

**National Assembly for Wales**  
Research paper

**Special Educational Needs (SEN)/  
Additional Learning Needs (ALN)  
in Wales**

June 2015

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Enquiry no: 15/1210  
Paper number: 15/025

**National Assembly for Wales**  
Research paper

# Special Educational Needs (SEN)/ Additional Learning Needs (ALN) in Wales

June 2015

Michael Dauncey

This Research Paper provides a timely overview of the current legal framework for Special Educational Needs (SEN) in Wales ahead of anticipated legislation in summer 2015. Current provisions and processes are explained, along with the journey of review and reform that has taken place throughout much of the post-devolution era. Statistics on the numbers of learners, levels of expenditure and relative academic performance of pupils with SEN are also included.

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# Current arrangements for Special Educational Needs (SEN)/Additional Learning Needs (ALN) in Wales

## Introduction

Approximately one in five learners in maintained schools in Wales has Special Educational Needs (SEN), or as they are increasingly, though not yet legally, referred to, Additional Learning Needs (ALN). These needs are currently met through three graduated stages of intervention:

- Firstly, additional support provided by schools themselves (*School Action*);
- Secondly, additional support by schools together with the involvement of external agencies (*School Action Plus*); and
- Thirdly, where deemed necessary, in accordance with a **local authority statement of SEN** which provides a legal entitlement to a specified package of support.

(Broadly equivalent programmes to *School Action* and *School Action Plus* exist within Early Years.)

There are currently **105,000** learners with SEN, 12,530 of whom have statements (2013/14). **£357 million** is currently budgeted by local authorities for SEN provision (2014-15).

SEN will usually fall into at least one of the following four broad areas:

- Communication and interaction
- Cognition and learning
- Behaviour, emotional and social development
- Sensory and/or physical.

The way in which learners' SEN are assessed and provided for is set to change with the introduction of legislation to the Assembly. This will make long-awaited reforms. It follows many years of various reviews, consultations and policy developments to consider how a 'model introduced more than 30 years ago that is **no longer fit for purpose**'<sup>1</sup> can be replaced with a '**more modern approach** to multi-agency working to the benefit of the child or young person, which will support them in the journey through education and their life choices'<sup>2</sup>. Indeed, many local authorities have already altered the way in which they provide for SEN, which has resulted in **divergence and inconsistency** in approaches across Wales, for example in the number of statements issued.

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<sup>1</sup> Welsh Government, *Legislative proposals for additional learning needs*, Ministerial Foreword (Huw Lewis, Minister for Education and Skills), May 2014, p2

<sup>2</sup> Welsh Government, *Forward in partnership for children and young people with additional needs: Proposals for reform of the legislative framework for special educational needs*, June 2012, p4

The Welsh Government's approach is one of '**evolutionary rather than revolutionary change**', retaining what is good about the system and replacing or improving its weaknesses.<sup>3</sup>

Ahead of the **expected introduction of a Bill**, this Research Paper seeks to provide a timely overview of the current legal framework for SEN, explaining current provisions and processes, along with some statistics on numbers of learners, levels of expenditure and relative academic performance. The **journey of reform** to date is also discussed.

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<sup>3</sup> Ibid, p2

## 1. The current legal framework in Wales

### 1.1. *Definition of Special Educational Needs*

Section 312(1) of the [Education Act 1996](#) states that children have Special Educational Needs (SEN) if '[they] have a **learning difficulty which calls for special educational provision** to be made for [them]',

A **learning difficulty** is defined by section 312(2) as:

- a) having a **significantly greater difficulty** in learning than the **majority** of children of the same age;
- b) having a **disability** which either **prevents or hinders** them from making **use of educational facilities of a kind generally provided** for children of their age in schools within the area of the local authority; or
- c) if they are **under compulsory school age and fall within the definition** at a) or b) or would do so if special educational provision was not made for them.

Section 312(4) states that **special educational provision** means:

- a) for children **aged two or over**, educational provision that is **additional to, or otherwise different from**, the educational provision made **generally** for children of their age in maintained schools, other than special schools, in the area;
- b) for children aged under two, educational provision of any kind.

[all my emphasis]

A child is not regarded as having a learning difficulty solely because the language spoken at home is different to the language in which they will be taught.

### 1.2. *Code of Practice*

The *Education Act 1993* (consolidated by the 1996 Act) required a Code of Practice to be produced giving practical guidance on how local authorities and schools should undertake their functions in respect of SEN.

The first Code of Practice was produced by the UK Government and came into effect in 1994. Following devolution, the then Minister for Education and Lifelong Learning, Jane Davidson, published the **first [SEN Code of Practice](#) specific to Wales** [hereafter 'the Code']. This took effect from **1 April 2002** and is still in force today.

The Code sets out the procedures which should be followed for assessing whether a learner has SEN and putting in place interventions to address them. However, there have been evolving changes to the way in which learners' needs are identified and provided and the Code is **arguably out of date to an extent**. These changes include, for example, increasing use of the **wider concept of 'Additional Learning Needs' (ALN)**, which the forthcoming legislation is expected to give a legal foundation to, and a shift away from a reliance on statements.

The **relevant agencies must have regard** to the Code of Practice and, whilst they may choose exactly how to fulfil their statutory duties, must do so in light of the guidance it provides.

The Code is founded on **five general principles**:

- A child with SEN should have their needs met;
- The SEN of children will normally be met in mainstream schools or settings;
- The views of the child should be sought and taken into account;
- Parents have a vital role to play in supporting the child's education;
- Children with SEN should be offered full access to a broad, balanced and relevant education.

### *1.3. Overview of key responsibilities*

Paragraph 1.19 of the Code states that **local authorities**, in partnership with schools, should 'place the **highest priority** on their statutory duty to promote high standards of education for all children, including those with SEN'. Paragraph 1.20 says an essential function of local authorities is to ensure the needs of children and young people with SEN are 'identified and assessed **quickly** and matched by **appropriate** provision'.

Local authorities are obliged by statute to publish their SEN policies and information on how they are 'promoting high standards of education' for learners with SEN and encouraging them to 'participate fully in their school and local community'.

Paragraph 1.24 advises that to fulfil their role effectively, local authorities should provide for the inclusion of SEN learners in mainstream schools. This is in line with the second general principle which **presumes mainstream provision**. Where a learner has SEN but no statement, they must be educated in a mainstream school. Where they have a statement, they must still be educated in a mainstream schools unless parents wish otherwise or it is incompatible with 'the provision of efficient education for other children'.<sup>4</sup>

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<sup>4</sup> Section 316, [Education Act 1996](#)

Schools and admission authorities **cannot refuse to admit a child solely because they have SEN**. For learners with SEN but no statement, the same admissions procedures must be followed as for other children. For learners with statements, a maintained school that is named in a statement must admit the child.

**Maintained schools** and early years settings must have a **written SEN policy**. Schools must have a '**responsible person**' (usually the head teacher although it may be a governor) who ensures all teachers know about a pupil's SEN. Paragraph 1.38 of the Code makes it clear that provision for learners with SEN is a matter for everyone in maintained schools and early years settings, not only the SEN Co-ordinator (SENCO).

The **SENCO** is the member of staff at a school who has responsibility for co-ordinating SEN provision within that school. In a small school, this may be the head teacher or deputy whilst, in a large school, there may be an SEN co-ordinating team. The SEN has an instrumental role in working with the classroom teacher(s) in identifying a pupil's SEN and what form of intervention is required.

The **governing bodies** of maintained schools must 'use their **best endeavours**' to ensure the necessary provision is made for any pupil with SEN. Governing bodies must also report annually to parents on how the school's SEN policy is being implemented.<sup>5</sup>

Where a learner has a statement, the local authority is responsible for ensuring the provision set out in that statement. Where they do not have a statement, the school is responsible for deciding what is needed and making that provision.

#### *1.4. Post-16 learners*

The key legislation concerning post-16 learners is the ***Learning and Skills Act 2000***, which deals with the planning and funding of post-16 education. The legislation uses the term '**learning difficulties and/or disabilities (LDD)**' rather than SEN.

The Welsh Ministers currently have a general duty under the *Learning and Skills Act 2000* to secure proper provision (for those aged between 16 and 19) and reasonable (for those over the age of 19) facilities for education and training for learners. In particular, section 140 places a **duty** on the Welsh Government to make arrangements for **young people under the age of 19 who have a statement of SEN to be assessed**, where it believes they are **likely to leave school at the end of their last year of compulsory schooling** to go on to further

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<sup>5</sup> Section 317, *Education Act 1996*

or higher education or training. Assessment must be carried out during the final year of compulsory education.

The Welsh Government also has a **power under** section 140 of the 2000 Act to arrange for an assessment to be conducted of **any person under the age of 25** where it appears they have learning difficulties and where they are receiving, or are likely to receive, post-16 or higher education or training. This applies **even where they do not have a statement of SEN** and is designed to enable assessments to be carried out in cases where learning difficulties were developed shortly before or after leaving school, or they had learning difficulties which did not result in a statement of SEN being issued.

Currently, these **assessments are conducted by Careers Wales** through an annual contract with the Welsh Government. An assessment results in a report setting out a person's educational and training needs, the post-16 education or training required to meet those needs and the provision required.

Some learners require specialist provision, which may include **residential accommodation**, in which case Careers Wales prepare and submit an individual application for funding to the Welsh Government. The Welsh Government then considers each application and the evidence supporting it in order to reach a funding decision, seeking additional evidence where necessary, and negotiates joint funding with local authorities and/or health boards. Often, a learner's education and training needs can be met in a **further education college** with some additional support. Where a learner's needs are sufficiently complex, colleges submit claims to the Welsh Government for supplementary or exceptional funding to meet these.<sup>6</sup>

Arrangements for the LDD (or ALN) of post-16 learners is a complex subject which has been the subject of considerable review in its own right. This is discussed later in section 4.4 of this paper.

### *1.5. Provision for SEN*

The Code advocates a **graduated approach** to help children with SEN, encompassing a range of strategies and intervention. The Code says this approach recognises there is a continuum of SEN and that schools should make full use of available classroom and school resources before calling upon outside resources and/or more specialist expertise.

The Code emphasises that 'the importance of early identification, assessment and provision for any child who may have SEN cannot be over-emphasised'; **'the earlier action is taken, the more responsive the child is likely to be'**.

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<sup>6</sup> See paragraphs 231–236 of [Explanatory Memorandum \(as introduced\)](#), *Education (Wales) Bill* for an explanation of this.

The Code includes separate chapters on identifying, assessing and providing for SEN in each of the early years, primary and secondary sectors. The information provided below is a summary of the guidance in relation to *School Action*, *School Action Plus* and, where necessary, statements for the primary school sector (chapter 5 of the Code). However, the guidance is broadly the same as for secondary schools and early years (*Early Years Action* and *Early Years Plus*).

Paragraph 5.39 describes the start of the process for identifying that a child may have SEN:

A school's **system for observing and assessing** the progress of individual children should provide information about areas where a child is not progressing satisfactorily even though the teaching style has been differentiated. These observations should be **enhanced by knowledge built up over time** of an individual child's strengths and weaknesses. Using this evidence, class teachers may come to feel that the strategies they are currently using with the child are **not resulting in the child learning as effectively as possible**. Under these circumstances, they will need to consult the SENCO to consider what else might be done. The starting point will always be a **review of the strategies currently being used** and the way in which these might be developed. The review **may lead to the conclusion** that the pupil requires **help over and above** that which is normally available within the particular class or subject. Consideration should then be given to **helping the pupil through *School Action***. [my emphasis]

The key test of the need for action that schools should use is evidence that current rates of progress are inadequate. This does not necessarily mean simply being behind other pupils as children cannot be assumed to progress at the same rate and the Code (para 5.42) gives guidance on how adequate progress may be defined.

