

Implications of the Additional Learning Needs and Education Tribunal (Wales) 2018 Act for Early Years Education and Care practice in Wales.

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Both current societal views and practice related to additional needs in education and care settings are rooted in the changes that were made following the Warnock report of 1978. This report was seminal at the time and fundamental in the switch from a medical model to a social model of disability (Connor, 2016), emphasising entitlement to education in mainstream settings, and putting the onus on settings to adapt. However, over 40 years later, continued research means that views in society and politically have moved on significantly and Dauncey (2018) said that reform of the Additional Learning Needs (ALN) system in Wales was long-overdue. Initially this piece of work will introduce the legislative and political background to the Additional Learning Needs and Education Tribunal (Wales) 2018 Act which will be implemented in September 2021. Then the work will explore some key aspects of the new Act with a consideration of some of the opportunities and challenges of implementing the specific aims in the context of early years education and care.

The United Nations Convention on the Rights of the Child (UNCRC) was drafted in 1989 and adopted by the UK just one year later. Furthermore, the United Nations adopted the United Nations Convention on the Rights of Disabled Persons (UNCRCDP) in 2006 to protect the rights of all disabled persons. Following a referendum in 1997, Wales became a politically devolved nation in 1999. The Government of Wales Act 2006 saw the Welsh Assembly able to create legislation for devolved issues and by 2020 Wales had an officially recognised parliament (Senedd). Being able to create Welsh legislation is significant in the context of children's participation because the Welsh Government has been at the forefront of putting children's rights at the centre of policy making (Welton, Tinney and Saer, 2020). This was evident in the fact they were the first UK nation to appoint a Children's Commissioner and in the introduction of the Early Years Foundation Phase, which emphasised child-led practice in education. Furthermore, all Welsh Government policy related to children and young people is underpinned by the UNCRC and children's rights are enshrined in Welsh law under the Rights of Children and Young Persons (Wales) Measure 2011. A children's rights context is therefore also the backdrop to the new ALN Code in Wales which sets out the way the Additional Learning Needs and Education Tribunal (Wales) 2018 Act will be put into practice and the duties of the various organisations involved in such provision (Welsh Parliament, 2021). The new ALN Code in Wales will replace the current Special Educational Needs (SEN) Code of Practice for Wales 2004 (National Day Nurseries Association (NDNA), 2019) and is the first major overhaul of the system which was developed following the Warnock report of 1978 (Lindsay et al. 2020). From September 2021, the new Code will be gradually phased in, whilst operating in parallel with the current SEN system (Welsh Government, 2021d). The transformation has a rights-based approach, underpinned by UNCRC and UNCRCDP principles (Welsh Government, 2019a). As well as imposing requirements onto local authorities, schools and further education institutions as to what they 'Must, May and Should' do, it describes the functions and processes of the 2018 Act to inform professionals involved in ALN provision (Welsh Government, 2019b). The Additional Learning Needs and Education Tribunal (Wales) 2018 Act has 11 aims including: changes in terminology from SEN to ALN; moving from a Special Education Needs Coordinator (SENCO) to Additional Learning Needs Coordinator (ALNCO) and the development of a unified plan with an Individual Development Plan (IDP) replacing current SEN plans and support; a focus on collaboration with parents and children and an emphasis on providing a bilingual system. It is beyond the remit of this article to explore all 11 aims however they can be explored in more depth in this web site:

<https://gov.wales/sites/default/files/publications/2018-09/additional-learning-needs-aln-transformation-programme-v2.pdf>

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With significant proportions of children in Wales (for example, a quarter of school pupils in West Wales) on the SEN register, with the majority attending mainstream school (ERW, 2018), there will be major implications for practice of the new ALN context in Wales. The article reviews below some of the key areas of change and potential implications for practice related to the key aims of the Additional Learning Needs and Education Tribunal (Wales), in terms of a person-centred approach, IDPs and bilingual provision.

