actions that will provide partial mitigation against these risks. Dialogue is ongoing with Local Authority partners, and the tone of this dialogue is becoming more positive, regarding the significant risks presented to the Health Board resulting from changes in operational arrangements and changing SLA arrangements. However, full mitigation of these risks is not possible and it is of significant concern that the Health Board is currently breaching statutory duties regarding the timeliness of its responses to Local Authority requests / referrals, when it is confidently predicted that the number of such requests / referrals will significantly increase in the next school year. There has been engagement with Performance colleagues to ensure that data regarding the Health Board's compliance with these duties is reflected in its Performance and its Quality and Safety dashboards.

From a quality perspective, at the heart of the ALN is the principle of person-centred practice: ensuring that the voice of children, young people and their parents / carers, and their longer-term aspirations, shapes the planning and the provision to meet their needs. Participation of Health Board staff in person-centred review meetings is in many cases crucial to ensuring person-centred practice and a truly integrated practice approach to meeting learners' needs. The capacity of Health Board staff to

participate in these meetings will be highly limited, presenting major risks to the person-centred intentions of the ALN Act being realised.

4. FINANCIAL IMPLICATIONS

In the paper that was brought to the Quality and Safety Committee in March 2021, the resources challenges associated with the ALN Act were noted. The paper articulated a plan to produce a business case for additional resource needed to meet the Act's requirements once Welsh Government had finalised the implementation plans for the Act. This guidance has now been provided (see section 2.1).

In view of the status of the ALN Act in the Health Board's scheme of prioritisation in the IMTP (i.e. at Tier 3), it has been agreed by the Steering Group that at this stage it would not be appropriate to produce a business case associated with the demand / capacity implications of the Act, as there is no process through which such a business case should go.

This means that the financial implications of the Act at this stage are limited to the risk of legal challenge and consequent financial impact on the Health Board. However, the 'cost' of this position is the risks as set out at section 3 of this paper, which cannot be mitigated in full.

5. RECOMMENDATION

The Committee is recommended to note the contents of this paper and to consider any actions that should be taken.

Governance and Assurance		
Link to Enabling Objectives <i>(please choose)</i>	Supporting better health and wellbeing by actively promoting and empowering people to live well in resilient communities	
	Partnerships for Improving Health and Wellbeing	<input checked="" type="checkbox"/>
	Co-Production and Health Literacy	<input type="checkbox"/>
	Digitally Enabled Health and Wellbeing	<input type="checkbox"/>
	Deliver better care through excellent health and care services achieving the outcomes that matter most to people	
	Best Value Outcomes and High Quality Care	<input checked="" type="checkbox"/>
	Partnerships for Care	<input checked="" type="checkbox"/>
	Excellent Staff	<input checked="" type="checkbox"/>
	Digitally Enabled Care	<input type="checkbox"/>
	Outstanding Research, Innovation, Education and Learning	<input type="checkbox"/>
Health and Care Standards		
<i>(please choose)</i>	Staying Healthy	<input checked="" type="checkbox"/>
	Safe Care	<input type="checkbox"/>
	Effective Care	<input checked="" type="checkbox"/>
	Dignified Care	<input checked="" type="checkbox"/>
	Timely Care	<input checked="" type="checkbox"/>
	Individual Care	<input checked="" type="checkbox"/>
	Staff and Resources	<input checked="" type="checkbox"/>
Quality, Safety and Patient Experience		
<p>Effective implementation of the ALN Act has the potential to deliver better outcomes and experience for some of our most complex and vulnerable children and to enable needs to be met in a timely and proactive way. However, there are significant risks that children will fail to access the integrated support they need and that there will be poor experience for children, young people and their parents / carers.</p>		
Financial Implications		
<p>The ALN Act was established as 'resource neutral' for operational services. It has become increasingly clear that this is not realistic and that additional staffing resource is required to meet the additional demands associated with the Act. This recognised in the IMTP as a 'Tier 3' priority. Additional resource from Welsh Government to support the implementation of the Act is not anticipated at this stage.</p> <p>The absence of additional resource largely mitigates the financial impact of the Act (though there are financial risks associated with legal challenge), though this increases the quality, safety and patient experience risks.</p>		
Legal Implications (including equality and diversity assessment)		
<p>The ALN Act is a legislative framework imposing a number of statutory duties on the Health Board. The Health Board's response to the requirements of the ALN Act may be subject to appeal to Educational Tribunal or Judicial Review. This is a new and untested legislative framework, the writing of which offers considerable latitude for interpretation, in a highly emotive and frequently contested area. As such, the likelihood of legal challenge is high.</p>		
Staffing Implications		
<p>Meeting the statutory requirements of the Act in a way that supports effective multi-agency collaboration and that mitigates legal risks (see section 3) will</p>		

present additional infrastructure requirements and demand / capacity implications for impacted operational services, especially within the Primary, Community Services and Therapies Service Group.

Long Term Implications (including the impact of the Well-being of Future Generations (Wales) Act 2015)

The Well-being of Future Generations Act’s 5 ways of working align closely with the general principles underpinning the ALN Act:

- **Long Term** – facilitating access to an effective education and promoting independence for some of our most vulnerable groups will maximise the life chances of these individuals, having considerable long-term implications.
- **Prevention** – the early identification of additional learning needs and effective early help to prevent the escalation of needs is at the heart of the ALN Act
- **Integration and Collaboration** – collaboration between Health Boards and Local Authorities is a key principle underpinning the Act. There is a local commitment to services working seamlessly to get it right for vulnerable children and young people: ‘one child, one service, one life’
- **Involvement** – Person-centered practice with the voice of the child at the heart of decision-making, both at a practice and a strategic level, is another key principle underpinning the ALN Act.