### *1.5.1. School Action*

*School Action* is the first of the three tiers of intervention under the graduated approach advocated by the Code. Each tier should **not** be taken to be a **stepping stone** to the next, particularly from *School Action Plus* to statements.

Pupils receive support under *School Action* when they are not making adequate progress and this cannot be addressed through regular differentiated teaching. *School Action* consists of 'interventions that are **additional to** or **different from** those provided as part of the school's usual differentiated curriculum offer and strategies'.

Paragraph 5.44 explains the **basis for intervention through *School Action*** could be concern, supported by evidence, that a child, despite receiving differentiated learning opportunities:

- makes **little or no progress** even when teaching approaches are **targeted** particularly in a child's identified area of weakness;

- shows signs of **difficulty in developing literacy or mathematics skills** which result in poor attainment in some curriculum areas;
- presents **persistent emotional or behavioural difficulties** which are not ameliorated by the behavioural management techniques usually employed in the school;
- has **sensory or physical problems**, and continues to make little or no progress despite the provision of specialist equipment;
- has **communication and/or interaction difficulties**, and continues to make little or no progress despite the provision of a differentiated curriculum.

The **SENCO** has an important role in working with the child's teacher(s) to decide on the action needed to help the child progress. The Code suggests that different learning materials or special equipment could be among the interventions made. The additional strategies used should be recorded within an **Individual Education Plan (IEP)**, which should also include information about short-term targets, outcomes and success/exit criteria. Paragraph 5.53 says IEPs should be **reviewed** at least twice a year and ideally, termly.

### *1.5.2. School Action Plus*

If the interventions under *School Action* are not delivering adequate results, the SENCO and the teacher(s) may decide in consultation with parents and specialists to involve **external support** services.

Paragraph 5.56 describes the **basis for *School Action Plus*** as being that, despite receiving an individualised programme and/or concentrated support under *School Action*, the child:

- **continues** to make **little or no progress** in specific areas over a **long period**;
- **continues** working at National Curriculum levels **substantially below** that expected of children of a similar age;
- **continues** to have **difficulty** in developing **literacy and numeracy** skills;
- has **emotional or behavioural difficulties** which substantially and regularly **interfere** with the child's own learning or that of the class group, **despite** having an **individualised behaviour management programme**;
- has **sensory or physical needs**, and requires **additional specialist equipment** or regular advice or visits by a specialist service;
- has **ongoing communication or interaction difficulties** that impede the development of social relationships and cause **substantial barriers to learning**.

Services may be provided by the local authority as well as outside agencies, including advice on new IEPs with fresh targets and strategies, more specialist assessments and advice on new specialist strategies or materials. Although developed with the help of external specialists, strategies should usually be implemented as far as possible in the normal classroom setting and their **delivery remain the responsibility of the classroom teacher**.

### *1.5.3. Statutory assessments and statements*

Where *School Action* and *School Action Plus* have not led to sufficient improvement, or where it is immediately obvious the learner's needs are sufficiently serious, a statutory assessment may be undertaken by the local authority. This may in turn lead to the local authority issuing a statement of the child's SEN.

The significance of statements is that the **local authority assumes legal responsibility** for making provision to meet specified needs. It has a duty under section 324 of the *Education Act 1996* to arrange the special educational provision in a child's statement. The wording of the Code when it was produced early in the last decade demonstrates an expectation of statements being issued as a **last resort or in the most serious** of cases:

For the **vast majority** of children their mainstream setting will meet all their SEN. (...) A **very small minority** of children will have SEN of a severity and complexity that requires the [local authority] to determine and arrange for the special educational provision their learning difficulties call for. (para 1.2) [my emphasis]

However, parents have tended to view **statements as the best way** to secure intervention for their child, probably **reassured by the legal certainty** of provision that they offer. This has arguably led the system of statements to become **confrontational and protracted** between local authority and parent. Indeed, the Minister for Education and Skills, Huw Lewis, recognises views that the system has become '**complex, bewildering and adversarial**'.<sup>7</sup> This is one of the reasons the Welsh Government proposes to replace the system of school-led intervention versus statutory local authority statements with a holistic system where all learners with SEN have an Individual Development Plan (IDP).

There are **rules and procedures** laid out in legislation and the Code over matters such as when a local authority is obliged to **undertake an assessment**, the **time-scale** it has to do so and **what factors** it must consider. These are discussed in section 2.7 after the data on numbers of SEN learners.

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<sup>7</sup> Welsh Government, [Legislative proposals for additional learning needs](#), Ministerial Foreword (Huw Lewis, Minister for Education and Skills), May 2014, p2

## 1.6. Statistics on learners with SEN

Tables 1-4 provide some statistics on SEN provision in maintained schools in Wales.

**Table 1** presents the numbers of learners in Wales with SEN and how many are provided for within each of the three tiers of intervention, across the last five years. **Table 2** breaks this data down by local authority for the latest year, 2013/14.

**Table 3** shows the number of learners with SEN as a proportion of total pupils, as well as how many have a statement as a proportion of total pupils, and of pupils with SEN. As with Table 1, this is across the latest five years for which data is available. **Table 4** breaks this data down by local authority, which enables some analysis of their comparative use of statements.

From these tables, it can be observed:

- In 2013/14, there were **105,303 pupils with SEN** in maintained schools, which is **22.6% of all pupils**.
- The large majority (88.1%) of pupils with SEN did not have a statement. **11.9% of pupils with SEN did have a statement**.
- The **proportion** of learners with SEN who have a **statement** has **fallen year-on year** from 13.9% in 2010/11 to 11.9% in 2013/14. Over the same period, the overall proportion who have SEN has risen from 21.2% to 22.6%.
- The relative issuing of statements to learners with SEN **varies amongst local authorities**. Whilst the average across Wales in 2013/14 was 11.9%, four local authorities made statements for over 16% of their learners with SEN yet five local authorities used statements for less than 8% of their learners with SEN.
- Monmouthshire had the lowest proportion of learners with SEN but issued the highest proportion of statements amongst the SEN cohort. Conversely, Merthyr Tydfil had the highest proportion of learners with SEN but issued the joint lowest proportion of statements.
- This suggests local authorities are using **different means of meeting the SEN** of their pupils, with some retaining the established system of statements and others shifting away from this approach. It should be noted that Estyn has reported that 'there is **not necessarily a correlation** between the percentage of statements and the quality of ALN services being provided'.<sup>8</sup>

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<sup>8</sup> National Assembly for Wales, Children and Young People Committee, [CYP\(4\)-24-13: Paper 6 - Estyn](#), 2 October 2013

**Table 1: Number of pupils with SEN in maintained schools in Wales**

	<i>number</i>				
	<u>School Action</u>	<u>School Action Plus</u>	<u>Total pupils with SEN but without statement</u>	<u>Statements</u>	<u>All pupils with SEN</u>
2013/14	58,146	34,627	92,773	12,530	105,303
2012/13	56,000	35,053	91,053	12,738	103,791
2011/12	56,511	33,429	89,940	13,098	103,038
2010/11	54,468	32,055	86,523	13,407	99,930
2009/10	54,256	30,981	85,237	13,767	99,004

Source: Welsh Government, StatsWales, [\*Pupils with special educational needs by local authority, region and type of provision\*](#) [accessed 15 May 2015]

Note: 2014/15 data is scheduled to be available on StatsWales in July 2015.

**Table 2: Number of pupils with SEN in maintained schools, by local authority, 2013/14**

	<i>number</i>				
	<u>School Action</u>	<u>School Action Plus</u>	<u>Total pupils with SEN but without statement</u>	<u>Statements</u>	<u>All pupils with SEN</u>
Isle of Anglesey	918	788	1,706	274	1,980
Gwynedd	1,816	1,538	3,354	499	3,853
Conwy	1,533	1,566	3,099	314	3,413
Denbighshire	1,827	1,801	3,628	427	4,055
Flintshire	2,370	1,282	3,652	557	4,209
Wrexham	1,844	946	2,790	555	3,345
Powys	2,162	1,465	3,627	468	4,095
Ceredigion	1,765	785	2,550	206	2,756
Pembrokeshire	2,750	2,027	4,777	344	5,121
Carmarthenshire	4,206	2,407	6,613	1,037	7,650
Swansea	4,978	2,357	7,335	1,410	8,745
Neath Port Talbot	3,339	1,712	5,051	751	5,802
Bridgend	3,175	1,320	4,495	342	4,837
Vale of Glamorgan	2,710	1,013	3,723	452	4,175
Cardiff	7,062	3,059	10,121	1,528	11,649
Rhondda Cynon Taf	5,775	2,210	7,985	658	8,643
Merthyr Tydfil	952	1,545	2,497	180	2,677
Caerphilly	3,072	2,362	5,434	719	6,153
Blaenau Gwent	999	913	1,912	345	2,257
Torfaen	1,554	1,193	2,747	250	2,997
Monmouthshire	875	631	1,506	348	1,854
Newport	2,464	1,707	4,171	866	5,037
<b>Wales</b>	<b>58,146</b>	<b>34,627</b>	<b>92,773</b>	<b>12,530</b>	<b>105,303</b>

Source: Welsh Government, StatsWales, [\*Pupils with special educational needs by local authority, region and type of provision\*](#) [accessed 15 May 2015]

Note: 2014/15 data is scheduled to be available on StatsWales in July 2015.

**Table 3: Proportions of pupils with SEN and proportions of pupils with statements of SEN in maintained schools in Wales**

	Total pupils	Total pupils with SEN	Total pupils with SEN statements	Percentage of total pupils who have SEN	Percentage of total pupils who have statements of SEN	Percentage of pupils with SEN who have statements
2013/14	465,081	105,303	12,530	22.6%	2.7%	11.9%
2012/13	464,868	103,791	12,738	22.3%	2.7%	12.3%
2011/12	465,943	103,038	13,098	22.1%	2.8%	12.7%
2010/11	466,172	99,930	13,407	21.4%	2.9%	13.4%
2009/10	467,141	99,004	13,767	21.2%	3.0%	13.9%

Source: Research Service calculations from Welsh Government, StatsWales, [Pupils with special educational needs by local authority, region and type of provision](#), and Welsh Government, Statistical First Release: [School census results, 2014](#), Table 3 [accessed 15 May 2015]

Note: 2014/15 data is scheduled to be available on StatsWales in July 2015, whilst the 2015 edition of the statistical release *School census results* is also due for publication in July 2015.

