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Bwrdd Iechyd Prifysgol
Bae Abertawe
Swansea Bay University
Health Board



Meeting Date	29 March 2022	Agenda Item	7.3	
Report Title	The Additional Learning Needs and Education Tribunal (Wales) Act 2018: Introductory Report			
Report Author	Dr Luke Jones, Designated Education Clinical Lead Officer (DECLO)			
Report Sponsor	Christine Morrell, Director of Therapies and Health Sciences			
Presented by	Dr Luke Jones, Designated Education Clinical Lead Officer (DECLO)			
Freedom of Information	Open			
Purpose of the Report	For the purposes of assurance and approval, this paper summarises the key requirements for the Health Board associated with the Additional Learning Needs and Education Tribunal (Wales) Act 2018 (hereafter, the ALN Act); opportunities and risks; progress to date; and next steps to ensure effective implementation of the Act.			
Key Issues	Key points of the paper, how this supports the achievements of the Health Board’s corporate objectives, overview of risk implications. Include the main details on page 2 of the report.			
Specific Action Required <i>(please choose one only)</i>	Information	Discussion	Assurance	Approval
	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Recommendations	Members are asked to: <ul style="list-style-type: none"> • NOTE • RECOMMEND frequency with which the Committee receives update reports regarding the Additional Learning Needs and Education Tribunal (Wales) Act 2018 			

THE ADDITIONAL LEARNING NEEDS AND EDUCATION TRIBUNAL (WALES) ACT 2018: INTRODUCTORY REPORT

1. INTRODUCTION

The purpose of this paper is to introduce Committee members to the ALN Act. The paper focuses on:

- Opportunities this new legislative framework presents to enable better outcomes for children and young people
- Health Board duties under the Act
- Implementation and key activity to date
- Governance, risks and controls
- Next steps to ensure effective delivery

2. BACKGROUND

2.1 Introducing the ALN Act: an opportunity for transformation

The ALN Act replaces an outdated Special Educational Needs (SEN) system that was widely viewed as slow and unresponsive; impenetrable for families; unfair, with statutory protection of provision only for those with the most severe needs; insufficiently focused on what's important to children; poor at resolving disputes early; and placing insufficient duties on Health Boards.

The ALN Act aims to enable whole-system change to transform how the needs of learners with additional learning needs (ALN) aged 0-25 are met, ensuring that they have the best possible access to education and the life chances that this enable.

The Act is grounded in five underpinning principles:

1. A **rights-based approach**, with the views and wishes of the child, their parent or the young person at the centre of the process at all times
2. **Early identification** of needs, **early help**, and the **prevention** of escalation
3. **Collaboration** and a co-ordinated **multi-agency** approach to support learners
4. **Inclusive education**, with most learners helped to fully participate in mainstream education
5. A **bilingual system**, with all reasonable steps to secure provision in Welsh for those who require this

2.2 Health Board duties under the ALN Act

Health Boards are vital partners in supporting this transformation. To support the principle of collaboration, the Act places a number of statutory duties on Health Boards, notably:

- A timely response to Local Authority (LA) **requests for information or help** that LAs need to fulfil their duties under the Act
- A timely response to LA **requests to consider** whether there is any Health Board **treatment or service likely to be of benefit in addressing a child's ALN**, where this is provided as part of normal NHS provision.
 - This provision is termed Additional Learning Provision (ALP), and Health Boards are required to **secure** this where needed
 - All reasonable efforts must be made to secure this provision in **Welsh** where required
- Participation in processes (including meetings) through which person-centred, statutory **Individual Development Plans (IDPs)** to support learners are agreed

- **Notifying** Local Authorities where **suspected ALN** is identified in pre-school-age children
- Appointment of the **Designated Education Clinical Lead Officer (DECLO)**, a co-ordinating and strategic role to ensure that the Health Board meets its duties under the Act and to support collaboration with partners

