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Y Gweinidog Addysg a Sgiliau
Minister for Education and Skills

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Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref: MA(L)/HL/0001/16

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19 January 2016

Dear Ann,

Draft Additional Learning Needs and Education Tribunal (Wales) Bill

Thank you for the separate letters that you sent on behalf of the Children, Young People and Education Committee in December 2015 to us as the Ministers for Education and Skills, and for Health and Social Services. Please accept this letter as a joint response to both letters.

Firstly, thank you for the opportunity you provided the Minister for Education and Skills to submit oral evidence to the Committee in relation to its pre-legislative scrutiny of the draft Additional Learning Needs and Education Tribunal (Wales) Bill (*the draft Bill*). We consider that the Committee's scrutiny at this stage, and the comments and suggestions you have provided in your two letters, will prove invaluable to our consultation on the draft Bill and any subsequent potential consideration of refining the draft Bill.

The consultation on the draft Bill closed on 18 December. We are currently collating and considering the 250 or so responses received, alongside other feedback obtained from the stakeholder engagement events and children and young people participation sessions that have been undertaken. Both letters from the Committee will be given due consideration in the context of our wider analysis of comments received. In the meantime, therefore, we have only provided responses to some of the issues that you have raised. We will consider all of your comments further ahead of issuing the Government's response to the consultation in due course.

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

The proposed additional learning needs (ALN) legislative reforms provide us with a once in a generation opportunity to reform the way in which we support some of our most vulnerable learners. The reforms have been a long time in gestation, making it all the more important that we get them right. The reforms are part of a wider education change programme – all aspects of which work towards an inclusive education system. A system that delivers equal access to the highest standards of education; that protects learners' rights to express their views; and that supports each and every learner to reach their full potential.

We welcome the broad support that the Committee and stakeholders have expressed for the principles of our ALN reforms, but recognise that a number of concerns remain. As outlined above, we will of course consider these concerns in the context of the consultation and associated responses.

We believe, however, that many of the topics on which unease has been expressed pertain to the implementation and operation of the proposed new system and we are confident these can be addressed through our ongoing work to prepare for transition to the new system. In particular, much of the operational detail of the new model will be set out in the ALN Code, the further development of which is already being taken forward in conjunction with a range of external partners. At the same time, issues relating to workforce capacity and training needs link closely to our wider reform programme, aspects of which are in the process of being developed and implemented.

This letter addresses directly the points that you raise in your letter to the Minister for Health and Social Services on the way that the draft Bill deals with multi-agency working and collaboration between local government and health bodies. It responds more generally to the points raised in your letter to the Minister for Education and Skills, recognising that some of that which has been raised will be addressed through the continued development of the ALN Code and also through the more comprehensive consideration of the responses made to the public consultation on the draft Bill.

We have chosen to jointly reply to your points about multi-agency working and collaboration because we think it important that the need for a coordinated approach to these matters extends equally to Ministers as it does delivery organisations and front line staff. Indeed, we think it is vital that Ministers and the Welsh Government more broadly set an example in this respect.

Our comments are grouped under the headings you have used in your letter to the Minister for Education and Skills.

Multi-agency working and collaboration between local government and health

Some relevant sections detailing the legal framework of the draft Bill relating to multi-agency working are described below.

Section 49 is the starting point for this. It requires health bodies and others (listed at section .49(4)) to comply with requests for information and help by local authorities in

respect of the latter's ALN functions. Requests must be complied with unless it would be incompatible with the body's own duties or would otherwise have an adverse effect of the exercise of its functions. If a request is not complied with, written reasons must be provided. Furthermore, regulations made under section .49(5) would set out the timescales within which compliance with requests must take place.

On top of the duty prescribed in section 49, there is a new duty at section 14 of the draft Bill which requires health bodies to secure additional learning provision that they agree to secure. This represents a considerable step forward from the current system where health bodies are not required to secure special educational provision, even where they have previously agreed to do so. Not all additional learning needs are amenable to a healthcare intervention and you note in your letter that you accept that health professionals must decide if there is a specific health need. It is this principle that sits behind the notion that a health board will be required to secure the provision they have agreed to secure: the agreement will be based on a recognition of an identified need amenable to a healthcare intervention. Where there was a need for additional learning provision, and it was not provision that the health body had agreed to deliver, the local authority would be under a clear duty to do so. The need and provision would be inserted into the IDP.

Section 48 of the draft Bill provides health bodies with the power to refer children under compulsory school age who they believe to have ALN to the local authority, where they are satisfied that doing so would be in the best interests of the child. Whilst this is a discretionary power, exercised in the light of the parent's views, in practice there would be a clear expectation that in the overwhelming majority of such cases, a referral would be made.

Finally, the Designated Medical or Clinical Officer, which health boards would be required to appoint under section 47 of the draft Bill, would have a key role to play in ensuring that health boards successfully exercised the duties and powers set out above. The scope of this role in, for example, promoting multi-agency working and raising the profile of ALN within health boards should not be underestimated. We note that the Committee is not sufficiently clear how this role would operate, but suggest that future iterations of the ALN Code will provide more detail on this matter, and on many of the others relating to collaboration.