**Table 4: Proportions of pupils with SEN and proportions of pupils with statements of SEN in maintained schools, by local authority, 2013/14**

	Total pupils	Total pupils with SEN	Total pupils with SEN statements	Percentage of total pupils who have SEN	Percentage of total pupils who have statements of SEN	Percentage of pupils with SEN who have statements
Isle of Anglesey	9,588	1,980	274	20.7%	2.9%	13.8%
Gwynedd	17,034	3,853	499	22.6%	2.9%	13.0%
Conwy	15,950	3,413	314	21.4%	2.0%	9.2%
Denbighshire	15,680	4,055	427	25.9%	2.7%	10.5%
Flintshire	23,731	4,209	557	17.7%	2.4%	13.2%
Wrexham	19,344	3,345	555	17.3%	2.9%	16.6%
Powys	18,647	4,095	468	22.0%	2.5%	11.4%
Ceredigion	9,624	2,756	206	28.6%	2.1%	7.5%
Pembrokeshire	18,208	5,121	344	28.1%	1.9%	6.7%
Carmarthenshire	26,993	7,650	1,037	28.3%	3.8%	13.6%
Swansea	35,311	8,745	1,410	24.8%	4.0%	16.1%
Neath Port Talbot	20,583	5,802	751	28.2%	3.7%	12.9%
Bridgend	22,664	4,837	342	21.3%	1.5%	7.1%
Vale of Glamorgan	21,907	4,175	452	19.1%	2.1%	10.8%
Cardiff	52,270	11,649	1,528	22.3%	2.9%	13.1%
Rhondda Cynon Taf	38,957	8,643	658	22.2%	1.7%	7.6%
Merthyr Tydfil	8,850	2,677	180	30.3%	2.0%	6.7%
Caerphilly	28,710	6,153	719	21.4%	2.5%	11.7%
Blaenau Gwent	9,559	2,257	345	23.6%	3.6%	15.3%
Torfaen	15,314	2,997	250	19.6%	1.6%	8.3%
Monmouthshire	11,544	1,854	348	16.1%	3.0%	18.8%
Newport	24,613	5,037	866	20.5%	3.5%	17.2%
<b>Wales</b>	<b>465,081</b>	<b>105,303</b>	<b>12,530</b>	<b>22.6%</b>	<b>2.7%</b>	<b>11.9%</b>

Source: Research Service calculations from Welsh Government, StatsWales, [Pupils with special educational needs by local authority, region and type of provision](#), and Welsh Government, Statistical First Release: [School census results, 2014](#), Table 5 [accessed 15 May 2015]

There were **42 maintained special schools** in Wales in 2013/14<sup>9</sup> (this is now 39<sup>10</sup>). In 2013/14, there were **4,338** pupils in these schools.<sup>11</sup> The 2013/14 position is broken down across the four regional consortia areas as follows:

- Central South Wales: 1,766 pupils in 17 maintained special schools
- South West and Mid Wales: 906 pupils in 11 maintained special schools
- South East Wales: 513 pupils in 5 maintained special schools
- North Wales: 1,153 pupils in 9 maintained special schools.

### *1.7. Process of statutory assessments and statements*

Chapter 7 of the Code of Practice sets out the procedures which local authorities should follow in relation to learners whose SEN are sufficiently serious that they **require a statutory assessment and potentially a statement**. These procedures include scenarios where the local authority receives a request to carry out a statutory assessment.

The Code describes requirements on local authorities under sections 321 and 323 of the *Education Act 1996* as:

[Local authorities] must identify and make a statutory assessment of those children for whom they are responsible who have special educational needs and who probably need a statement. (page 73)

There are therefore two main decision-making steps for local authorities. Firstly, they must decide **whether there is a need to undertake a statutory assessment**, and secondly, if an assessment is undertaken, they must decide **whether to issue a learner with a statement of their SEN**.

#### *1.7.1. Deciding whether to make an assessment*

Paragraph 7.7 of the Code sets out **three possible routes** for a child being referred for an assessment:

- A request by the child's **school** or setting
- A referral by **another agency** (for example health authorities or social services departments)
- A request by a **parent**.

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<sup>9</sup> Welsh Government, StatsWales, [Schools by local authority, region and type of school](#) [accessed 22 May 2015]

<sup>10</sup> Welsh Government, [Address list of schools](#) [accessed 22 May 2015]

<sup>11</sup> Welsh Government, StatsWales, [Pupils by local authority, region and type of school](#) [accessed 22 May 2015]

If an assessment has not already been made within the previous six months, the local authority must comply with a request from either the school or the parent unless it concludes, upon examining all the evidence, that a statutory assessment is not necessary (paras 7.11 and 7.21). Where referral is by a health or social services professional, again the local authority is not automatically required to carry out an assessment, although they need to collect evidence before considering whether it is necessary (para 7.15).

Effectively, this means it is **up to the local authority to decide** whether it undertakes the assessment although the Code gives guidance on what **factors the local authority should consider and who it should consult**. Paragraph 7.35 of the Code says:

In considering whether a statutory assessment is necessary, [local authorities] should pay particular attention to:

- Evidence that the **school has responded appropriately** to the requirements of the National Curriculum;
- Evidence provided by the child's school, parents and other professionals where they have been involved with the child, as to the **nature, extent and cause** of the child's learning difficulties;
- Evidence of **action already taken** by the child's school to meet and overcome these difficulties;
- Evidence of the rate and style of the child's **progress**;
- Evidence that where some progress has been made, it has only been as the result of much additional effort and instruction at a **sustained level not usually commensurate** with provision through *School Action Plus*. [my emphasis]

The **key question** the local authority faces is whether, despite action taken by the school with the help of external specialists, **the child's learning difficulties have not been sufficiently remedied** and there may be a need for the local authority to determine the child's SEN. However, the local authority may decide that, even where the child requires some form of intervention or additional assistance, there is no need for a statutory assessment. As the Code states at paragraph 7.46, the local authority 'may be able to identify immediate remedies that would mean a statutory assessment was not necessary', which may include support through *School Action* or *School Action Plus*.

Whilst the Code says 'academic **attainment** is not in itself sufficient for local authorities to conclude that statutory assessment is or is not necessary', it describes it as the 'essential **starting point**'. Local authorities should therefore consider '**significant discrepancies**' between the child's attainment and that of the **majority** of their classroom peers and children of the same age, as well as in their own attainment within or between core national curriculum subjects.

In addition, paragraphs 7.42–7.45 cite factors other than attainment, which should also be considered, including:

- Clear, recorded evidence of **clumsiness**; significant difficulties of sequencing or visual perception; deficiencies in working memory; or significant delays in language functioning.
- Any evidence of **impaired social interaction or communication** or a significantly restricted repertoire of activities, interests and imaginative development.
- Evidence of significant **emotional or behavioural difficulties**, as indicated by clear recorded examples of withdrawn or disruptive behaviour; a marked and persistent inability to concentrate; signs that the child experiences considerable frustration or distress in relation to his or her learning difficulties; difficulties in establishing and maintaining balanced relationships with his or her fellow pupils or with adults; and any other evidence of a significant delay in the development of life and social skills.

Other factors relating to the child's **home environment or school attendance** may also contribute towards under-attainment but may not always be indicators of SEN. The Code therefore states that local authorities should seek evidence of any such identifiable factors that could impact on learning outcomes including:

- Any evidence that the child's performance is different in different environments
- Evidence of contributory medical problems
- Evidence from assessments or interventions by child health or social services.

With regard to reaching its decision, paragraph 7.29 of the Code states:

The [local authority] should react **consistently** to requests from parents, schools and settings for assessments and should subsequently make **open and objective** judgements as to whether a statement should be issued. [my emphasis]

Paragraph 7.50 adds:

Where the **balance of evidence** presented to and assessed by the [local authority] suggests that the child's learning difficulties:

- **have not responded** to relevant and purposeful measures taken by the school or setting and external specialists; and
- may call for special educational provision which **cannot reasonably be provided within the resources normally available** to mainstream maintained schools and setting in the area,

the [local authority] should **consider very carefully the case for a statutory assessment** of the child's special educational needs. [my emphasis]

## *Communication*

Before deciding whether to make an assessment, the local authority must issue a notice under section 323(1) or 329A(3) of the *Education Act 1996*, **advising the parents and giving certain information** about the process.

The Code sets out the steps a local authority must take to communicate its decision whether or not to make an assessment. Paragraph 7.69 states:

If the LEA decides it is not necessary to carry out a statutory assessment they **must** inform the parents and explain the reasons; they should also set out the provision that they consider would meet the child's needs appropriately. The decision not to make a statutory assessment may be a severe disappointment to the child's parents and may also be unwelcome to the child's school. Regardless of whether the initiative for a possible assessment came from the [local authority] or a request from the parents or school, **the [local authority] should write to the school, as well as the child's parents, giving full reasons for their decision.** [other than 'must', bold is my emphasis]

Local authorities must inform parents (or the school if it made the request) of its decision whether to carry out a statutory assessment within **six weeks** of receiving a request.

The Code suggests that it may be helpful for the local authority to meet the parents to explain the position in detail. It also says that the local authority may consider inviting a representative of the school to be present, highlighting that 'a meeting of this kind will be particularly useful where it is clear that there is disagreement between the parents and the school'.

## *Appeals*

Under paragraph 7.71, where parents have formally requested a statutory assessment or where their child's school or setting has made such a request, **the parents may appeal to the [SEN Tribunal for Wales](#)** against a decision not to make an assessment. **Local authorities must inform parents of the right to appeal** and the time limits for appeal, the availability of disagreement resolution services and the fact that these do not affect parents' right of appeal.

As of 5 January 2015, **children themselves also have the right of appeal** to the SENTW regarding local authorities' decisions about SEN.<sup>12</sup>

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<sup>12</sup> Welsh Government, Huw Lewis (Minister for Education and Skills), [Children's Right to Make Special Educational Needs Appeals and Claims of Disability Discrimination to the Special Educational Needs Tribunal for Wales](#), Cabinet Written Statement, 15 December 2014

### *1.7.2. Deciding whether to make a statement*

In accordance with paragraphs 7.74 and 7.82 of the Code, after deciding to make a statutory assessment, the local authority **must seek the following advice**:

- Parental advice
- Educational advice
- Medical advice
- Psychological advice
- Social services advice.

Under paragraph 7.85, local authorities should also seek to ascertain **the views of children and young people** who are being assessed. The learner's views about their needs and aspirations should, wherever possible be recorded as part of the statutory assessment process.

Local authorities must also seek any **other advice** they consider appropriate and, where reasonable, should consult those whom the parents have named. They must give copies of any representations or evidence submitted by the parents to those requested for advice.

At this point, parents must be informed that, as part of the process of putting together all the relevant advice, their child may be called in for an examination or assessment.

When requesting advice, the local authority should ask **all concerned to respond within six weeks**. Health and social services must normally respond within this six week timeframe, although they are under no obligation to do so where they have no prior knowledge of the child.

Local authorities should make clear that Regulations require **that advice must relate to the educational, medical, psychological or other features that appear relevant** to a child's current and future educational needs. The advice must also set out how those features could affect the child's current and future educational needs and the provision that is considered appropriate in light of those features.

Paragraph 7.86 states that, having received all the advice, the local authority must decide whether it needs to make a statement or amend an existing statement. It must make that **decision within ten weeks** of serving notice that it was undertaking a statutory assessment. (This includes the six week period for seeking advice.)

If the local authority decides a statement or amended statement is necessary, it must send a copy of the **proposed statement** to the child's parents **within a further two weeks**. The advice received should also be attached.

If the local authority decides that a statement or amended statement is not necessary, it must notify the parents and give reasons, preferably providing a **note in lieu** of the statement, also within two weeks.

Parents must normally receive formal notification of the outcome of the assessment within **12 weeks of the start of the statutory assessment**. Where this is a proposed statement, the local authority has a **further 8 weeks to finalise** the statement.

This means that the **total process** from referral or request for a statutory assessment to having a final statement should be completed **within 26 weeks**. (This is made up of the original six week period to decide whether to undertake an assessment and 20 weeks for the process of deciding whether a statement is necessary and producing that statement).

Data from the [My Local Council website](#) shows that in 2013-14, 70% of SEN statements were issued within the 26 week target and 97% where there were no special circumstances.