Health Boards also have a strategically vital, though *non*-statutory, role in working collaboratively with Education to support a transformation in inclusive practice within Education whereby more learners' needs can be met through high-quality universal provision. This is truly preventative work, necessary to meet needs at an early and emerging stage, preventing the escalation and 'race' to secure statements that was widely viewed as being endemic within the SEN framework. However, as this is not a statutory duty, there are risks of an insufficient focus in this area, which could lead to many of the challenges of the 'old' system being repeated in the 'new' system

2.3 Implementation and key activity to date

The ALN Act became lawful in September 2021, with implementation phased over a three-year period. At present, the ALN system applied only to learners with newly-identified needs and those with non-statutory Individual Education Plans in specified year groups. For detailed information, see [Implementing the Additional Learning Needs and Education Tribunal \(Wales\) Act 2018: practitioner guide \[HTML\] | GOV.WALES](#). Information regarding the implementation 'timetable' from September 2023 period is expected imminently from Welsh Government.

In line with the phased approach to implementation, much of the Health Board's activity to date has been around ensuring preparedness. This includes:

- Appointment to the post of DECLO
- Implementing a comprehensive programme of training for Health Board staff from impacted operational services
- Developing a suite of training resources to support inclusive Education provision
- Establishing mechanisms for monitoring activity regarding Welsh Language requirements
- Awareness raising regarding Putting Things Right and establishing mechanisms to enable early resolution of concerns
- Work to develop a clear interpretation of the Act and its implications for the Health Board (this has presented significant challenges caused by ambiguities in the legislation)
- Work currently underway with Local Authority partners to ensure that our response to the Act is grounded in a shared vision and roadmap for transformation, and principles through which partners will collaborate

While the Act has been formally 'live' from September 2021, implementation arrangements mean that initial levels of statutory demand have been relatively low, though these (and associated demands on operational services) will increase significantly over the next period. To date:

- 137 requests for information or help have been received by individual services, for 46 children in total (information or help is typically required for more than one service per child). Responses have been completed by the

Health Board within the statutory six-week timescale for 58 requests, while for 46 the request has breached the statutory timescale or has not yet been responded to but the statutory timescale has already been breached. A number of requests are 'open' but not overdue.

- 62 requests for consideration for a relevant treatment or service have been received, for 36 children in total. Responses have been within the statutory 6-week timescale for 17 requests, with 32 either breaching the statutory timescale or not responded to but overdue.

The early performance challenges that this data shows in part reflects new operational processes being embedded. This data also (and to a greater degree) demonstrates the significant demand / capacity pressures already being experienced by ALN- impacted services which are working to address waiting time challenges and to produce cost improvement plans while facing new and additional statutory demands under the ALN Act.

3. GOVERNANCE AND RISK ISSUES

Much ALN Act preparedness work to date has been progressed on a regional basis, with Swansea Bay University Health Board working collaboratively with the Health Boards of Powys and Hywel Dda through a Regional Operational Group. The DECLO was appointed to cover the three Health Boards. However, as responsibility for the delivery of the ALN Act rests with individual Health Boards, and in order to ensure a co-ordinated Health Board approach that is 'owned' at a senior strategic level within all impacted Service Groups and corporate areas, it has been agreed that Health Boards will establish separate ALN Steering Groups.

The Swansea Bay ALN Steering Group met for the first time in March 2022, with terms of reference for this group and an ALN Operational Group operating under the governance of the Steering Group that are in finalisation (draft terms of reference are at Appendix I). The ALN Steering Group will report to the Quality and Assurance Committee with a frequency to be determined by the Committee. The ALN Operational Group is being finalised and the group's first task will be to formulate a detailed work plan for the 2022/23 period, for approval and oversight by the Steering Group.

Key risks for the Health Board presented by the ALN Act relate to breaches in the Health Board's statutory duties and the risk of legal challenge through Education Tribunal or Judicial Review. These risks are reflected in the Health Board Risk Register.

