



## **RHONDDA CYNON TAF COUNTY BOROUGH COUNCIL**

### **CABINET**

**25TH FEBRUARY 2021**

## **UPDATE ON THE IMPLEMENTATION OF THE ADDITIONAL LEARNING NEEDS AND EDUCATION TRIBUNAL ACT (2018) IN RHONDDA CYNON TAF COUNTY BOROUGH COUNCIL**

### **REPORT OF THE DIRECTOR OF EDUCATION AND INCLUSION SERVICES**

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#### **1. PURPOSE OF THE REPORT**

- 1.1 The purpose of the report is to provide Cabinet with an update on the implementation of the ALNET (Additional Learning Needs and Education Tribunal) Act (2018) from and to provide Cabinet with information on the implications of the new legislation for the council from a local perspective.

#### **2. RECOMMENDATIONS**

- 2.1 It is recommended that Cabinet:
- i. Note the content of this report.
  - ii. Agree to a review being undertaken to scope the additional resources needed to implement the new ALN legislation
  - iii. Agree to receive a further report presenting the outcome of the review including recommendations for potential future investment.

#### **3. REASONS FOR RECOMMENDATIONS**

- 3.1 To address the demand for additional capacity for the local authority to undertake its enhanced statutory duties under the new ALNET Act to ensure that all children and young people aged 0-25 in Rhondda Cynon Taf receive high quality ALN provision.

#### **4. BACKGROUND/WIDER CONTEXT**

- 4.1 Considerable changes are planned in Wales in relation to the statutory provision required to meet the needs of learners with Special Educational Needs (SEN)/Additional Learning Needs (ALN) with the implementation of new

legislation, the ALNET Act (2018), in September 2021. The ALNET (Wales) Act 2018<sup>1</sup> (The 2018 Act) received Royal Assent in January 2018.

4.2 The new statutory framework is underpinned by three overarching objectives:

- A unified legislative framework to support all children of compulsory school age or below with additional learning needs (ALN) and to support young people with ALN who are in school or further education (FE);
- An integrated, collaborative process of assessment, planning and monitoring of the support provided to ALN learners which facilitates early, timely and effective interventions; and
- A fair and transparent system for providing information and advice, and for resolving concerns and appeals.

These in turn are supported by a further eleven core aims within the Act:

- The introduction of the term ‘additional learning needs (ALN)’;
- A 0 to 25 age range;
- A unified, single statutory plan;
- Increased participation of children and young people;
- High aspirations and improved outcomes;
- A simpler and less adversarial system;
- Increased collaboration;
- Avoiding disagreements and earlier disagreement resolution;
- Clear and consistent rights of appeal;
- The ALN Code;
- A bilingual system.

4.3 The Act replaces the terms ‘special educational needs (SEN)’ and ‘learning difficulties and/or disabilities (LDD)’ with the new term ‘additional learning needs (ALN)’. All children and young people with ALN regardless of the severity or complexity of their learning difficulty or disability will be entitled to a statutory support plan called an ‘Individual Development Plan’ (IDP). Children and young people with ALN will receive support called additional learning provision (ALP) which will be set out in their IDP.

4.4 The Act will be supported by the implementation of a new statutory ALN Code which will be laid before the Senedd in February 2021. Until this time, Welsh Government has published a draft version of the Code to support local authorities and other relevant stakeholders to plan towards implementation.

4.5 The transformed system will:

- Ensure that all learners with ALN are supported to overcome barriers to learning and achieve their full potential;

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<sup>1</sup> [The Additional Learning Needs and Education Tribunal \(Wales\) Act](#)

- Improve the planning and delivery of support for learners from 0 to 25 with ALN, placing learners' needs, views, wishes and feelings at the heart of the process;
  - Focus on the importance of identifying needs early and putting in place timely and effective interventions which are monitored and adapted to ensure they deliver the desired outcomes.
- 4.6 It is expected that the new ALN system set out in the Act will be fully implemented over a three-year period. The implementation period is expected to run from September 2021 to August 2024. However, Welsh Government is yet to publish its revised implementation timetable following its decision to delay its original implementation over three years from September 2020.