As with decisions whether to carry out the assessment, parents and children have a right to appeal to the SENTW against the decision.

### *1.7.3. Content of statements*

The form and content of a statement issued by a local authority must comply with paragraph 8.29 of the Code. A statement should consist of:

- **Part 1, Introduction:** The child's name, address and date of birth; the child's home language and religion; the names and address(es) of the child's parents.
- **Part 2, Special Educational Needs:** Details of each and every one of the child's SEN as identified by the local authority during the statutory assessment; details of the advice received and attached as appendices to the statement.
- **Part 3, Special Educational Provision:** The special educational provision that the local authority considers necessary to meet the child's SEN, including the objectives of the provision, the provision itself and the arrangements for monitoring progress.
- **Part 4, Placement:** The type and name of school where the provision is to be made or the local authority's arrangements for provision where this is to be otherwise than in school. (This Part must be left blank when the proposed statement is issued so as not to pre-empt any parental preference.)
- **Part 5, Non-Educational Needs:** All relevant non-educational needs of the child as agreed between the health services, social services or other agencies and the local authority.

- **Part 6, Non-Educational Provision:** Details of relevant non-educational provision required as agreed, including the agreed arrangements for provision.

All the advice obtained and taken into consideration during the assessment must be attached as appendices to the statement.

Parents may express a preference for the maintained school (but not a Pupil Referral Unit or hospital special school) they wish their child to attend, or make representations for a placement in any other school. **Local authorities must comply with a parental preference unless the school is unsuitable to the child's age, ability aptitude or SEN, or where the placement would be incompatible with the efficient education of other children or with the efficient use of resources.**

Local authorities must ensure that a child is educated in a **mainstream school** unless a parent indicates that they do not want their child educated in a mainstream school or it is incompatible with the efficient education of other children.

### *Residential placements*

The Code explains that:

In general [local authorities] are likely to consider that there is a **need for residential provision** where there is multi-agency agreement that:

- the child has severe or multiple SEN that **cannot** be met in **local day provision**;
- the child has severe or multiple SEN that require a **consistent programme both during and after school hours** that cannot be provided by parents with support from other agencies;
- the child is **looked after** by the local authority and has **complex social and learning needs** and placement is joint funded with the social services department;
- the child has **complex medical needs** as well as learning needs that cannot be managed in local day provision and the placement is joint-funded with the health authority. (para 8.74) [my emphasis]

Paragraph 8.75 adds 'if these conditions apply, a multi-agency plan should be put into place that enables tri-partite funding'.

### *Ceasing, amending or reviewing statements*

The Code provides guidance on procedures that should be followed when ceasing to maintain a statement (paras 8.117–8.124), amending an existing statement (paras 8.125–8.133) and reviewing statements (chapter 9).

It should not be assumed that once a local authority has made a statement, it should maintain that statement until it is no longer responsible for the young person. The Code advises ‘**statements should be maintained only when necessary**’ but that the local authority may cease to maintain a statement ‘only if they believe that it is no longer necessary to maintain it’ (para 8.118). **Statements lapse when a young person moves into further or higher education** or leaves school at age 16; there is no need to cease a statement when it is going to lapse anyway.

Local authorities can only **amend a statement** following an order from the SENTW, if it is directed to do so by the Welsh Ministers or in accordance with Schedule 27 of the *Education Act 1996*.

Paragraph 9.1 of the Code requires all statements (other than those for children aged under two) to be **reviewed annually**. This is so the local authority, the school, the pupil and the parents, and all professionals involved consider the pupil’s progress in the previous 12 months and whether any amendments are needed. The Code highlights the **particular importance of the annual review held in year 9** in preparing for the pupil’s transition to further education, work-based training, employment and adult life. Paragraph 9.46 therefore states that the annual review in year 9 **must involve Careers Wales**.

## 2. Funding of SEN provision

### 2.1. *Funding for local authorities from the Welsh Government*

Local authorities in Wales use money they receive within the **Revenue Support Grant (RSG)** from the Welsh Government to fund education for pupils with SEN. The amount of RSG each local authority receives to provide services across all of their areas of responsibility is announced annually in the [Local Government Settlement](#).

In 2015-16, the Welsh Government is giving local authorities a total of £4.125 billion through the RSG to deliver all of their services. This is a **3.4% decrease** from 2014-15 when it was £4.270 billion.

The RSG is largely **un-hypothecated**, which means that local authorities make decisions themselves over how much money to spend on a particular service area such as education, and subsequently on SEN provision for example. However, the RSG settlement does include an **Indicator-Based Assessment (IBA)** for each service area, which is a notional calculation of what each Council needs to spend to provide a standard level of service.<sup>13</sup> This is not a spending target and local authorities can decide how much they spend on SEN provision for example, as long as they meet any statutory requirements on them.

In 2015-16, the **notional IBA for 'Special Education' is £219 million**, which is very similar to 2014-15. In addition, some funding that is intended for use on SEN provision will also have been included in the 'Nursery and Primary' and 'Secondary' teaching IBAs. Indeed, the **total budgeted gross expenditure on SEN provision in 2014-15 was £357 million**.<sup>14</sup>

Although the vast majority of local government resource funding is un-hypothecated, there remain some specific grants<sup>15</sup> which the Welsh Government pays to local authorities for a specific purpose. These have reduced in number over recent years as part of an agreed approach between the Welsh Government and Welsh Local Government Association (WLGA) of a general move towards less hypothecation and greater local decision-making over use of resources. There are **no specific grants relating to SEN in 2015-16**; there was previously £880,000 for 'Autistic Spectrum Disorder Infrastructure' but this has been transferred into the RSG for 2015-16 onwards.

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<sup>13</sup> The notional IBAs for 2015-16 are listed in table 4d of the Local Government Settlement [Excel tables](#) available on the Welsh Government's website.

<sup>14</sup> Welsh Government, Statistical First Release: [Budgeted expenditure on Special Educational Needs \(SEN\) provision: 2014-15](#), 19 June 2014, p1

<sup>15</sup> Specific grants are listed in Table 9 of the Local Government Settlement [Excel tables](#) available on the Welsh Government's website.

## 2.2. Arrangements between local authorities and schools

Local authorities may fund SEN provision through either of the following means:

- The **delegated budgets** they provide to schools (**70% in 2014-15**). This comprises delegated budgets to special schools where all expenditure is assumed to be on SEN and notional allocations to SEN within the delegated budgets for mainstream schools (notional because it is for each school to determine how much they actually spend on SEN).
- Through funds they **retain centrally** within the Local Authority (LA) budget or School Budget (**30% in 2014-15**).

Under the provisions of the [School Standards and Framework Act 1998](#), the Welsh Government sets the legal framework within which local authorities allocate their education expenditure to schools. The framework is set out in the [School Funding \(Wales\) Regulations 2010](#). The regulations require local authorities to allocate expenditure to three budgets, the LA Budget, the Schools Budget and the Individual Schools Budget (ISB).

The *School Funding (Wales) Regulations 2010* specify that the ISB must be allocated amongst schools maintained by the authority in the form of budget shares, using a locally determined funding formula. The regulations require that **70% of the funding must be distributed on the basis of pupil numbers**. In their formula, local authorities may weight pupil numbers according to a number of **factors including SEN**.

The Code of Practice says the following in relation to funding:

8.3 Maintained schools, other than special schools, should have within their delegated budget some funding that reflects the additional needs of pupils with special educational needs. They receive this through a funding formula that reflects the incidence of SEN measured in various ways. (...)

8.4 [Local authorities] are required under the *Special Educational Needs (Provision of Information by Local Education Authorities) (Wales) Regulations 2002* to publish from April 2002, details of the kinds of support arrangements maintained **schools** in their area might **normally provide from their budgets under School Action and School Action Plus**. They are also required to publish their own plans for providing appropriate SEN support – particularly under School Action Plus.

8.5 Where **extra resources** are required to enable a school to make the provision specified in **statements**, the [local authority] can provide those resources directly from central provision, devolve them to schools on an earmarked basis or delegate them.

8.6 However resources are provided, schools and [local authorities] have specific duties in relation to children with special educational needs which funding for SEN should support. (...) [my emphasis]

### 2.3. *Statistics on funding*

The Welsh Government publishes [annual statistics on budgeted expenditure on SEN provision](#). Tables 5-7 below provide some information on how much money is allocated for SEN in Wales.

**Table 5** shows how much in total was budgeted by local authorities for SEN provision, as well as the amount per pupil (all pupils not just those with SEN). This covers a five year period and Table 5 also shows the delegation rate, i.e. how much of local authorities' SEN budgets were passed directly to schools.

**Table 6** breaks this data down by local authority, for the latest year, 2014-15.

**Table 7** shows how much each local authority has budgeted for SEN in each of the last five financial years.

From these tables, it can be observed:

- **Total budgeted expenditure** on SEN in 2014-15 across Wales was **£357.099 million**. This is a 0.6% fall from 2013-14 but a **4.5% increase since 2010-11**.
- **£792** was budgeted for SEN **per pupil** (total not SEN cohort).
- Anglesey (£1,086) and Blaenau Gwent (£1,029) budgeted the most for SEN per pupil in 2014-15. Vale of Glamorgan (£592), Torfaen (£542) and Rhondda Cynon Taf (£621) budgeted the least.
- Denbighshire (89%) delegated the largest proportion of its SEN budget to schools in 2014-15. Caerphilly (51%) and Flintshire (55%) had the lowest delegation rates.
- The **delegation rate** for SEN expenditure across Wales in 2014-15 was **70%**. This means that £70 of every £100 budgeted for SEN was passed by local authorities to schools themselves. The delegation rate has **risen** in each of the last five years.

**Table 5: Gross budgeted expenditure on SEN provision by local authorities in Wales**

	<u>£ Million Budgeted gross expenditure on SEN provision</u>	<u>£ Per pupil budgeted gross expenditure on SEN provision</u>	<u>% delegated to individual schools' budgets</u>
2014-15	357.099	792	70%
2013-14	(r) 359.217	796	69%
2012-13	346.862	769	67%
2011-12	(r) 347.100	770	60%
2010-11	341.755	754	55%

Source: Welsh Government, Statistical First Releases: [\*Budgeted expenditure on SEN provision\*](#), 19 June 2014

Notes:

- a) Includes notional allocations to schools for SEN provision as part of local authorities' formulae for distributing funds to schools. As it is for each school to determine how much of its delegated budget to spend on SEN, the actual expenditure within schools may vary from these notional allocations.
- b) The £ per pupil expenditure is based on the whole cohort of pupils on roll rather than only pupils with SEN
- (r) These are the revised 2013-14 and 2011-12 budgeted gross expenditure figures that were published in the subsequent year's release. Updated £ per pupil and delegation rates were not published, hence some caution is advised in comparing these two fields with gross budgets for these years.