The key cause of the risk of breaches of statutory duties is the new demands that the Act imposes on Health Boards, with the operational areas most impacted being within the Primary, Community Services and Therapies Service Group. The precise demand / capacity implications of the Act have been extremely challenging to formulate, though we are now at a point in time where this work needs to be progressed with some urgency, taking a phased approach. The Health Board IMTP includes reference to a pending business case to meet these additional capacity requirements, which will be progressed as part of the work plan for the ALN Operational Group.

Regarding legal challenge, the ALN Act is a new and untested legislative framework, the writing of which offers considerable latitude for interpretation, in a highly emotive and frequently contested area. As such, the likelihood of legal challenge is high, especially if the Health Board struggles to manage the demand / capacity implications of the Act.

Risks will be exacerbated if the Health Board fails to work collaboratively with its partner Local Authorities. Building on positive relationships at the practice level, strategic work referenced in section 2.3 to develop a shared vision, roadmap and principles for the ALN transformation programme will be vital to mitigating this risk and supporting collaboration.

4. FINANCIAL IMPLICATIONS

The ALN Act was established by Welsh Government as being 'cost neutral' beyond some additional funding to support a transition period that has now passed. This notion of cost neutrality is increasingly being challenged for reasons including emerging clarity regarding:

- the operational processes required to effectively and collaboratively discharge functions under the Act;
- what aspects of Health provision will be statutory provision (additional learning provision / ALP) under the Act;
- the number of children and young people who will initially have statutory plans under the ALN systems, which is anticipated to be close to one-quarter or all learners. This is a very significant increase over the proportion of learners with statutory plans under SEN (typically 2-3%) and also an increase on what had initially been anticipated;
- significant ongoing preparation work that is required to support the phased implementation plan, including for post-compulsory education;
- potential for costly legal challenge

Once Welsh Government has provided updated information guidance, a business case for the additional resource required to enable the Health Board to safely discharge its functions under the Act will be developed as a matter of priority. This business case will be produced and agreed through the ALN Steering Group.

5. RECOMMENDATION

- For noting, and for the Committee to determine frequency with which it receives update reports regarding the Additional Learning Needs and Education Tribunal (Wales) Act 2018

Governance and Assurance		
Link to Enabling Objectives <i>(please choose)</i>	Supporting better health and wellbeing by actively promoting and empowering people to live well in resilient communities	
	Partnerships for Improving Health and Wellbeing	<input checked="" type="checkbox"/>
	Co-Production and Health Literacy	<input checked="" type="checkbox"/>
	Digitally Enabled Health and Wellbeing	<input type="checkbox"/>
	Deliver better care through excellent health and care services achieving the outcomes that matter most to people	
	Best Value Outcomes and High Quality Care	<input checked="" type="checkbox"/>
	Partnerships for Care	<input checked="" type="checkbox"/>
	Excellent Staff	<input checked="" type="checkbox"/>
	Digitally Enabled Care	<input type="checkbox"/>
	Outstanding Research, Innovation, Education and Learning	<input type="checkbox"/>
Health and Care Standards		
<i>(please choose)</i>	Staying Healthy	<input checked="" type="checkbox"/>
	Safe Care	<input checked="" type="checkbox"/>
	Effective Care	<input checked="" type="checkbox"/>
	Dignified Care	<input checked="" type="checkbox"/>
	Timely Care	<input checked="" type="checkbox"/>
	Individual Care	<input checked="" type="checkbox"/>
	Staff and Resources	<input checked="" type="checkbox"/>
Quality, Safety and Patient Experience		
Effective implementation of the ALN Act between the Health Board and its Local Authority partners has the potential to deliver significantly better outcomes and experience for some of our most complex and vulnerable children and to enable the needs of children with additional needs to be met in a timely and proactive way, preventing avoidable escalation.		
Financial Implications		
<p>The ALN Act was established by Welsh Government as being 'cost neutral' beyond some additional funding to support a transition period that has now passed. This notion of cost neutrality is increasingly being challenged as the implications of the Act become clearer.</p> <p>Once Welsh Government has provided updated information guidance, a business case for the additional resource required to enable the Health Board to safely discharge its functions under the Act will be developed as a matter of priority. This business case will be produced and agreed through the ALN Steering Group prior to formal submission.</p>		
Legal Implications (including equality and diversity assessment)		
The ALN Act is a legislative framework imposing a number of statutory duties on the Health Board. The Health Board's response to the requirements of the ALN Act may be subject to appeal to Educational Tribunal or Judicial Review. This is a new and untested legislative framework, the writing of which offers considerable latitude for interpretation, in a highly emotive and frequently contested area. As such, the likelihood of legal challenge is high.		
Staffing Implications		
Meeting the statutory requirements of the Act in a way that supports effective multi-agency collaboration and that mitigates legal risks (see section 3) will present additional infrastructure requirements and demand / capacity implications for		

