

Proposal for a Government Legislative Competence Order (LCO) relating to Education and Training (Additional Learning Needs)

Foreword

The Association of Directors of Education in Wales (ADEW) welcomes, in principle, the proposal by the National Assembly for Wales to adopt an LCO that will enable it to bring forward coherent measures for legislation, in the form of Measures, which are based on Welsh priorities and timescales. A distinctive 'Welsh flavour' would facilitate a concerted drive on key components of special educational needs (SEN) policy and practice, including matters highlighted in:

- The Learning Country: Vision into Action;
- The Policy Review of Additional Learning Needs by the National Assembly's former Education, Lifelong Learning and Skills Committee; and,
- The Wales Audit Office report, 'Good Practice in Special Educational Needs Funding'.

Key issues for attention in the drive to promote further effective practice in SEN policy and practice in Wales include:

- ensuring equality of opportunity for all our children and young people;
- responding to the special circumstances of Wales, including its language, geography and culture;
- sustaining consistency across Wales, for example in responses to the SEN Code of Practice;
- avoiding overly complicated and bureaucratic systems, for example in the statutory assessment process;
- improving co-ordination between stakeholders and key agencies, not least Local Education Authorities, Social Services Departments and Local Health Boards/NHS Trusts;
- promoting further regional collaboration, for example to provide facilities for children and young people with complex and challenging needs;
- developing benchmark data that assist LEAs to evaluate the volume, cost and effectiveness of SEN provision; and
- synchronising legislation and policy initiatives, for example as they relate to social services functions and to education functions.

ADEW remains committed to driving effectively on the policies of the National Assembly. At this stage, the content of the proposed LCO is not fully defined. ADEW anticipates that further detailed consultation will be required on any specific legislative programme in respect of SEN/additional learning needs, and stands ready to participate fully in that consultation.

Responses to the main issues identified in the proposal

(i) There is no power to alter the statutory threshold which activates a Local Education Authority's formal SEN duties.

ADEW accepts in principle that statutory thresholds may need to be redefined, but would welcome further consultation on any specific legislative changes. Additional funding may be required to properly implement new proposals.

(ii) Case law has established that the Welsh Ministers' Code of Practice in relation to SEN has relatively weak legal force because LEAs must merely 'have regard' to it. This means that, provided an authority gives an intelligible good reason for departing from the Code, it may do so. Social services guidance issued under s.7 of the Local Authority Social Services Act 1970, for example, is much stronger in that case law has established that local authorities are expected to comply with it.

The continuing drive to ensure joined-up working in the delivery of services to children and young people means that it makes sense for the Code of Practice and Social Services legislation to complement one another. Consequently, ADEW views the move towards compliance as generally positive. It is difficult to see, however, how compliance could be enforced or monitored anymore than is currently the case through Estyn inspections. Consideration might, therefore, be given to strengthening audit and regulation as opposed to amending legislation.

It is desirable that any strengthening of the Code of Practice should relate closely to changes to the statutory assessment process. Due regard should also be given to disability discrimination issues, present guidance, for example about what is 'reasonable', being open to wide interpretation.

A key area for attention in catering appropriately for children and young people with behavioural difficulties is ensuring that they are always treated under the Code of Practice at both school action and school action plus stages before recourse to exclusion. Strengthening compliance with the Code of Practice and/or strengthening audit and regulation in respect of this area would assist LEAs in reducing exclusions and improving provision for pupils with behavioural difficulties.

(iii) The formal system of statementing is highly prescriptive. Whilst there are Assembly powers to make regulations about the operation of this process, they do not permit it to make fundamental changes to the structure of the statementing process.

ADEW agrees that the present system of statementing is highly prescriptive and also considers that it is costly, bureaucratic and inefficient. The system would benefit from changes to better reflect recent developments in SEN, including greater inclusive practices in schools, regional collaboration and the development of national standards aimed at improving consistency in provision, for example for pupils with specific learning difficulties.

ADEW suggests that the present high level of statementing should be reduced to 1% or less of the population and specifically for those who require:

- a multi-disciplinary assessment; and
- require an alternative placement to their community school.

For other pupils with SEN, non-formal assessments of need and of progress and performance can take place under the auspices of the Common Assessment Framework and as part of educational psychologists regular visits to schools. Such visits need not be multi-disciplinary nor depend on the use of an expensive array of assessment tools. They should occur as part of the school action and school action plus stages. Local Authorities should report on the progress and performance of pupils with SEN to the local Children and Young People's Partnership which has a role in ensuring that services are appropriate to the young people's needs.

Where formal statements of special educational needs are prescribed, it is desirable that there should be some flexibility in the definition of the level of resource to which the subject of the statement is entitled.

Any changes to the statementing process should reflect the widespread consultation already undertaken and the work done by the former Education, Lifelong Learning and Skills Committee. This requires further exploration and discussion, in which ADEW would be keen to participate.

(iv) There is no power to alter the range of individuals with rights to appeal to the SEN Tribunal for Wales. Accordingly, at present it cannot provide a right of appeal for children (as opposed to parents and/or carers) even if a child has the necessary capacity to bring an appeal. In relation to children, this contrasts with, for example, the Children Act 1989 which, in a number of instances, gives children the right to make applications to the courts.

ADEW considers that, under the Children Act and in the spirit of the requirements for the Single Children and Young People Plan, the involvement and

engagement of children and young people and their entitlement to have a say in decisions which affect them make it essential that they should have a right of appeal to the SEN Tribunal for Wales. Allied to this is the need to provide appropriate advocacy services to make the rights to appeal of children more effective and realistic.

(v) The current system does not allow for local dispute resolution mechanism to be concluded before proceeding to appeals to the Tribunal.

ADEW agrees that there is a need for a more structured approach to the resolution of disputes. LEAs are required to pay for a Disagreement Resolution Service, yet parents/carers have no need to avail themselves of the service and, in some cases, go straight to Tribunal. It is desirable that dispute resolution processes are concluded before recourse to Tribunal. It may be desirable to identify a time scale for concluding the resolution process, such that there is a cut off point after which it may be reasonable to have recourse to a tribunal. Presently, the processes can overlap and this can be confusing.

(vi) There is no statutory requirement for LEAs to provide advocacy services for children with SEN. This is in marked contrast to the position in relation to social services for children in respect of whom the Children Act 1989 places an express duty upon authorities to make advocacy arrangements. The current powers do not permit similar provision to be made as regards SEN.

ADEW supports creating a legal requirement for LEAs to provide advocacy services for children with SEN. Adequate funding to provide such services would need to be made available by the Welsh Assembly Government.

(vii) There is little scope for the Assembly by regulations to confer additional specific duties upon LEAs or anyone else in relation to SEN.

It is not clear what additional specific duties are implied here. ADEW stands ready to respond as appropriate to any specific proposals, having due regard to the available capacity and resources to tackle additional duties.

This response is on behalf of the Association of Directors of Education in Wales (ADEW). Representatives of ADEW are prepared to give oral evidence to the Committee.

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