**Table 6: Local authorities' gross budgeted expenditure on SEN provision, 2014-15**

	<u>£ Million Budgeted gross expenditure on SEN provision</u>	<u>£ Per pupil budgeted gross expenditure on SEN provision</u>	<u>% delegated to individual schools' budgets</u>
Isle of Anglesey	10.069	1,086	62%
Gwynedd	13.776	837	74%
Conwy	12.484	807	80%
Denbighshire	12.128	796	89%
Flintshire	20.419	891	55%
Wrexham	15.462	831	79%
Powys	15.468	836	73%
Ceredigion	8.520	901	68%
Pembrokeshire	14.348	811	76%
Carmarthenshire	21.720	810	76%
Swansea	31.322	931	65%
Neath Port Talbot	14.603	751	75%
Bridgend	18.626	825	68%
Vale of Glamorgan	12.599	592	78%
Cardiff	42.343	847	80%
Rhondda Cynon Taf	24.203	621	61%
Merthyr Tydfil	7.261	854	72%
Caerphilly	19.370	702	51%
Blaenau Gwent	9.171	1,029	70%
Torfaen	7.908	542	73%
Monmouthshire	8.327	736	68%
New port	16.973	721	59%
<b>Wales</b>	<b>357.099</b>	<b>792</b>	<b>70%</b>

Source: Welsh Government, Statistical First Release: [Budgeted expenditure on SEN provision 2014-15](#), 19 June 2014

Notes:

- a) Includes notional allocations to schools for SEN provision as part of local authorities' formulae for distributing funds to schools. As it is for each school to determine how much of its delegated budget to spend on SEN, the actual expenditure within schools may vary from these notional allocations.
- b) The £ per pupil expenditure is based on the whole cohort of pupils on roll rather than only pupils with SEN

**Table 7: Local authorities' gross budgeted expenditure on SEN provision**

	<i>£ Million</i>				
	2010-11	2011-12	2012-13	2013-14	2014-15
Isle of Anglesey	9.259	9.500	8.675	(r) 9.775	10.069
Gwynedd	13.197	13.359	14.032	13.938	13.776
Conwy	12.459	13.536	13.200	12.838	12.484
Denbighshire	10.057	10.310	10.025	11.843	12.128
Flintshire	19.785	20.666	20.000	21.030	20.419
Wrexham	15.002	14.721	14.601	15.467	15.462
Powys	15.647	16.735	16.410	17.167	15.468
Ceredigion	7.877	8.511	8.962	8.614	8.520
Pembrokeshire	15.269	15.893	15.541	14.576	14.348
Carmarthenshire	20.778	21.424	21.090	22.179	21.720
Swansea	30.658	29.981	29.577	30.448	31.322
Neath Port Talbot	16.342	15.127	15.305	14.562	14.603
Bridgend	16.753	16.516	16.542	18.787	18.626
Vale of Glamorgan	11.785	11.612	11.662	12.425	12.599
Cardiff	35.348	37.269	39.444	41.903	42.343
Rhondda Cynon Taf	23.522	24.408	27.730	24.250	24.203
Merthyr Tydfil	7.357	(r) 7.401	7.455	7.525	7.261
Caerphilly	18.808	18.364	18.311	18.949	19.370
Blaenau Gwent	8.795	8.776	9.196	9.541	9.171
Torfaen	8.650	8.428	8.194	8.118	7.908
Monmouthshire	7.954	8.584	8.601	8.593	8.327
New port	16.453	15.979	16.308	16.688	16.973
<b>Wales</b>	<b>341.755</b>	<b>(r) 347.1</b>	<b>346.862</b>	<b>(r) 359.217</b>	<b>357.099</b>

Source: Welsh Government, Statistical First Releases: [\*Budgeted expenditure on SEN provision\*](#)

Notes:

- a) These figures include notional allocations to schools for SEN provision as part of local authorities' formulae for distributing funds to schools. As it is for each school to determine how much of its delegated budget to spend on SEN, the actual expenditure within schools may vary from these notional allocations.
- (r) These are the revised 2013-14 and 2011-12 budgeted gross expenditure figures that were published in the subsequent year's release.

### 3. Statistics on achievement of pupils with SEN

Tables 8-10 provide some information on the **achievement of learners in Wales with SEN**. **Tables 8 and 9** present statistics on the percentage of all pupils with SEN achieving the expected level at Key Stage 2 and 3 respectively, as well as breaking these down for each of the three levels of intervention. **Table 10** presents statistics on achievement at Key Stage 4.

Statistics for all pupils are also given, enabling some **comparisons to be made between the achievement of pupils with SEN with their peers'**. The data covers the last five years.

From these tables, it can be observed:

- In 2014, at **Key Stage 2**, **57.7% of all pupils with SEN achieved the Core Subject Indicator (CSI)**, which is the expected level in English/Welsh, Mathematics and Science combined. This **compares to 86.2% of all pupils**, meaning there is a 28.5 percentage point gap. This **gap has narrowed** since 2010 when it was 39.8 percentage points.
- At **Key Stage 3**, **49.2% of all pupils with SEN achieved the CSI** in 2014, compared with **81.3% of all pupils**. This **gap has also narrowed** from 40.9 percentage points in 2010 to 32.1 percentage points in 2014.
- At **Key Stage 4**, in 2014, **19.7% of all pupils with SEN achieved the Level 2 threshold inclusive** (5 or more GCSEs at grades A\*-C or equivalent). This compares with **56.2% of all pupils**. The gap of 36.5 percentage points is broadly the same as in 2010 when it was 36.8 percentage points.
- As would be expected, **fewer pupils with statements achieve** either the CSI at Key Stages 2 and 3, or the Level 2 threshold inclusive at Key Stage 4, than other learners having their SEN supported through *School Action Plus* or *School Action*. Similarly, fewer pupils requiring support through *School Action Plus* achieve these measures than those only receiving *School Action*. **9.3% of pupils with statements achieved 5 or more GCSEs at grades A\*-C** (or equivalent), compared to 17.3% at *School Action Plus* at 24.1% at *School Action*.
- At each of Key Stages 2, 3 and 4, the **cohort of pupils with SEN** receiving any of the three levels of intervention **achieved higher in 2014 than 2010** (using these two measures).

**Table 8: Key Stage 2 achievement by level of SEN provision (percentage of pupils achieving at least the expected level (Level 4) in teacher assessments)**

Year	SEN provision	Cohort	English	Maths	Science	CSI (a)	Welsh First Language	
			%	%	%	%	Cohort	%
2010	Total pupils on SEN register	9,023	45.6	51.5	58.7	38.5	1,867	48.6
	Statemented	1,161	17.8	22.2	24.5	14.9	177	26.0
	School Action Plus	3,022	38.4	47.2	55.1	32.3	623	36.0
	School Action	4,840	56.8	61.1	69.2	48.0	1,067	59.8
	<b>All pupils (b)</b>	<b>33,449</b>	<b>82.1</b>	<b>83.4</b>	<b>86.6</b>	<b>78.3</b>	<b>6,542</b>	<b>81.2</b>
2011	Total pupils on SEN register	8,845	49.2	55.4	60.6	42.4	1,762	50.8
	Statemented	1,066	20.0	22.3	24.0	16.4	157	18.5
	School Action Plus	3,006	42.6	51.6	57.2	36.8	603	40.1
	School Action	4,773	59.9	65.2	70.9	51.7	1,002	62.3
	<b>All pupils (b)</b>	<b>32,388</b>	<b>83.5</b>	<b>85.0</b>	<b>87.2</b>	<b>80.1</b>	<b>6,349</b>	<b>82.1</b>
2012	Total pupils on SEN register	8,997	54.5	60.6	65.0	49.0	1,855	55.6
	Statemented	992	21.0	24.8	25.3	17.4	118	25.4
	School Action Plus	3,231	46.9	54.9	59.6	42.0	696	47.8
	School Action	4,774	66.5	72.0	76.9	60.3	1,041	64.2
	<b>All pupils (b)</b>	<b>31,807</b>	<b>85.3</b>	<b>86.9</b>	<b>88.7</b>	<b>82.7</b>	<b>6,451</b>	<b>84.1</b>
2013	Total pupils on SEN register	8,787	59.7	62.3	67.8	53.1	1,730	59.6
	Statemented	950	21.1	22.1	24.1	17.3	108	23.1
	School Action Plus	3,260	53.0	57.6	63.6	46.8	686	45.3
	School Action	4,577	72.5	74.0	79.8	65.1	936	74.3
	<b>All pupils (b)</b>	<b>30,896</b>	<b>87.2</b>	<b>87.6</b>	<b>89.8</b>	<b>84.4</b>	<b>6,188</b>	<b>86.7</b>
2014	Total pupils on SEN register	8,933	63.5	65.8	69.7	57.7	1,816	63.9
	Statemented	986	22.9	24.4	24.1	19.7	131	27.5
	School Action Plus	3,181	55.5	59.6	63.9	49.5	672	52.5
	School Action	4,766	77.2	78.5	83.0	71.0	1,013	76.1
	<b>All pupils (b)</b>	<b>31,670</b>	<b>88.5</b>	<b>89.0</b>	<b>90.5</b>	<b>86.2</b>	<b>6,400</b>	<b>88.2</b>

Source: Welsh Government, Statistical Bulletin: [Academic achievement by pupil characteristics](#), 31 March 2015, Table 14

Notes:

- (a) The Core Subject Indicator (CSI) represents the percentage of pupils achieving the expected level or above in English or Welsh (First Language), Mathematics and Science in combination.
- (b) 'All pupils' represents the attainment of all pupils in maintained primary, secondary, special schools or PRUs whose Pupil Level Annual School Census or Education Otherwise Than At School collection and attainment data were successfully matched within the National Pupil Database.

**Table 9: Key Stage 3 achievement by level of SEN provision (percentage of pupils achieving at least the expected level (Level 5) in teacher assessments)**

SEN provision	Cohort	English	Maths	Science	CSI (a)	Welsh First Language		
		%	%	%	%	Cohort	%	
<b>2010</b>	Total pupils on SEN register	8,104	32.7	40.3	43.7	23.0	1,085	36.8
	Statemented	1,451	14.0	18.6	19.7	8.8	133	14.3
	School Action Plus	2,269	29.6	38.5	41.8	20.8	306	36.9
	School Action	4,384	40.6	48.4	52.5	28.8	646	41.3
	<b>All pupils (b)</b>	<b>34,419</b>	<b>72.7</b>	<b>75.6</b>	<b>77.3</b>	<b>63.9</b>	<b>5,546</b>	<b>76.8</b>
<b>2011</b>	Total pupils on SEN register	8,319	37.2	42.8	48.2	26.6	1,147	44.4
	Statemented	1,482	17.1	20.8	24.1	11.9	124	28.2
	School Action Plus	2,572	33.8	41.2	45.3	23.7	329	32.5
	School Action	4,265	46.1	51.3	58.4	33.4	694	52.9
	<b>All pupils (b)</b>	<b>35,724</b>	<b>76.1</b>	<b>78.0</b>	<b>80.4</b>	<b>68.1</b>	<b>5,858</b>	<b>81.4</b>
<b>2012</b>	Total pupils on SEN register	8,192	43.8	48.5	53.9	33.3	1,150	49.9
	Statemented	1,311	18.0	21.4	24.9	13.3	111	25.2
	School Action Plus	2,599	41.1	48.2	51.4	31.3	365	43.6
	School Action	4,282	53.3	56.9	64.3	40.7	674	57.4
	<b>All pupils (b)</b>	<b>34,289</b>	<b>79.5</b>	<b>81.3</b>	<b>83.9</b>	<b>72.8</b>	<b>5,783</b>	<b>84.2</b>
<b>2013</b>	Total pupils on SEN register	8,230	50.6	53.9	61.3	39.7	1,120	57.9
	Statemented	1,287	20.4	25.1	29.7	16.2	119	31.1
	School Action Plus	2,526	46.1	51.4	57.6	36.2	321	53.9
	School Action	4,417	61.9	63.6	72.7	48.6	680	64.6
	<b>All pupils (b)</b>	<b>33,193</b>	<b>83.0</b>	<b>84.0</b>	<b>87.2</b>	<b>77.2</b>	<b>5,667</b>	<b>87.6</b>
<b>2014</b>	Total pupils on SEN register	8,518	59.2	61.8	71.2	49.2	1,294	68.4
	Statemented	1,236	24.0	27.6	32.1	19.2	101	27.7
	School Action Plus	2,523	54.3	58.3	68.7	44.7	328	61.9
	School Action	4,759	70.9	72.5	82.7	59.4	865	75.6
	<b>All pupils (b)</b>	<b>32,162</b>	<b>86.1</b>	<b>86.7</b>	<b>90.6</b>	<b>81.3</b>	<b>5,537</b>	<b>90.1</b>

Source: Welsh Government, Statistical Bulletin: *Academic achievement by pupil characteristics*, 31 March 2015, Table 15

Notes:

- (a) The Core Subject Indicator (CSI) represents the percentage of pupils achieving the expected level or above in English or Welsh (First Language), Mathematics and Science in combination.
- (b) 'All pupils' represents the attainment of all pupils in maintained primary, secondary, special schools or PRUs whose Pupil Level Annual School Census or Education Otherwise Than At School collection and attainment data were successfully matched within the National Pupil Database.