A person-centred approach

Although there have been changes to the SEN system in the UK and Wales, the latest being an updated Code of Practice in 2004, the principles remained largely the same. The views of the child were meant to be sought and considered when providing additional needs support; however, provision was not believed to be sufficiently person-centred according to research commissioned by the Welsh Government (Thomas et al. 2019), and thus the process of transforming the system began. Person-centred practice is a relatively new concept and is being adopted in healthcare, most notably in dementia provision (NICE, 2021), and as part of education reform with the New Curriculum for Wales 2022 (Welsh Government, 2021a). It is recognised that in England “the participation of children, their parents and young people in decision making” is included in the SEND Code of Practice (Department for Education, 2015). Up until the introduction of the new ALN Code, the Welsh SEN Code of Practice stated that the “the views of the child should be sought and taken into account” (Welsh Assembly Government, 2004). Though both Codes of Practice encourage involvement of children and parents/ carers, the language and duties under the new ALN Code are more explicit, and could be reflective of the times in which they were developed. Therefore, these changes to ALN provision can be seen as part of a cultural shift, following devolution in Wales, to the idea of citizenship, belonging and participation, (Wales Institute of Social and Economic Research and Data (WISERD), 2014) and is underpinned by Article 12 of the UNCRC which states that every child has the right to express their views on matters related to them, and that every child should be enabled to participate fully in society. Therefore, in the new ALN Code, there is an emphasis on participation, where the views and involvement of children and their parents are considered during the whole process (Welsh Government, 2021c). For practitioners, this will mean getting to know the child, through close and meaningful observations and working closely with parents and families to gain a deep understanding of the needs and wishes of the child (Lewis, 2021). It will also mean sharing information in an accessible way, raising awareness of their rights and the processes involved for securing appropriate provision whilst encouraging children and families to participate fully in the process (Welsh Government, 2021c).

However, historically provision for children with ALN tended to happen to them, not with them. Teachers and early years setting leaders would prepare a referral to go to panel. Professionals would meet and decide what was best for the child, and then that plan would be implemented by practitioners, therapists or health professionals. Parents may have provided information, but were not necessarily fully consulted or invited to participate in the decision-making process (Welsh Assembly Government, 2010). Children were also not a part of the decision-making process on the support provided for them (Welsh Assembly Government, 2010). Things could look different moving forwards, with the new ALN context highlighting the need for more consultation between parents, children and other professionals, where the child and parent’s expertise of their ALN is recognised alongside other experts outside the family, as set out in the Additional Learning Needs and Education Tribunal (Wales) Act 2018. In practice, this will mean that from the moment ALN is suspected, children themselves and their families will be involved in decisions about what provision is needed in line with Dauncey (2018) who states that they should be involved at every stage of the process. As Robinson (2021) stated in the Children and Covid Conversation Event, despite disagreement about the capability of children to form and express their views, there is an

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obligation to enable them to do so, and that not doing so is a contravention of Article 12 of the UNCRC.

This drive for person-centred practice will affect practitioners in a number of ways. Firstly, it is reliant upon getting to know the child and the family and building up a relationship of trust. However, research by McDermott (2010), suggested that practitioners have little training in building relationships with parents. Furthermore, Cottle (2014) found that although practitioners recognise the importance of good relationships with parents, it is enacted in varying ways and with varying success. Secondly, practitioners will need to be knowledgeable about the new ALN Code, as they may be acting as advocates for children and their families. The Code states the need to ensure that families understand their rights. Dauncey (2018) states, it is up to the local authority to ensure that this information is available, however, for parents and children to access it in a meaningful way, may require practitioners to provide significant support linked to their own knowledge of the child's context. Thirdly, practitioners will need the opportunity to work collaboratively with other organisations involved with the child, so that profiles and plans paint a picture of the whole child and are not only focussed on the ALN or disability. Again, this could be considered as a development of the social model of disability, which the Foundation for People with Learning Disabilities (2021) outline as the view that it is society which disables people.

