



Consultation on the proposed Additional Learning Needs LCO - The National Assembly for Wales (Legislative Competence) Order 2007

Citizens Advice Cymru welcomes the opportunity to respond to the consultation on the proposed LCO on Additional Learning Needs.

A. Background

A.1 The Citizens Advice Bureaux (CAB) Service in Wales is the largest integrated network of independent advice agencies in Wales with service delivered from 58 main offices and 198 secondary advice outlets. Each CAB offers access to services by telephone, which is available 670 hours per week and the CAB service has home visiting schemes in every County. The local CAB service is delivered by the efforts of a variety of people. There are 1,475 people involved in the CAB service in Wales, of these, 77% are volunteers.

A.2 The **Twin Aims** of the Citizens Advice Bureau service are

“to ensure that individuals do not suffer through lack of knowledge of their rights and responsibilities or of the services available to them, or through an inability to express their needs effectively

and equally;

“to exercise a responsible influence on the development of social policies and services both locally and nationally”.

A.3 Individual Bureaux, under the terms of Membership of Citizens Advice (the operating name for the National Association of Citizens Advice Bureaux), provide core advice based on a certificate of quality standards on consumer issues, welfare benefits, housing, taxes, health, money advice, employment, family and personal matters, immigration and nationality and education.

A.4 In the year 2006/07, Wales Citizens Advice Bureaux dealt with 281,219 enquiries. These included 95,674 enquiries related to welfare benefits and tax credits; 91,368 enquiries in relation to debt; 19,501 related to employment; 15,536 housing issues; 12,481 legal issues; 11,355 related to relationships and families and 1,569 specifically related to education.

A.5 All CAB offer core advice at generalist level in relation to education under the terms of the Citizens Advice Membership Scheme. The types of issues covered in advice on educational matters include:

- Education up to 16
- Choice of schools

- Education organisations
- Special education
- Primary and secondary schools
- Financial help
- Education over 16
- Discrimination in further and higher education
- Student organisations
- Open University
- Fees, grants and loans for students
- Distance learning
- Adult education organisations
- Education abroad

A.6 Flintshire CAB and Wrexham CAB deliver the Parent Partnership Services (PPS) in their respective LEA areas, providing specialist caseworkers who support, advise and represent the parents of children with Additional Needs, living within the authority area. In Flintshire, during the 2005/06 period, 1,123 new enquiries were dealt with and £54,288 was generated in disability and family related benefits. For the Flintshire PPS, during the 2005/06 period, 1,123 new enquiries were dealt with and £54,288 was generated in disability and family related benefits. For the Wrexham PPS, during the 2005/06 period, £40,391 was generated in disability and pass-ported benefits and £140,000 was gained to parents from Education / Health and Social Services. **Our response incorporates comments received from these specialist services.**

1. *Would the terms of the proposed Order allow for the implementation of the policy agenda on additional learning needs by means of Measures? If not how would the proposed Order need to be re-drafted and why?*

No Comment.

2. *Is it appropriate for the proposed Order to cover all persons? If not, how should the proposed Order be re-drafted and why?*

2.1 In order to cover all persons, the focus should be on the individual's additional needs.

3. *Is the definition of disability in the proposed Order appropriate? If not, how should the definition be re-drafted and why?*

3.1 We wish to express our concern that the definition of disability in the draft LCO may lead to extensive case-law and resultant delay, and some children being excluded from special provision. **We would suggest that entitlement to special provision should depend on need not causation.**

3.2 The following area of need, and titles are all used by professionals;

- Speech & Language Impairment

- Speech & Language Difficulty
- Speech & Language Delay
- Speech & Language Disorder

If the definition of disability is by reference to 'impairment', would only the 'Speech & Language Impairment' category be regarded as a 'disability'?

3.3 There is great difference of opinion with regards to the definition of '**mental impairment**'. We have attached at Appendix 1 a copy of the part of the legislation about Disability Living Allowance which uses the term 'severely mentally impaired'.