**Table 10: Key Stage 4 achievement by level of SEN provision (percentage of pupils aged 15 at the start of the academic year)**

	SEN provision	Cohort	Percentage of pupils achieving:			
			Level 1 threshold (a)	Level 2 threshold (a)	Level 2 threshold inclusive (a)	CSI (b)
<b>2010</b>	Total pupils on SEN register	6,643	71.2	25.1	12.9	12.5
	Statemented	1,186	44.8	13.6	7.4	7.7
	School Action Plus	2,034	67.4	23.7	11.7	11.5
	School Action	3,423	82.6	29.8	15.5	14.7
	<b>All pupils (c)</b>	<b>35,254</b>	<b>91.7</b>	<b>64.6</b>	<b>49.7</b>	<b>48.4</b>
<b>2011</b>	Total pupils on SEN register	6,952	75.4	33.2	15.5	14.9
	Statemented	1,221	52.9	19.7	8.7	8.5
	School Action Plus	2,040	68.1	28.4	14.3	13.9
	School Action	3,691	86.9	40.3	18.4	17.6
	<b>All pupils (c)</b>	<b>34,345</b>	<b>92.4</b>	<b>68.4</b>	<b>50.5</b>	<b>49.0</b>
<b>2012</b>	Total pupils on SEN register	7,059	79.4	41.6	16.5	15.5
	Statemented	1,173	55.8	24.2	8.4	8.4
	School Action Plus	2,108	74.3	37.3	13.9	13.1
	School Action	3,778	89.5	49.4	20.5	19.0
	<b>All pupils (c)</b>	<b>33,770</b>	<b>93.6</b>	<b>73.8</b>	<b>51.5</b>	<b>49.7</b>
<b>2013</b>	Total pupils on SEN register	7,583	82.7	50.6	16.8	15.3
	Statemented	1,239	60.5	29.0	10.6	10.2
	School Action Plus	2,461	77.9	46.0	15.5	14.1
	School Action	3,883	92.8	60.4	19.6	17.8
	<b>All pupils (c)</b>	<b>35,154</b>	<b>94.7</b>	<b>78.9</b>	<b>53.2</b>	<b>50.1</b>
<b>2014</b>	Total pupils on SEN register	7,576	86.4	60.4	19.7	18.4
	Statemented	1,118	61.4	35.2	9.3	8.6
	School Action Plus	2,450	83.3	55.8	17.3	15.8
	School Action	4,008	95.3	70.3	24.1	22.8
	<b>All pupils (c)</b>	<b>33,708</b>	<b>95.8</b>	<b>83.9</b>	<b>56.2</b>	<b>53.9</b>

Source: Welsh Government, Statistical Bulletin: [Academic achievement by pupil characteristics](#), 31 March 2015, Table 16

Notes:

- (a) Level thresholds represent a volume, or 'size', of qualifications at a specific level on the National Qualifications Framework (NQF). Three thresholds have been established: Level 1 – a volume of qualifications at Level 1 equivalent to the volume of 5 GCSEs at grade D-G; Level 2 – a volume of qualifications at Level 2 equivalent to the volume of 5 GCSEs at grade A\*-C; Level 2 inclusive – a volume of qualifications at Level 2 equivalent to the volume of 5 GCSEs at grade A\*-C including English/Welsh first language and Mathematics.
- (b) The Core Subject Indicator (CSI) represents the percentage of pupils achieving the expected level or above in English or Welsh (First Language), Mathematics and Science in combination.
- (c) 'All pupils' represents the attainment of all pupils in maintained primary, secondary, special schools or PRUs whose Pupil Level Annual School Census or Education Otherwise Than At School collection and attainment data were successfully matched within the National Pupil Database.

## 4. Previous reviews and proposed reforms

Reform of the legal framework for learning needs has been on the agenda for a long time in Wales with a number of previous reviews, consultations, policy developments and pilots.

The Welsh Government accepts the current system and terminology of Special Educational Needs (SEN) is out of date and committed in its [Programme for Government 2011-2016](#) to:

**Reform the Additional Learning Needs process** for the most vulnerable children and young people in either a school or Further Education (FE) setting. [my emphasis]

In the **Fourth Assembly**, the Welsh Government has:

- Undertaken a [consultation on proposals](#) to reform the legislative framework (June – October 2012);
- Included changes to SEN at **post-16 within the [Education \(Wales\) Bill](#)** before later agreeing to these being **removed** from the Bill (following an Assembly Committee’s recommendation that these be instead taken forward in a single SEN/ALN Bill); and
- **Consulted on a [White Paper](#)** (May – July 2014) which built on the consultation two years earlier.

However, the journey of review dates back much earlier with two reports, published not long after devolution, highlighting the need for change. In 2002 the Audit Commission published [Special educational needs: A mainstream issue](#), followed by [Support for Children with Special Educational Needs: An Estyn Overview](#) in 2003. This chapter provides an overview of developments since.

### 4.1. *Three-part Committee inquiry in the Second Assembly*

Improving the way SEN are managed in Wales was the subject of a three-part Inquiry carried out by the Education, Lifelong Learning and Skills (ELLS) Committee in the Second Assembly between 2003 and 2007.

The **first part** of the inquiry, which [reported in November 2004](#), focused on ***Early Identification and Intervention***, and highlighted issues such as late diagnosis, an acute shortage of specialist therapists, and a need for multi-agency working. The ELLS Committee made 28 recommendations which were responded to by the then Minister, Jane Davidson, in a [written statement on 25 January 2005](#) and subsequently in a [Plenary debate on 1 February 2005](#).

The **second part** of the ELLS Committee's inquiry, *Statutory Assessment Framework (Statementing)* found **general dissatisfaction** with the statements process but, at that time, did not advocate the abolition of the statements system. The Committee acknowledged that 'the majority of those consulted [were] in favour of keeping some sort of statementing process'<sup>16</sup> but suggested this may have reflected a '**better the devil you know**' mindset<sup>17</sup>.

The ELLS Committee [reported on statementing in May 2006](#), making 28 recommendations. Jane Davidson responded on behalf of the Welsh Government in a written statement on [28 June 2006](#) before a [Plenary debate on 5 July 2006](#).

Some of the conclusions and recommendations the ELLS Committee reached in 2006 remain highly relevant today. The Committee found that 'the statementing process is **costly and complex** and can **create barriers** between parents, teachers and other professionals'. It also concluded that, due to the greater recognition of a wider range of disorders, 'statements [were] being asked to do a job – of assessing the needs of a very broad group of children with very different types of needs – for which they were never intended or designed.'

The Committee therefore recommended that **statements should be limited** to children with the '**most severe and complex** of needs' and 'should be gradually replaced for most children'. It also recommended a move away from the 'Special Educational Needs' term and **adopting 'Additional Educational Needs'** as a replacement.

Even back in 2006, **inconsistency in local authorities' use of statements** was an issue and the Committee said there needed to be a 'more consistent application of ... statementing arrangements'. The Committee also recommended a move towards a '**continuously assessed record of need**', which can now be seen in what the Welsh Government proposed in its 2012 consultation and 2014 White Paper. Jane Davidson welcomed the report, telling Members it had provided her with 'an evidence-based platform to take forward further work on changes to the current statutory assessment framework'.

[Inclusion and Pupil Support guidance](#), which the Welsh Government issued several months later in November 2006, sought to **embed the concept of 'Additional Learning Needs'** by adopting this term 'to cover those learners whose needs are greater than the majority of their peers'. The focus on 'Additional Learning Needs (ALN)' rather than 'Special Educational Needs (SEN)' is therefore relatively well established in practical and policy terms, if not yet in law.

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<sup>16</sup> National Assembly for Wales, Education, Lifelong Learning and Skills Committee, [Policy Review of Special Educational Needs Part 2: Statutory Assessment Framework \(Statementing\)](#), May 2006, Chair's Foreword

<sup>17</sup> [Ibid](#), p7

The **third part** of the ELLS Committee's inquiry looked at *Transition* and the particular needs of young people with SEN as they leave secondary education and move into further or higher education, training or employment. The Committee made 47 recommendations when it [reported in March 2007](#). It expressed concern about a '**lack of co-ordination** between agencies', despite a considerable amount of guidance. The Committee recommended that '**key workers**' be appointed to help strengthen the support available and '**independent advocacy services**' help ensure young people are fully informed and understand the choices facing them.

Jane Davidson responded on behalf of the Welsh Government in a [written statement on 21 March 2007](#), accepting all the recommendations in full, in part, or in principle.

#### *4.2. Developments in the Third Assembly*

Shortly into the Third Assembly, in the summer and autumn of 2007, the Welsh Government undertook a **consultation with parents and stakeholders called *Statements or something better?*** This preliminary consultation sought views on possible reform of the legislative framework and aimed to build confidence and consensus about the way forward. It was based on a document (also called '*Statements or something better?*') produced by a Welsh Government Task Group. Three options for change were set out.

A document produced by the Welsh Government's Additional Needs and Inclusion Division in September 2007 summarised parental views on each option. This reported that '**many parents expressed anxieties about potential changes**', although '**malcontent expressed about the current situation** relates not only to the statutory processes of producing and amending the statement, but also to the provision ... in mainstream schools'.<sup>18</sup>

The **dilemma facing policymakers** is evident from the Welsh Government document summarising progress to date and next steps (May 2008). It was clear the existing system was flawed and people were dissatisfied yet there was a nervousness about losing what was good about it and caution over what should come in its place:

The general consensus was that the **current framework offers most of what is desirable** in a statutory framework for children and young people with SEN and with some improvements it could be made to be "fit for purpose" and less bureaucratic and less "medical" in its approach. There was general agreement that a less bureaucratic approach could be adapted for the wider group of learners with additional needs.

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<sup>18</sup> Welsh Government Additional Needs and Inclusion Division, [Statements or something better? Preliminary consultation on options for change to the framework for statutory assessment and statements of SEN: Summary of parental views](#), September 2007 [accessed 19 May 2015]

However, there is an overwhelming and very strong belief throughout Wales that the **current system is not working as it should** and there are major inconsistencies in its implementation within [local authorities] and mainstream schools. Those parents and carers who attended the consultation events had generally low levels of trust that they will be dealt with fairly and that their children's needs will be appropriately met.

(...)