## 5. LOCAL CONTEXT

- 5.1 Local authorities and all those who work with children and young people with special educational needs (SEN) must ensure that they continue to comply with the duties placed upon them by the Education Act 1996 and continue to have regard to the SEN Code of Practice for Wales (2002).
- 5.2 During the three year implementation period from September 2021, local authorities will need to implement the new ALN system in parallel to the current SEN system which will gradually be phased out. To support its implementation, the Act introduces three new statutory roles which took effect from 4<sup>th</sup> January 2021. These are:
- **Additional Learning Needs Coordinator (ALNCo):** this replaces the current non-statutory Special Educational Needs Coordinator (SENCo) in schools and education settings.
  - **Early Years Additional Learning Needs Lead Officer (EYALNLO):** each local authority is required to appoint an EYALNLO to undertake the strategic development and coordination of early years Additional Learning Provision in line with the new statutory duties.
  - **Designated Education Clinical Lead Officer (DECLO):** each Health Board must appoint a DECLO to work in partnership with local authorities to meet the enhanced duties placed upon it by the Act to contribute to any identified additional learning provision.
- 5.3 Welsh Government is providing financial assistance to support the implementation of the Act through a £20m package of funding. A substantial proportion of funding is being used to support workforce development. This is structured at three levels:
- Core skills development for all practitioners;
  - Advanced skills development through the implementation of the new ALNCo role;
  - Specialist skills development for local authority services provided to education services.

- 5.4 Funding has been used to appoint five ALN Transformation Leads since 2018, four of whom have been working with local authorities to prepare for the new system on a consortium footprint with the fifth supporting Further Education Colleges. Each ALN Transformation Lead is responsible for the delivery of a regional strategic project plan. The plan is designed to support local authority inclusion services, wider education services, schools, early years' settings, further education institutes and local health boards to work in partnership to prepare for the new system. The strategic priorities of the plan are based upon analysis of current practices across the region and are evaluated and updated annually.
- 5.5 The following four high-level regional priorities details how the Central South region is preparing for the implementation of the act during 2020-21:
- Ensure that all local authorities develop consistent practices and collaborate effectively with key partners to prepare for the new ways of working.
  - Ensure that local authority maintained schools develop consistent approaches to improving practice for learners with ALN that meet the expectations of the Act and are complementary to the wider national education reforms.
  - Develop support and provision for post compulsory-aged learners through identifying local and potential regional offers.
  - Develop Health Board preparedness for implementation of the Act
- 5.6 Each year the regional plan is supported by a local action plan in each local authority to ensure a flexible and bespoke approach to addressing the above strategic priorities. The action plans are funded through the ALN Transformation Grant, part of the overall Welsh Government transitional financial support. (See Appendix 1 for the RCT ALN Transformation Action Plan 2020/21).
- 5.7 Due to the transformational nature of the new ALN system, ensuring compliance with the statutory requirements of the ALNET Act and ALN Code will bring significant challenges for local authorities. These include:
- **Increased statutory duties across an enhanced age range 0-25 years:** The requirement for local authorities to assume the additional statutory responsibility for making additional learning provision for children aged 0-3 and young people aged 19-25 has clear implications for the capacity of central local authority inclusion services. It also has legal implications in terms of governance. Local authorities will also become responsible for securing post-16 specialist placements of young people at ISPIs (Independent Special Post 16 Institutions) in the future – a function that is currently undertaken by Welsh Government every year.
  - **Replacement of the statutory assessment process with a single statutory plan:** all pupils with an ALN will now have a statutory Individual Development Plan (IDP). This is very different from the current

system whereby the majority of learners with SEN have a non-statutory Individual Education Plan (IEP) and only a minority with the most significant SEN will have a statutory Statement of SEN. For children under compulsory school age and not attending a maintained school, the local authority will be responsible for preparing and maintaining IDPs and ensuring the provision of any identified Additional Learning Provision (ALP). For children of compulsory school age, the majority of IDPs will be written by schools but the IDPs for learners with significant ALN will be maintained by the local authority. This will also be the case for young people attending a Further Education Institute (FEI). The new statutory process has implications for local authorities in relation to IT infrastructure, and, crucially, the capacity of central inclusion services to meet the new statutory requirement to carry out assessments and produce IDPs in a much shorter timescale than the current statutory assessment process (12 weeks instead of the current 26 weeks)