3.4 Parents feel this term narrows the criteria with too much focus on the cause and nature of the disability. In many cases this is very difficult to establish and identification, evidence, and diagnosis can take a long time. Dyslexia is a Specific Learning Difficulty. Would this be considered to be an 'impairment'? We would suggest that the Committee look closely at definitions of disability on how these are interpreted in subsequent Regulations.

4. *Are the terms of the proposed Order drafted appropriately, too narrowly or too broadly? If necessary, how should the proposed Order be re-drafted and why?*

The definitions below subparagraph (b) of 'Matter 5.17' are unexplained and restricted. There is the need to focus on the additional needs of each individual. It can be difficult to establish the causes that give rise to the child's additional needs and that any definition which requires a specific diagnosis would inevitably cause delay and possible dispute – see reference to DLA in paragraph 3.3 above.

5. Additional Comments

5.1 As Citizens Advice Bureaux have a great deal of experience of representing clients at tribunals, mainly Social Security and Employment tribunals, we are very aware of the need for appeal provision. The numbers using the Special Educational Needs Tribunal for Wales is comparatively small. The percentage of appeals which are upheld is very large. At present however, anyone who wishes to challenge a Tribunal decision has to apply to the High Court, with the formality and costs implications this would involve.

5.2 Section 32 of the Tribunals, Courts and Enforcement Act 2007 allows the Lord Chancellor to provide for the route of appeal from a tribunal in Wales to align with that in England, so that in both countries the appeals will lie to an Upper Tribunal. This would enable families or indeed LEAs to use a cheaper less formal route for further appeals.

5.3 We hope that the Committee will do all it can, either by using this LCO, or by any other means, to try to ensure that potential appellants in

Wales are not disadvantaged by having no access to an Upper Tribunal. We propose that the Committee look at the drafting of the additional 'Matter 5.17' within the LCO to ensure that such provisions can be put in place.

5.4 The following incorporates the opinions of parents and caseworkers within the PPS schemes in Wrexham and Flintshire.

a) Its essential that resulting Regulations safeguard the long term entitlement to support that have already been committed through existing statements. There should be no changes for parents who are already satisfied with existing provisions.

b) For the majority of families the Statutory Assessment and Statementing process is lengthy but successful. Parents and grandparents were overall happy with the provision of service. A statement was seen as the best gateway to support services for the child with additional needs. Procedures at school level however, can involve greater difficulties for parents, especially in connection with identification and monitoring.

c) Procedures at school level, both before and after Statutory Assessment, differ between establishments. There was inconsistency found regarding how professionals delivered there service provision after statementing. It was agreed that it was beneficial for professionals i.e. speech and language therapists to go into the school after the statementing process and to work closely with the school. Reshaping the statutory assessment and statementing process alone will not improve on the inconsitencies found, and indeed changes could make matters worse. There seems to be a need for ensuring that regulations and guidance are followed in every school.

d) There is a post code lottery as to who gets a statement, depending on where they live. There was widespread concern for Special Educational Needs funding in schools. Annual information and detail of SEN spending of individual schools would need to be published.

e) There is a need to maintain indemendent cources of advice and advocacy. For example, the Flintshire Parent Partnership was praised by those present at the consultation as an independent source of support for parents of children in understanding relevant assessment procedures to ensure they can contribute as an equal partner to the decisions affecting the lives of their children.

5.5 Anonymous evidence of individual cases could be provided on request, on the condition that the client has given consent.

Appendix 1

SOCIAL SECURITY CONTRIBUTIONS AND BENEFITS ACT 1992

Section 73

(3) A person falls within this subsection if–

(a) he is severely mentally impaired; and

(b) he displays severe behavioural problems; and

(c) he satisfies both the conditions mentioned in section 72(1)(b) and (c) above.

SOCIAL SECURITY (DISABILITY LIVING ALLOWANCE) REGULATIONS SI 1991/2890

Regulation 12

(5) A person falls within subsection (3)(a) of section 73 of the Act (severely mentally impaired) if he suffers from a state of arrested development or incomplete physical development of the brain, which results in severe impairment of intelligence and social functioning.