Overall, given the clarity emerging from this consultation, it is **difficult to envisage either making no change** or not tackling any of the key issues identified. It would also seem **difficult to embark on wholesale radical change** before making the current system work more effectively and building the trust of parents and carers.<sup>19</sup>

The Welsh Government subsequently established **four ALN pilot projects** in 2009 to **develop and test alternatives** to the current statutory framework of SEN statements. The aspects piloted included an **Individual Development Plan (IDP)** setting out a person's needs and actions to support them within a **whole system (age 0-25) approach**.

Each of the four pilots involved two local authorities, focusing on the following:

- **Pilot A** was contracted to develop a model for the **quality assurance** of provision made for children and young people with ALN. The work included three core strands which were the development of **outcome measures**; a provision mapping tool for **linking data on inputs and outcomes**; and a **self-evaluation toolkit** for schools. (Caerphilly and Flintshire)
- **Pilot B** was contracted to develop and pilot a framework for the identification, assessment, planning and review of provision for **severe and complex** ALN. This included the development of an **IDP**; structures and processes for **multi-agency working and funding decisions**; and **family information** and support services and **dispute resolution** mechanisms. (Carmarthenshire and Torfaen)
- **Pilot C** was contracted to develop and pilot an identification, assessment, planning and review framework for ALN that are **not severe or complex**. As with Pilot B, this included the development of an **IDP**, **family information** and support services and **dispute resolution** mechanisms. In addition, a system was also piloted for facilitating the **improvement** of schools' ALN provision. (Bridgend and Pembrokeshire plus some involvement of Torfaen)
- **Pilot D** was contracted to develop and define the **role of the Additional Learning Needs Co-ordinator (ALNCOs)** and to develop and pilot an **accredited course** for ALNCOs. (Cardiff and Newport)

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<sup>19</sup> Welsh Government, *Statements or something better: Summary of progress to date and the next steps*, May 2008, p4 [accessed 19 May 2015]

Further information on the pilots can be found in documents published as part of the research to inform the evaluation of the pilots. These can be found on the [Welsh Government website](#).

The summary report of the research noted:

There remain substantial concerns amongst parents and carers about the legal status of IDPs, and whether they will lose the **legal protection** they feel a Statement of SEN provides.<sup>20</sup>

The report also observed:

However, at the heart of the reforms there is a **tension between the desire** to prescribe what should be done and how it should be done in order to **ensure quality and increase consistency**, and the **need to empower practitioners and give them the flexibility** to respond to individual needs and interests.<sup>21</sup> [all my emphasis]

### 4.3. 2012 consultation

A consultation entitled '[Forward in partnership for children and young people with additional needs: Proposals for reform of the legislative framework for special educational needs](#)' was undertaken by the Welsh Government between 26 July and 19 October 2012. This proposed **moving away from the legal framework of basing provision on statements of SEN and towards a wider concept of 'Additional Learning Needs' (ALN)**, which the Welsh Government intends to give a legislative footing.

Under such a system, **statements** would cease to be the important determinant of level of provision and would be **replaced by Individual Development Plans (IDP)**. Whereas currently, only pupils with SEN who have statements have a statutory right to additional provision, the proposed changes would give **all children with SEN a statutory right to an IDP**.

This is intended in part to **address the reliance on statements as the only perceived way** of securing provision. As the Welsh Government noted from the *Statements or something better?* consultation with parents:

There was a strong feeling that the **most valued aspect** of the current arrangements is the **legal protection afforded by a statement**. Those parents whose children were protected by a statement wanted to keep it and those whose children don't currently have a statement wanted one.<sup>22</sup> [my emphasis]

Overall, the 2012 consultation set out the Welsh Government's plans to legislate to:

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<sup>20</sup> The People and Work Unit (Research for and published by Welsh Government Social Research), [Research on the IDP Expanded Testing Phase Summary Report](#), 2014, p14

<sup>21</sup> *Ibid*, p18

<sup>22</sup> Welsh Government, [Statements or something better: Summary of progress to date and the next steps](#), May 2008 (p4) [accessed 19 May 2015]

- Give a **statutory footing** to the concept of **additional needs** (AN);<sup>23</sup>
- **Replace SEN statements** with new **integrated Individual Development Plans** (IDPs) for children and young people;
- Set out how integrated plans will cover those **aged 0-25 years** who fall within different categories of need;
- Set out the **duties to be imposed on relevant bodies** (such as local authorities and the NHS);
- Set out the **resolution process** for any disputes;
- Impose a duty on the Welsh Ministers to issue a **code of practice** for the new statutory framework;
- Impose a duty on relevant bodies to **collaborate** in respect of AN provision;
- Transfer **responsibility for post-16 assessment** and provision for learners with learning difficulties and/or disabilities (LDD) to **local authorities** (currently duties rest with the Welsh Ministers). The term LDD for 16-25 year olds would be **encompassed within the single 0-25 ALN approach**.

The Welsh Government received over 200 responses to the consultation and published a **summary of responses** in July 2013. A separate summary was published in respect of the proposals for changes to post-16 learners. Both documents are available on the [consultation's web-page](#). In a [Cabinet statement on 17 July 2013](#), the Minister for Education and Skills, Huw Lewis, recognised that whilst the **majority of respondents agreed** with the principles of the proposals, many of those who responded **asked for further details**. He added that his officials would be seeking views from stakeholders before producing another consultation document.

#### *4.4. Post-16 assessment/provision and the Education (Wales) Bill*

The findings of the third part of the ELLS Committee on [Transition](#) included the **need for a more learner-centred approach** and **better information sharing and collaboration** between agencies. The Committee reported that the system was overly complex and not sufficiently learner focused.

In the Third Assembly, the **Enterprise and Learning Committee considered two petitions in 2009** that related to post-19 students with additional learning needs and also highlighted shortcomings in transition between stages of education. In its subsequent [report](#), the Committee referred to a 'convincing body of evidence on the **need for transition planning to happen earlier** than currently appears to be the case in most instances'.

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<sup>23</sup> The Welsh Government later reverted back to proposing the term 'Additional [Learning](#) Needs' following concerns that 'Additional Needs' was not sufficiently education focused.

In 2010, a **Ministerial Task and Finish Group** found that **the present system could not continue** and that the **separation of the funding and management decisions was not sustainable**. In its [report](#), the Group recommended that local authorities should take over responsibilities in these areas. The Welsh Government later said ‘ultimately, it was a clear message from the group that the learner could achieve benefits if better planning of provision took place’.<sup>24</sup>

The [Education \(Wales\) Bill](#), which was introduced in July 2013, provided **for local authorities to be given the duty for assessment** of post-16 learners’ needs. They would be responsible for provision where this required specialist and/or residential provision. Further education colleges would be responsible where they could meet the learner’s needs although they would continue to be able to claim exceptional funding from the Welsh Government where needs were sufficiently complex.

The Welsh Government argued that these arrangements would achieve greater continuity as local authorities already have responsibility for learners up to the age of 16, which would mean that **the same agency had responsibility for both assessing needs and the subsequent provision** to meet these.

Evidence received by the Children and Young People Committee during its scrutiny of the Bill suggested that the changes to SEN provision at post-16 level would **be better placed as part of an overall Bill** reforming SEN/ALN provision. The Committee recommended that the SEN reforms be removed from the *Education (Wales) Bill* and instead be taken forward in a single holistic piece of legislation. The Minister for Education and Skills accepted this recommendation and the *Education (Wales) Bill* was **amended to delete the SEN provisions**. The Minister said in a [Cabinet statement on 6 January 2014](#) that the post-16 provisions would now be taken forward in ‘**cohesive and holistic**’ legislation.<sup>25</sup>

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<sup>24</sup> [Explanatory Memorandum \(as introduced\)](#), *Education (Wales) Bill*, p26

<sup>25</sup> For more information on this matter, see the Research Service’s blog article [Special Educational Needs \(SEN\) proposals to be removed from the Education \(Wales\) Bill](#), 7 January 2014

#### 4.5. 2014 White Paper

On 22 May 2014, the Welsh Government published a [White Paper setting out its plans for new legislation](#) on meeting ALN in Wales.

Broadly, the proposals were to:

- **Replace** the existing statutory definition of **Special Educational Needs (SEN)** with a more flexible and inclusive legal concept of **Additional Learning Needs (ALN)**; and
- **Replace statements** of SEN with **Individual Development Plans (IDPs)** as the basis for meeting a child or young person's ALN.

Through the reforms outlined in the White Paper, the Welsh Government also wants to **bring together the legislation and statutory definitions** for children **under 16**, who are classed as having SEN, and **post-16** learners in further education, who are considered as having 'learning difficulties and/or disabilities'. An ALN Bill would also seek to bring about **greater co-operation** between education, health and social services and **improve families' rights and experiences** when applying for interventions.

In his Foreword to the White Paper, the Minister for Education and Skills, Huw Lewis, was unequivocal about the need for comprehensive change, describing the current system as '**no longer fit for purpose**' and '**complex, bewildering and adversarial**':

The evidence points to an assessment process which is inefficient, bureaucratic and costly, as well as insufficiently child-centred or user-friendly. Needs are sometimes identified late and interventions are not planned or implemented in a timely or effective way. Families tell us that they feel they have to battle at each stage of the system to get the right support for their child, and they don't know where to turn to for advice and information.<sup>26</sup>

The Welsh Government said that it had reflected carefully on the responses received to its 2012 consultation. The Minister stressed that whilst the proposals were bold and radical, there would be **no throwing the baby out with the bathwater**, to paraphrase his approach:

In some instances, proposed legislative provisions would constitute a radical break with the current statutory framework. Elsewhere, they will simply build upon existing strengths. Our approach is based on the principle that **what works should be retained and strengthened; that which doesn't work should be adapted or replaced**.<sup>27</sup> [my emphasis]

The Welsh Government stated the following three aims for the legislation, under which it listed 22 specific proposals.

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<sup>26</sup> Welsh Government, [Legislative proposals for Additional Learning Needs - White paper](#), May 2014, p2

<sup>27</sup> *Ibid*

1. A **unified legislative framework** to support children and young people aged 0 to 25 with ALN (8 proposals);
2. An **integrated, collaborative process** of assessment, planning and monitoring which facilitates **early, timely and effective** interventions (7 proposals);
3. A **fair and transparent system** for providing information and advice, and for resolving concerns and appeals (7 proposals).

#### *4.5.1. Problems with the current system*

In its White Paper, the Welsh Government gave nine headline reasons it believes the current legislative framework for SEN is unsatisfactory:

- The current terminology **stigmatises** children and young people and is associated with a system which needs fundamental reform.
- There is an **unclear divide** between those requiring statements of SEN and those who do not.
- The **lack of clear criteria** about when and for whom a statement should be made results in an inconsistent approach between local authorities.
- There is a perception that the **existing SEN Code of Practice** is not always applied rigorously or is **interpreted differently** by different local authorities.
- It is **unfair** that the provision necessary to address more complex needs is protected through the issuing of a statement but the provision required to address **less complex needs is not statutorily protected**.
- **Trust** between parents and local authorities or schools is often **undermined** and this leads to dispute.
- It is **difficult to adopt a flexible approach** to the delivery of special educational provision.
- The current arrangements for children and young people with LDD potentially **disrupt their smooth transition between school and post-16 education** and may make the system of post-16 provision less efficient than it should be.
- The **current legislation** to ‘approve’ and ‘register’ **an independent school** to admit pupils with an SEN **does not provide an effective system** for ensuring that appropriate provision is made available or in clarifying whose responsibility it is to do so.