Individual Development Plans

Those who have an ALN, and enter the system following the introduction of the new ALN Code in September 2021 will have an Individual Development Plan (IDP). Current Individual Education Plan (IEP) or a Statement will need to be converted to an IDP as part of the process of moving from the SEN to ALN system (Welsh Government, 2018). This single, statutory plan is designed to replace all existing plans, leading to greater consistency and continuity (Provision Map, 2019). Responsibility for preparation, implementation and maintenance of an IDP lies with local authorities, schools or further education institutions (SNAP Cymru, 2021). However, the need for collaboration is a key principle, and involves local authorities, governing bodies and health authorities providing information to each other as requested, as confirmed in the Additional Learning Needs and Education Tribunal (Wales) Act 2018. Dauncey (2016) indicates that an integrated and collaborative process, when combined with timely and effective interventions, is designed to lead to better outcomes for children. However, this will involve a new way of organisations and individuals working, which draws on the expertise of all those involved, including the family and the child themselves having a voice (Ainscow, 2020). Whereas previously different sectors working with the child (such as health or education) and children with different levels of need would have had different graduated levels of support or plans, these plans will now all be the same. IDPs will therefore replace statements of SEN and Individual Education Plans (IEPs) which are currently in place. Provision Map (2019) suggest that the idea behind this is that it will provide greater continuity and consistency for the benefit of service users. Some benefits foreseen are that: there will be one document; it will be familiar to all; with the child at the centre. According to the new ALN Code, it will still be the responsibility of schools to produce this document for their pupils, but for pre-school children, the responsibility for preparing, implementing and maintaining the IDP lies with the local authority. This is part of the responsibility of the Early Years Additional Learning Needs Lead Officer (EYALNLO) and may be seen as easing the burden on practitioners; however, practitioners are the ones on the front line who have a detailed understanding of the children in their care. They will be the ones who work with the children day to day and therefore they have unique and in-depth knowledge of the child. They will also be the ones actioning the development plan alongside other professionals and can provide insights that an EYALNLO may not have. Therefore, practitioners will still be responsible for carrying out observations and using either the Foundation Phase Profile in Flying Start settings or Wellcomm in Cylchoedd (Welsh medium playgroups/nurseries) to assess progress against

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developmental norms, and to determine whether there is an ALN. For example, in Ceredigion, mid Wales, as part of the early years ALN toolkit created by the EYALNLO, practitioners are now asked to complete a 1-page profile which feeds into the referral process. It details what is important to the child, what people like and admire about them, and what should be done to support them. Therefore, in this context the IDP is fundamentally a positive document, tied to the social model of disability, highlighting strengths as well as areas where the child needs support. Furthermore, IDPs link with the New Curriculum for Wales 2022, and the idea of individualised development. Therefore, IDPs could be useful for planning provision for all children in the early years, however an emphasis on collaboration (Welsh Government, 2019b) will require early year's practitioners' roles to be acknowledged and supported in developing these plans.

Bilingual provision

Another significant change will be requirement for Additional Learning Provision (ALP) to be offered in Welsh, so far as is reasonably practicable, with a view to this being mandatory in the future. The IDP should be offered through the medium of Welsh as well, for those who require it, so far as is possible (Welsh Government, 2021). This is in line with the Welsh Government's Welsh in Education Action Plan 2017-2021, which has placed requirements on local authorities to put the Welsh language at the forefront of ALN support through from planning to delivery. Although this can be viewed as a positive step in achieving equity for children to receive support in their own language, there is no such equity for those with Welsh / English or both as an additional language. Multilingual children achieve similarly or better than those with only one language, with or without speech and language concern (McLeod et al. 2015). However, practitioners will need to consider whether a child needs differentiated support because they are learning through an additional language or whether they have ALN. To do this, practitioners will need to take a holistic view of performance across the curriculum (Welsh Government, 2021d). The profile of the Welsh language has risen, with the appointment of a Welsh Language Commissioner as part of the Welsh Language (Wales) Measure 2011, and increasing numbers of residents now able to speak Welsh, according to data from the annual population survey (Welsh Government, 2021e). The promotion of the Welsh language is strongly linked to education policy in Wales, and evidenced by various strategies, such as the Welsh in Education Strategic Plans written by local authorities (Welsh Government, 2021b). However, Ware (2019), is calling for more debate around the potential tensions between Welsh Language Strategy and ALN provision, and more research about the impact of immersion methods on progress and inclusion. This could be a potentially contentious issue, but one that needs addressing if the rights of children are to be paramount.