impacted operational services, especially within the Primary, Community Services and Therapies Service Group.

Long Term Implications (including the impact of the Well-being of Future Generations (Wales) Act 2015)

The Well-being of Future Generations Act's 5 ways of working align closely with the general principles underpinning the ALN Act:

- **Long Term** – facilitating access to an effective education and promoting independence for some of our most vulnerable groups will maximise the life chances of these individuals, having considerable long-term implications.
- **Prevention** – the early identification of additional learning needs and effective early help to prevent the escalation of needs is at the heart of the ALN Act
- **Integration and Collaboration** – collaboration between Health Boards and Local Authorities is a key principle underpinning the Act. There is a local commitment to services working seamlessly to get it right for vulnerable children and young people: 'one child, one service, one life'
- **Involvement** – Person-centered practice with the voice of the child at the heart of decision-making, both at a practice and a strategic level, is another key principle underpinning the ALN Act.

Report History

This is the first report on the ALN Act to the Quality and Safety Committee. It was scheduled for a previous meeting but needed to be moved.

A report on the ALN Act was provided to Management Board in August 2021. Plans for ongoing governance for ALN to be through the Quality and Safety Committee were approved at this meeting.

Appendices

Appendix I: Draft Terms of Reference for SBUHB ALN Steering Group and Operational Group

Terms of Reference – ALN Steering Group

ALN Steering Group		
Purpose	<ul style="list-style-type: none"> The ALN Steering Group exists to provide oversight, support and direction around the activity required to enable the Health Board to meet the requirements of the Additional Learning Needs and Education Tribunal Wales Act 2018 (ALN Act) The Group will ensure ownership at senior level from operational and corporate areas who are impacted by the ALN Act of the Health Board's strategic approach and detailed plans relating to the ALN Act The group will ensure a clear and co-ordinated strategic approach across all impacted Service Groups and corporate areas to how the Health Board works through the ALN Act The group will be a single point for accountability for activity under the ALN Act and will provide assurance to the Executive Board via the Quality and Safety Committee 	
Responsibilities & Duties	<ul style="list-style-type: none"> The Steering Group will oversee and approve plans relating to the ALN Act and will ensure that the right resources are in place (including operational staff) to support the delivery of plans <ul style="list-style-type: none"> These operational staff will work through an ALN Operational Group, with membership to be agreed by the Steering Group The operational Group's plans and progress will be reported to the ALN Steering Group for assurance The Steering Group will act as a point of escalation for risks and will monitor and appropriately escalate risks relating to ALN Where additional resource is required to meet the requirements of the ALN Act, any business case will be needed to be considered and supported by the Steering Group before being taken through the Health Board's business case process. 	
Membership (Deputy)	Assistant Director of Therapies	Head of Strategic Planning, Strategy
	Group Director, Primary Community and Therapies Service Group (Head of Speech and Language Therapy)	Acting Director of Corporate Governance
	Divisional Manager, Learning Disabilities, Mental Health and Learning Disabilities Service Group	Executive Director of Nursing
	Designated Education Clinical Lead Officer (DECCLO)	
	Head of Nursing, Children's Services, Singleton Neath Port Talbot Delivery Group	
	Senior Nurse Manager, CAMHS	
Standing Items	<ol style="list-style-type: none"> Action log review Operational Group update Deep dive into challenges from item 2 Key risks and issues for escalation 	Reporting <ul style="list-style-type: none"> Inputs: Highlight reports from operational group, Update on ALN activity and performance Outputs: Minutes and actions, Assurance Report/Update to Quality and Safety Committee
Meetings, Quorum & Support Arrangements	<ul style="list-style-type: none"> Meetings will take place on a bi-monthly basis, with interim touch points as necessary (by email where possible and by additional meeting where required) Meetings will be quorate with a chair and three other members Any papers to be considered will be shared at least 5 days in advance of the meeting. 	