#### 4.5.2. Proposals for a single legal framework from age 0-25

The White Paper contained 8 specific proposals under its first aim:

1. Introduce the terms '**additional learning needs**' and '**additional learning provision**' to **replace** the existing terms 'special educational needs' and 'special educational provision'.
2. Introduce Individual Development Plans (IDPs) to replace statements of SEN, post 16 assessments (under section 140 of the *Learning and Skills Act 2000*) and non-statutory Individual Education Plans (IEPs) and post-16 plans.
3. Require the Welsh Ministers to consult on and issue a **Code of Practice** on ALN which may include:
  - mandatory requirements in accordance with which relevant bodies (likely to be local authorities, maintained schools, FE institutions, pupil referral units (PRUs), local health boards and the Special Educational Needs Tribunal for Wales ('the Tribunal')) must act; and
  - guidance to which those bodies and other providers of education and training must have due regard.
4. Set out the **minimum requirements** for information that must be included in an **IDP**, and require the Code to set out detailed mandatory requirements to underpin this.
5. Require local authorities to **prepare an IDP** and ensure that any agreed additional learning provision set out in the IDP Action Plan is put in place for **all** children and young people aged **0-25** who have been determined as **having ALN** and who are receiving or wish to receive education or training.
6. Require maintained schools, FE institutions, and PRUs to use their **best endeavours** to secure that the additional learning provision set out in a child or young person's IDP is provided.
7. Require **local authorities** to secure specialist education provision for **post-16** learners where the IDP indicates that this is necessary to meet a child or young person's needs.
8. **Prohibit** the placement of any child or young person into an **independent school that has not been registered** to provide the type of additional learning provision identified in their IDP.

#### *4.5.3. Proposals for an integrated, collaborative process with early, timely and effective interventions*

7 specific proposals were listed under this second aim:

9. Require local authorities to ensure that children, young people and their parents are **involved, consulted with**, and have their views taken into account from the outset of and throughout the IDP assessment and planning process.
10. Require, as a minimum, **IDPs to be reviewed on an annual basis** but permit reviews to be conducted earlier or more often where this is appropriate.
11. Require the **Code of Practice to provide guidance to professionals** on the **early identification** of children with ALN including those aged below compulsory school age.
12. Require local authorities, local health boards and FE institutions to **co-operate and share information** in assessing, planning and delivering provision to meet the additional learning needs of children and young people up to the age of 25.
13. Require the Code of Practice to provide guidance to support **effective multi-agency** working practices.
14. Require mainstream schools to designate an **ALN Co-ordinator (ALNCO)**.
15. Enable **IDPs to replace** or serve the function of **Personal Education Plans (PEPs)** for children and young people who are looked after by a local authority.

#### *4.5.4. Proposals for a fair and transparent system*

16. Require local authorities to put in place arrangements to give **information and advice** and require the Welsh Government to set out guidance (to authorities), including mandatory requirements where necessary.
17. Require local authorities to put in place **disagreement resolution arrangements** and require the use of local complaints processes prior to appeal to the Tribunal.
18. Require local authorities to appoint an **independent person** to facilitate the **resolution of disagreements**.
19. Enable a **right of appeal to the Tribunal** against:
  - a decision not to put an IDP in place;
  - a refusal of a request to review an IDP;

- the content of an IDP, including the description of the child or young person's needs or the educational provision required to meet those needs;
  - a failure to make available the provision identified through the IDP; and
  - a decision to cease to continue an IDP.
20. Provide a **right of appeal to any child or young person of school age** or below who has an IDP (or their parent) or believes they should have one.
21. **Extend the right of appeal to post-16 learners** with ALN, up to the age of 25, who are receiving or wish to receive education or training.
22. Restate the existing provisions in relation to **independent advocacy services** and case friends, but require the Welsh Government to set out guidance on this, including mandatory requirements where necessary.

#### 4.6. *Issues arising from the White Paper consultation*

The Welsh Government received 215 responses to its White Paper consultation. The Minister made a [statement on 14 October 2014](#), publishing a [summary of the responses](#), saying he was 'very pleased' with the 'broad strength of support' for the proposals. However, he recognised that some important points had been raised and assured Members that the costs of the reforms would be set out in the Regulatory Impact Assessment (RIA) accompanying the legislation. A separate report summarising the consultation with children, young people, parents and carers was also published.

**Key points** emerging from the consultation responses included:

- The proposed **term 'Additional Learning Needs' was welcomed by four fifths** of respondents who agreed it is more inclusive. However, only half of young people consulted supported the change from 'Special Educational Needs', suggesting it would not remove negative labelling and actual provision is more important than terminology.
- The proposed extension of the security and entitlements of statements to all learners currently supported through *School Action* and *School Action Plus*, through an IDP for all SEN learners, raised **resource and capacity issues**. Furthermore, the additional costs of extending the age range for interventions to 25 was identified as a key issue.
- Estyn said these costs were likely to create '**extra pressure** for local authorities, health agencies and providers', whilst the WLGA stressed 'it is essential that the **financial impact** [of the Bill and any changes in delivery] are fully costed and financed'. The Minister has said that any additional costs would be **met from existing resources** within his department's budget and

therefore 'may require the **re-prioritisation** of budgets once costs are quantified'. To this end, the Welsh Government has commissioned a review 'to assess the quantum of funding for SEN currently in the system' which will inform the RIA for the Bill.<sup>28</sup>

- Some respondents were concerned that extending the benefits of a statement to the full cohort of SEN learners **risked diluting** the support available to those with the greatest need.
- There was concern that the requirement on further education institutions to use their '**best endeavours**' to meet the young people's ALN was insufficiently robust. Many respondents thought this to be 'a **vague phrase** that could be open to interpretation'.
- Local government representatives had reservations that if **local authorities** had ultimate responsibility for delivery of an integrated IDP, they 'might be held **accountable for the delivery** of services by bodies over which they had **no control**'. As Estyn commented, 'local authorities cannot be ultimately responsible for preparing, delivering or reviewing provision or support that is the responsibility of the health service'.
- There was **strong support for a mandatory Code of Practice**, with 89% in agreement. The consensus was that a voluntary code would be insufficient, although respondents stressed the importance of distinguishing clearly between 'mandatory requirements' and 'practical guidance', i.e. what must be done as opposed to what should be done.
- The Third Sector was **concerned about the proposal to require families to use a local authority's own complaints process before appealing to a tribunal**. Objection was not so much against the principle of starting at a local level, rather that it should be undertaken by an independent third party. There was also concern this could create delays in lodging appeals and 'a further loophole for parents to negotiate'.
- Almost a third of respondents (mainly from local government) disagreed or were unsure that **local authorities should take on responsibility for securing specialist provision for post-16 learners** where their ALN could not be met in mainstream FE settings. The main **concern was whether sufficient funding** would be provided and the Welsh Government acknowledged in its summary that this was an 'important theme in the responses'.

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<sup>28</sup> National Assembly for Wales, Children, Young People and Education Committee, [\*CYPE\(4\)-25-14-Paper 5: \(Paper from the Minister for Education and Skills on the Draft Budget 2015-16\)\*](#), 23 October 2014

SNAP Cymru, a national charity which works with families, children and young people with ALN and/or disabilities, has cautioned that **'legislation alone will never be enough'** to address differences in provision.

In an article published on 7 October 2014 by the Institute of Welsh Affairs, SNAP Cymru Chief Executive, Denise Inger, **'welcomed** the Welsh Government's proposed focus on successful outcomes ... rather than inputs' but warned this is about **more than simply abolishing the statements process**:

In principle, the proposed Individual Development Plans can be more responsive to a child or young person's emerging or changing needs, and less bureaucratic to achieve. It also could be seen as removing the absolute need to obtain a statutory statement in order to access the additional support. However, in our experience the **'battle or quest' is not to achieve the Statement, but to obtain the detailed assessment and provision that it offers**.

Echoing some of the comments of others, including the Minister himself, Ms Inger also urged that the proverbial baby is not thrown out with the bathwater:

Families who have trialled the Individual Development Plan in recent years as a way of assessing and meeting need found the new format to contain insufficient detail and emphasis. They also found that the insights that a diagnosis and in-depth assessment of needs would have offered have **been side-lined by the shift in emphasis**. Despite the current weaknesses in the existing statutory assessment process, such as the time, cost and flexibility required, it is still felt by many families and professionals to provide a rigorous assessment of need. For those children and young people with more complex needs, **rigorous assessment will still be required** and will need to remain a focus of the new process.

(...)

We do not agree that the current system as a whole is 'not fit-for purpose'. (...) It is the **execution of these processes not the processes themselves that is not fit for purpose**.<sup>29</sup>  
[all my emphasis]

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<sup>29</sup> Inger, Denise (October 2014) [\*Transparency, accountability and user engagement at the centre of new SEN reform\*](#), Institute of Wales: Click on Wales

## 5. Reforms in England

The [\*Children and Families Act 2014\*](#) made changes to SEN provision in England. A revised [\*SEN and Disability Code of Practice: 0-25 years\*](#) was published in January 2014 and took effect from 1 September 2014.

The changes in England **bring together educational interventions with health and care**, so that these are provided for within one plan. They also integrate the two previous systems of pre-16 and post-16 into a **0-25 age approach**. **Local authorities and health bodies are obliged to work together** to meet young people's needs. The UK Government said that **parents and children would be much more involved** in the decision-making process.

A **House of Commons Library Standard Note**, published in November 2014, [\*The reformed system for children and young people with SEN in England\*](#), provides a useful overview of the changes in England and the new arrangements in place for September 2014.

**Statements of SEN**, which can cover learners up to the age of 19, are **being replaced by Education, Health and Care (EHC) plans**, which may be maintained up to the age of 25 if the young person is still in education or training. From 1 September 2014, no new learners are being issued with a statement and those who already have a statement will gradually be transferred on to an EHC by 31 March 2018. EHC plans place **statutory obligations on local authorities and health bodies to collaborate** to meet the young person's needs. Many of the legal requirements for EHC assessments and plans are the same or **similar** to those required for statements.

**School Action and School Action Plus** are being **replaced** by a graduated school-based support system for learners whose needs do not require them to have an EHC plan. The new system is known as **'SEN support'**.

Local authorities are now under an obligation to develop and publish a **'Local Offer'**, setting out in one place information about **provision they expect to be available across education, health and social care** for children and young people in their area who have SEN or are disabled. This includes those who do not have EHC plans but who receive SEN Support. Local authorities must involve and engage young people in preparing their Local Offer.

Some other sources provide further information on the reforms in England, both from a government and third sector perspective:

- UK Government Press Release, [\*Reforms for children with SEN and disabilities come into effect\*](#), 1 September 2014;
- [\*Special educational needs and disability \(SEND\)\*](#) section of UK Government website;
- National Deaf Children's Society, [\*Summary guide to SEN reform\*](#);
- The National Autistic Society: [\*SEN reforms – England\*](#).

## 6. Next steps for SEN/ALN in Wales

When announcing the publication of the consultation summary, the Minister for Education and Skills said:

the responses received will be carefully considered to inform the development of the legislation planned for introduction to the National Assembly for Wales in the summer of [2015].

The Welsh Government is expected to introduce a Bill in **July 2015**.

In the White Paper of May 2014, the Welsh Government said, based on the introduction of legislation in 2015, the **earliest any proposals could take effect would be for the academic year 2016/17**. The Welsh Government also said that, separate to the Bill itself, it would consult on a full draft of the new resulting Code of Practice.