- ***Operating two legislative systems during transition:*** during the three year transitional period from the current SEN legislation to the new ALNET Act, local authorities will need to operate the two systems in parallel. This will have significant impact upon both the capacity of the central Access and Inclusion Team and the skillset necessary to undertake the above duties.
- ***Workforce Development:*** the strengthened requirements in the Act and Code to support the creation of a fully inclusive education system requires all schools and other relevant education settings to upskill their workforce to deliver high quality universal and additional learning provision. Central inclusion services will need to enhance their specialist workforce to provide high quality advice, support and provision for children and young people aged from 0 to 25 years old.
- ***Developing a bilingual system:*** The Act requires that, where it is identified that a child or young person needs additional learning provision in Welsh, 'all reasonable steps' must be taken to secure the provision in Welsh. A mechanism is included in the Act to remove by regulations the 'all reasonable steps' test, so that the duties to provide ALP through the medium of Welsh become absolute over time. This has implications for specialist workforce development and the potential need to develop Welsh medium additional learning provision on a regional / sub-regional basis. As such, the development of a bilingual ALN system is a priority in the local authority's Welsh in Education Strategic Plan (WESP).
- ***Dispute resolution and right of appeal to Education Tribunal Wales:*** The Act puts collaboration and the need to resolve disagreements with families at the earliest possible opportunity at its heart. As such, the Act gives local authorities a new duty to make advocacy services available to all children and young people on request. In addition, under the current SEN system only young people (not yet 19 years old) who are registered at maintained schools have the right to appeal to tribunal in relation to their SEN. However, the new Act will introduce more equitable

rights of appeal by extending this right to all young people up to the age of 25 years who are in school or FEI. Extending rights of appeal to any learner who is entitled to an IDP from 0 – 25 years, together with the heightened anxiety that some parents may experience due to the legislative changes, are likely to result in an increase in appeals made against the local authority. This would have both financial implications for the local authority in terms of implementing often costly tribunal directions and also in terms of the capacity of central ALN services and specialist provisions to meet the needs of learners with ALN.

- 5.8 In 2014 the Special Educational Needs and Disability (SEND) reforms came into force in England over a phased transitional period. There are clear similarities with the ALN reforms in Wales, particularly in relation to the replacement of the statutory Statement of SEN with a statutory unified plan, the Education and Health Care Plan (EHCP), the requirement for children and young people to be at the heart of the decision making process and an enhanced focus upon dispute resolution.
- 5.9 The implementation of the SEND reforms since 2014 have resulted in significant resource implications for local authorities in England. In a report commissioned by Welsh Government in July 2019, the Council for Disabled Children (CDC) reported that there has been a 45- 50% increase in the number of EHCPs issued in England since 2014. In January 2019 The Department for Education reported a 40% increase in the number of pupils attending special schools, and a significant increase in the number of pupils accessing highly expensive placements in independent schools. The number of appeals to the SEND Tribunal by parents dissatisfied with their children's SEN provision doubled over the first four years of implementing the reforms and have continued to rise.
- 5.10 The CDC (2019) reported that the ensuing budget pressures for English local authorities have, in turn, impacted upon the quality of SEND provision that children and young people receive citing that, as at 29<sup>th</sup> March 2019, 41(49%) of the 84 Ofsted and Care Quality Commission local area inspections of SEND support were found to have significant areas of weakness in their provision and required a written statement of action to be drawn up.
- 5.11 Other notable areas of concern reported by the CDC included insufficient resources for local authorities and services to meet their statutory responsibilities, lack of training to develop the specialist workforce, inadequate leadership, governance and strategy in local authority SEN services, poor local arrangements for joint commissioning with other services and limited involvement of families in service planning and delivery.
- 5.12 The £20M ALN package of funding awarded by Welsh Government is merely transitional funding intended to support local authorities and their partners to prepare for the implementation of ALNET. This is based on Welsh Government's premise that the ALN reforms will be cost neutral. However, in light of the additional statutory ALN duties that will be placed upon local authorities, and having seen the significant financial impact of the SEND

Reforms upon local authorities in England, it would be more than reasonable to predict that the implementation of the new Act will have significant financial and resource implications for local authorities in Wales. This report seeks to highlight these risk and to ensure that appropriate plans are put in place to mitigate risks.