Terms of Reference – ALN Operational Group

ALN Operational Group		
Purpose	<ul style="list-style-type: none"> Sitting under the governance of the ALN Steering Group, the ALN Operational Group exists to develop and ensure the effective implementation of operational plans required to enable the Health Board to meet the requirements of the Additional Learning Needs and Education Tribunal Wales Act 2018 (ALN Act) The group will ensure ownership of the ALN agenda by all operational and corporate areas impacted by the ALN Act, and that these service areas have plans and processes in place to meet its requirements 	
Responsibilities & Duties	<ul style="list-style-type: none"> The ALN Operational Group will develop, and ensure the delivery of, plans to enable the Health Board to meet the requirements of the ALN Act <ul style="list-style-type: none"> Plans will need to be approved by the ALN Steering Group The Operational Group's Chair will provide the ALN Steering Group with assurance regarding the delivery of plans via a highlight report and escalate any challenges Designated leads for elements of the plan will ensure progress for their area/s of the plan, updating the Operational Group regarding progress and sharing challenges for problem-solving. <ul style="list-style-type: none"> Challenges that cannot be resolved by the Operational Group will be escalated to the ALN Steering Group. 	
Membership	The ALN Operational will have a 'core' membership and a 'pull' membership. 'Core' members are expected to attend all meetings, or to nominate an appropriate deputy where unable to attend. 'Pull' members will not be expected to attend all meetings but will be 'pulled in' by the Chair as necessary and where directly relevant to the meeting agenda. Other colleagues may also be invited to attend meetings by the Chair as necessary	
	Designated Education Clinical Lead Officer (Chair)	Learning Disabilities rep
	Head of Paediatric Speech and Language Therapy (Clinical Lead for Integrated SLT Services)	Adult Mental health rep
	Head of Paediatric Occupational Therapy	CAMHS rep
	Strategic Lead for Physiotherapy	Adult scheduled care rep (?)
	Head of Paediatric Dietetics	Child psychology rep
	Community Paediatrics rep/s	Planning rep
	Paediatric Nursing rep/s (school and community nursing)	Health Visiting rep
	Head of Paediatric Audiology	ND rep
Standing Items	<ol style="list-style-type: none"> Action log review Update from designated leads for planning areas Deep dive into challenges from item 2 Key risks and issues for escalation 	Reporting <ul style="list-style-type: none"> Inputs: Highlight reports from designated leads from operational group, Update on ALN activity and performance Outputs: Minutes and actions, Assurance Report/Update to Quality and Safety Committee
Meetings, Quorum & Support Arrangements	<ul style="list-style-type: none"> Meetings will take place on a monthly basis Meetings will be quorate with the chair and half of the 'core' membership in attendance Any papers to be considered will be shared at least 5 days in advance of the meeting. Administrative support will be through the Therapies and Health Science business support 	