Report History

28.03.2022 – ‘The Additional Learning Needs and Education Tribunal (Wales) Act 2018: Introductory Report’ (agenda item 7.3)

Appendices



23 03 2022 Updated ALN Implementation (Updated Implementat

29 03 2022 - WG Implementation guidance – see section 2.1



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Vision / principles paper – see section 2.2



Llywodraeth Cymru
Welsh Government

CABINET STATEMENT

Written Statement: Additional Learning Needs and Education Tribunal Act 2018 Implementation

Jeremy Miles MS, Minister for Education and Welsh Language

First published: 23 March 2022

Last updated: 23 March 2022

The implementation of the Additional Learning Needs and Education Tribunal Act 2018 (the ALN Act) remains important for those children who were newly identified as having ALN and, from January 2022, children with special educational provision via school action/school action plus and early years equivalent started to move to the ALN system.

There has been continued engagement with key partners to ensure a smooth transition to the new ALN system. However, with the continued disruptive impact of the pandemic it has meant that progress to moving children from the SEN system to the ALN system has been slower than expected. I want to reassure Members, that no child has been disadvantaged as a result.

It is important that schools, pupil referral units (PRUs) and local authorities have the time to undertake the ALN process in a person-centred way – putting the views of children and their families at the centre of the decision-making process.

To ensure that schools, PRUs and local authorities have the necessary time to move children from the SEN system to the ALN system, I have decided to extend the time available to move children during the first year of implementation by one year. This means that children who were due to move to the ALN system between January 2022 and August 2022, will now move to the ALN system between January 2022 and August 2023.

This extension will be accommodated within the existing three year timeframe. This has been achieved by reorganising how specific groups of children will move in the second and third year of implementation:

School year 2022/23 – children with provision via school action/school action plus: Year 10 (and any children who were in Nursery, Year 1, Year 3, Year 5, Year 7 and Year 10 in 2021/22 who were not moved to the ALN system during 2021/22)

School year 2022/23 – children with provision via statements: Nursery, Reception, Year 6, Year 10 and Year 11.

School year 2023/24 - children with provision via school action/school action plus: Nursery, year 2, Year 4, Year 6, Year 8 and Year 10.

School year 2023/24 – children with provision via statements: Year 2, Year 3, Year 4, Year 5, Year 6, Year 8, Year 9, Year 10.

This extension and reorganisation means that schools, PRUs and local authorities will now be required to move fewer children in the first two years of implementation. The right for children, and their parents, to request the child moves to the ALN system is unaffected – meaning that children who want to move to the ALN system will not be affected by the extension and reorganisation.

Further information about how commencement will work in years two and three of implementation, including guidance will be published in the summer term.



Llywodraeth Cymru
Welsh Government

CABINET STATEMENT

Written Statement: Additional Learning Needs and Education Tribunal Act 2018 Implementation for Post-16

Jeremy Miles MS, Minister for Education and Welsh Language

First published: 28 March 2022

Last updated: 28 March 2022

Following my written statement on Wednesday 23 March setting out the revised plans for moving children currently in year 10 and below to the Additional Learning Needs (ALN) system, I am today providing members with an update on plans for implementing the Additional Learning Needs and Education Tribunal Act 2018 (the ALN Act) for young people who are post-16.

Implementation for post-16 will involve a 'flow through' approach, whereby those currently in year 10 and below, who are being moved to the ALN system by a school or local authority during the implementation period, will 'flow through' into further education with an individual development plan (IDP) already in place (where they require one). Any young person not yet on the ALN system at the end of the 2024/25 school year will move to the ALN system at that point.

This approach mirrors the way the ALN system will work in the long term. FEIs and local authorities will begin to maintain IDPs for young people in a gradual, managed way, ensuring they are fully prepared to undertake their duties and that

the IDP process is person-centred. It also avoids placing excessive burden on FEIs, schools and local authorities at a time of extreme pressure due to the impacts of the pandemic and the wider education reform agenda.

Until the ALN Act applies to a young person, the Education Act 1996 and the Learning and Skills Act 2000 will continue to apply and they will continue to benefit from the support available via the existing Special Educational Needs and Learning Difficulty and Disability systems, respectively.

The Welsh Government is currently responsible for securing specialist post-16 provision for young people whose education and training needs cannot be met via mainstream provision, under the Learning and Skills Act 2000. As part of the ALN Act, this responsibility will transfer to local authorities. Under the arrangements I am announcing today, this will take place gradually, with local authorities becoming responsible for those who have been moved to the ALN Act from 2022/23 (those currently in year 10 and below). The Welsh Government will continue to secure and fund specialist post-16 placements for those young people who have not yet been moved to the ALN system (those currently in Year 11 and above).

The Welsh Government is committed to providing certainty and security to young people in specialist provision. I can therefore confirm today that any funding for placements agreed by Welsh Ministers before the end of the 2024-25 school year will remain available to young people until they complete their agreed programme of study.

In the interests of supporting FEIs to continue preparing for the new system and support them in providing person-centred support to young people with ALN, I can also announce the ALN Transformation Lead for FE will be extended from 31 March 2022 to 31 March 2023, which I know will be welcomed by the sector.

My officials will be writing to key stakeholders setting out further detail on these arrangements in the coming days.



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