Nevertheless, we understand and acknowledge that concerns remain about multi-agency working. We also recognise how vital such partnership working is, especially between education and health, if the improvements sought are to be attained. We will consider jointly what else could be put in place, in legislative and non-legislative terms, including ways in which disagreements between local authorities and health boards might be approached. It is intended that this consideration will include, but not be limited to, direct engagement sessions with health boards to raise awareness of the proposed reforms, and the establishment of a therapies group to look at the way in which this aspect of specialist support services might be improved. The Committee's points of specific concern – such as early years collaboration, assessment capability and Team around the Family – will form a central part of this continued joint-consideration in the context of the consultation.

We also recognise that there is considerable crossover between the draft Bill and other existing legislation, especially, but not exclusively, the Social Services and Well-being (Wales) Act 2014. Coherence and compatibility between the draft Bill and existing legislation has been and will continue to be considered.

Benefits and challenges of a graduated system of support

We note that concerns have been expressed to the Committee about a perceived absence of a graduated system of support. We consider that the current draft Bill will set up a mechanism which allows for support at the appropriate level to be provided. We will, however, consider all comments received as part of the consultation process. The ALN Code can impose mandatory requirements in respect of matters relating to the statutory Individual Development Plans and will deal with some of these issues. It is important to note that current primary legislation does not set out a graduated system of support. Under the current legislative system, learners with special educational needs ('SEN') are simply divided in to those who have a statutory Statement of SEN and those who have no statutory plan. The concept of graduated support in the form of 'school action' and 'school action plus' is included only in the SEN Code of Practice.

We will consider further the comments made about the uncertainties in relation to the division of responsibilities between local authorities and schools/further education institutions, the ALN Co-ordinator and the IDP template.

Part 2 of the draft Bill, in particular deals with the division of responsibilities and further detail will be provided in the ALN Code.

The role of the ALN Co-ordinator is established in section 46, under which regulations may also be made providing further detail. Moreover, the ALN Code will provide further detail on the role.

Work is ongoing on the issue of the IDP template, including as part of the work being taken forward by the Code Content Development Group.

Dispute resolution and creating a fairer, more transparent system

We note and will consider further the Committee's comments in relation to disagreement resolution. In particular, we will explore how the ALN Code can be developed to require and promote improved disagreement resolution within the system. Indeed, this very point is a matter that we have asked the group of external partners currently involved in developing the Code to specifically consider.

We also note the Committee's recommendations in relation to the Tribunal's powers and will consider these alongside the general responses to the consultation.

Establishing a 0-25 system

We do not agree that the focus of the draft Bill is on schools. Where required, there is specific provision in the draft Bill for early years and post-16 education. However, the

draft Bill is intended to establish a coherent, continuous system for the entire range and, consequently, many of the provisions apply to all without any reference to age group or setting. The letter sent to the Committee by the Minister for Education and Skills on 7 December addressed this point and provided more detail.

Notwithstanding our general position outlined above, the Committee's specific points made in relation to early years and post-16 will be considered, as appropriate, alongside the general review of consultation responses, and as we take forward the development of the ALN Code.

The challenges of transition

We note the points that the Committee raises in relation to capacity issues, training needs and costs. Whilst these are not matters that relate directly to the consideration of the Bill's provisions themselves, they are clearly critical to the successful implementation of the proposed legislative framework.

Key to delivering better outcomes for learners with ALN is the knowledge and skills of the workforce. We have already concluded two critical studies to better understand the workforce development requirements of the general education workforce; and assess the capacity of specialist support services in supporting learners with SEN.

Through our approach to the New Deal Pioneer Schools, we are already working to enable our teaching workforce to develop knowledge and skills in relation to differentiation, assessment, meta-cognition and SEN. Ensuring our teaching workforce has the necessary tools, and confidence to use those tools, will improve the support available for all learners, not just those with SEN. In addition we are working with key stakeholders to improve the capacity of specialist SEN services through improved workforce planning arrangements and access to specialist qualifications. This will enable services to better focus resources on those learners with the greatest needs.

We have also commenced rolling out person-centred practice across all education settings and have made available £300,000 this financial year to support this. A range of resources are now available on our Learning Wales website. The roll-out of this approach to planning will benefit learners in the immediate term and will provide an essential building block upon which our legislative reforms will sit.

In relation to Welsh language provision, we also note the comments that have been made to and by the Committee. We will pay due regard to these as the draft Bill and Code are further developed.

The Committee has also noted concerns in respect of the costs associated with our reforms. We recognise that the transition phase, in particular, will be challenging for the organisations required to implement the new system and we have committed to financially supporting this process. We are currently scoping what this might look like and will say more about a support package in due course.

Timescales for reform

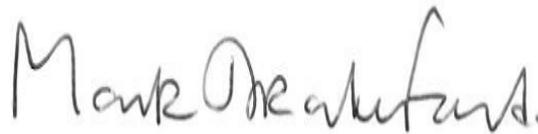
We note that the Committee is concerned that the consultation on the draft Bill might have an unintentional impact on the consistency with which the current legislative system is implemented by local authorities. The current law and the duties on local authorities and other relevant parties still of course apply without question. The Minister for Education and Skills sent a letter to local authorities at the start of the consultation on the draft Bill to remind them that they must continue to comply with their current statutory responsibilities and has consistently communicated this message over recent months. We will, however, continue to explore what more we can do to convey this message.

Thank you once again for your comments and suggestions on the draft Bill and supporting reform package. Whilst bringing forward legislation will, of course, be a decision for the next Government, in the meantime, we look forward to continuing to work with the Committee to develop a set of legislative and wider policy proposals that are as robust and comprehensive as possible.

Yours sincerely,



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