## **6. EQUALITY AND DIVERSITY IMPLICATIONS**

- 6.1 Welsh Language, Equality, and Community Impact Assessments are not required for the purpose of this report.
- 6.2 Each of these Impact Assessments however will be prepared if approval is granted to progress with any proposal as a result of any future detailed review of the capacity of the local authority to undertake its enhanced statutory duties under the new ALNET Act.

## **7. CONSULTATION**

- 7.1 If approval is granted to progress with any proposals as a result of the review of the current capacity of the County Borough's Access and Inclusion Service to meet its enhanced statutory duties as required by the ALNET Act and ALN Code, where appropriate, the consultation process will be undertaken in line with the Council's Management of Change Policy and under the arrangements outlined in the Welsh Government's Statutory Code – School Organisation Code (011/2018)<sup>2</sup> as appropriate.

## **8. FINANCIAL IMPLICATIONS**

- 8.1 If the above proposal to undertake a detailed review of the capacity of the County Borough's Access and Inclusion Service to undertake its new statutory duties is to proceed, the associated costs of undertaking the review will be met from existing Access and Inclusion Service budgets. However, once the review is undertaken it is possible that further staffing will be deemed necessary to ensure that the full requirements of the ALNET Act are met.

## **9. LEGAL IMPLICATIONS OR LEGISLATION CONSIDERED**

- 9.1 Section 316 of the Education Act 1996<sup>3</sup> specifies that children and young people with SEN should normally be educated in mainstream schools so long as this is compatible with them receiving the special educational provision that their learning difficulty calls for, the efficient education of other children and young people and the efficient use of resources.
- 9.2 Section 315 of the Education Act 1996 also requires Local Authorities to ensure that SEN/ALN provision is kept under review. Sections 1:20 and 1:21 of The Code of Practice also requires Local Authorities to evaluate the effectiveness

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<sup>2</sup> [Welsh Government's Statutory Code – School Organisation Code \(011/2018\)](#)

<sup>3</sup> [Education Act 1996](#)

of school funding arrangements in supporting and raising the achievements of children and young people with SEN.

- 9.3 The ALNET Act (2018) and the Draft ALN Code (2018) provide a legal framework to ensure that the additional learning needs of learners are met. Chapter 5 of the Draft Code specifies the statutory responsibilities of local authorities to ensure that additional learning provision is kept under review as a key part of local strategic planning.

## **10. LINKS TO CORPORATE AND NATIONAL PRIORITIES AND THE WELLBEING OF FUTURE GENERATIONS ACT 2015**

- 10.1 The proposals will ensure that two of RCTCBC's three key priorities will be met. These include:

- Economy: Building a strong economy.
- People: Promoting independence and positive lives for everyone.

- 10.3 The proposals will ensure that some of RCTCBC's most vulnerable learners will have the best chance of achieving positive outcomes. The proposals will ensure more efficient and effective use of resources which promotes the development of social inclusion and positive outcomes for learners.

- 10.4 Organising services so that they are focussed on early intervention and prevention is a key statutory requirement of the Wellbeing and Future Generations Act 2015<sup>4</sup> and a key element of RCTCBC's Corporate Plan.

## **11. CONCLUSION**

- 11.1 RCT County Borough Council must be prepared to implement the new ALN system in line with the prescribed timescales from September 2021. The enhanced statutory duties placed upon local authorities under the new Act and Code are likely to have significant resource implications for the local authority's Access and Inclusion Services.
- 11.2 It is recommended therefore, that additional work be undertaken to facilitate a detailed review of the additional resources the County Borough's Access and Inclusion Service may require to ensure that RCTCBC is able to implement fully the new statutory requirements of the ALNET Act, and enable all learners with ALN to achieve their potential through the effective implementation of transformational reform. This report should also include recommendations for future investment.

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<sup>4</sup> [Wellbeing and Future Generations Act 2015](#)



**LOCAL GOVERNMENT ACT 1972**

**AS AMENDED BY**

**THE LOCAL GOVERNMENT (ACCESS TO INFORMATION) ACT 1985**

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**Background Papers**

None