Childcare is in a different position to educational establishments, as these providers may be private businesses, and unless they offer funded education places, they do not have to adhere to local authority language policies and strategies. However, Care Inspectorate Wales do look to whether settings have the Active Offer (CIW, 2017) as part of their consideration of the quality of care provided. According to WISERD (2014) research literature indicates that there are many benefits of bilingualism, cognitively, socially and economically. Therefore, respecting the home language is particularly important in the early years according to Kioko (2015), and where children have an additional need that is linked to language and communication issues it is critical that they have the best opportunity to communicate. When the author worked in a Welsh immersion setting providing one-to-one support for children with additional needs, who had English as a home language, she sought the advice of speech and language therapists. Their policy was to provide activities and support in the home language. However, to avoid removing the child from their peers, the author would often opt to carry out small group activities and strategies based on a child's language development – however if this were not carried out in Welsh, it could be going against the policies of the setting. This issue will persist for practitioners until clear guidance is

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provided and could also be pertinent to the English as an Additional Language context beyond Wales.

There is also the challenge for practitioners of provision for children where both Welsh and English are additional languages. Practitioners will need to identify which is additional provision due to learning an additional language, and which is linked to an ALN. The ALN Code does recognise this, and states the need for holistic views on development, which will tie in with the New Curriculum for Wales 2022 and the idea of a continuum of progress.

Closing thoughts

There are some cross-cutting issues that will impact upon practitioners as they implement the Additional Learning Needs and Education Tribunal (Wales) 2018 Act. Firstly funding; transformations of this scope require additional funding to cover staff training and recruitment to certain roles, for example, the ALNCO, as well as the ongoing costs of increased collaboration, which settings and local authorities may find challenging (National Assembly for Wales, 2017). Welsh Government are investing to implement the Act, with over £20million of transformation funding. However, in addition to funding for training for the initial implementation of the new ALN Code, ongoing funding will be needed to cover the additional staff costs that increased collaboration will require. Practitioner training and continuous professional development will be required in the long term and will thus lead to additional staffing costs for settings and local authorities.

Secondly, partnership working between families and settings is essential for the success of the new system, but is reliant on all parties engaging in the process (SNAP Cymru, 2021). Increased collaboration, will require commitment from all parties, be they practitioners, health professionals, education or early years specialists and families. In relation to families this means increasing awareness and educating people on their rights and responsibilities. Enabling and raising awareness of the new system is a significant and additional expectation on practitioners outlined in the new ALN Code.

Finally, the workforce; NDNA (2019) and Professional Association for Child Care and Early Years (PACEY) (2017) have stated that there is a recruitment crisis in early years care and education. Poor wages and pensions are amongst the reasons for this recruitment crisis (NDNA, 2019; PACEY, 2017). The requirement for Welsh language speakers to support provision could also exacerbate this, as despite the percentage of Welsh speakers rising, only 29.1% of the population speak Welsh (Welsh Government, 2021e). From the perspective of the author's role as a childcare coordinator within the local authority recruitment is a challenge. The sector is losing staff, particularly those who are fluent in Welsh, to schools, and to different sectors such as retail and hospitality. According to the Organisation for Economic Co-operation and Development (OECD) (2019), practitioners' buy-in is key to major transformations, which the new ALN Act will be. Therefore, practitioners need to feel valued and for their professionalism to be recognised. Overall, the new ALN Code is aspirational and signals positive change in provision for those with an Additional Learning Needs, as well as a simplified system to navigate for themselves and their families. However, from a practice perspective, there are a number of changes which will need to be monitored as the rollout progresses over the timeline from the Additional Learning Needs and Education Tribunal (Wales) Act 2018 gaining Royal Assent in 2018, through to the ALN system going live on a three-year phased basis in September 2021. The phased introduction should help to provide continuous feedback on the implementation of the new legislation. However, issues such as staff recruitment may impact upon successful implementation of the aims and ethos of the Code.

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