



## Consultation on the Education (Wales) Bill

### NDCS Cymru and RNIB Cymru Response (with additional endorsement from SENSE Cymru)

September 2013



#### About Us

The National Deaf Children's Society (NDCS) Cymru is the national charity dedicated to creating a world without barriers for deaf children and young people.

We support and represent the interests of deaf children and young people from birth through to independence.

RNIB Cymru works with the 1300 blind and partially sighted children and young people within the school system in Wales, with the aim of raising their levels of attainment and creating a world where barriers to success are removed.

#### Endorsement



Please note that this response has also been read and endorsed by **SENSE Cymru**

#### Response

NDCS Cymru and RNIB Cymru are pleased to have been invited to respond to the Children and Young People Committee consultation on the Education (Wales) Bill.

In particular, we would like to take this opportunity to welcome the extension of the right to appeal to SENTW on decisions around support for learners with ALN in a post-16 context. This is a welcome development towards improving equality of opportunity for vulnerable groups of learners. However, as identified within this response, there are aspects of the Bill on which we would welcome further reassurances and/or information in order to feel confident that the new systems and structures will be effective for deaf and disabled learners in Wales.

## **Education Workforce**

NDCS and RNIB Cymru note that the Bill will require school and FE learning support workers to register with the reformed Education Workforce Council. We also note that the Education Workforce Council will have a role to play in the improvement of standards of teaching in Wales and in promoting training and continuing professional development.

NDCS Cymru has concerns about the availability and skillset of specialist staff to support deaf pupils across Wales. In particular, we are concerned that there is a lack of Communication Support Workers across the principality and a difficulty in recruiting Communication Support Workers who have the appropriate skill set to support learners who use BSL. Likewise, RNIB Cymru have similar concerns regarding the skill set of specialist staff to support learners using Braille and large print, and the lack of support for independent living and travel skills.

The Welsh Government has recently agreed to review the availability of specialist support staff for pupils with sensory impairment as part of its wider workforce planning exercise, which both NDCS Cymru and RNIB Cymru welcomes. Following this exercise, we would recommend that the Education Workforce Council plays a role in helping to maintain up-to-date information on the availability and skill set of support workers for deaf pupils. We would also suggest that the Council could help to promote and encourage crucial professional development among this group.

Welsh Government Statistics demonstrate significant attainment gaps between deaf pupils and their peers at every Key Stage. We consider that the reformed Education Workforce Council could help to improve standards of teaching for this particularly vulnerable group of learners by encouraging school staff to develop a career in supporting deaf pupils, and helping to raise deaf awareness generally among school staff. We would also be keen to work with the Welsh Government and the Education Workforce Council towards establishing minimum standards for those employed to support deaf pupils. RNIB Cymru appreciates that the gap between learners with visual impairment and non-disabled learners is narrower, however, we would also be keen to see minimum standards established.

## **Reform of the registration and approval of independent schools in respect of special educational needs**

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NDCS Cymru understands the reasoning behind the proposal to reform the registration and approval of independent schools in respect of special education needs. However, we are anxious that the section 160 application does not include the same level of information required under a current section 347 application. In particular, the section 347 application requires consideration of the qualifications of teachers employed to support pupils with a hearing impairment, visual impairment or a multi-sensory impairment (see *The Education (SEN) (Approval of Independent Schools) Regulations 1994, Schedule 1 parts 2 - 4.*) NDCS Cymru would urge that, in moving to a single system for registering and approving independent schools, the section 160 application is amended to include more detail on the specific provision provided to pupils with SEN, including those with a sensory loss.

In addition, we note that, under a section 160 application, an independent school receives an annual visit from Estyn. We would suggest that this annual visit includes specific reference to the school's continued ability to meet the needs of pupils with special educational needs.

RNIB Cymru endorses both these proposals.

### **Responsibility for assessing the need for and arranging specialist post-16 education for learners with learning difficulties and/or disabilities**

NDCS Cymru and RNIB Cymru appreciate that there are difficulties within the current system for assessing the needs of post-16 learners with ALN and arranging their support. Many deaf learners will require support in order to reach their full potential and to access FE courses and some may require a placement at a specialist deaf college. As such, we are keen to ensure that any changes to the existing systems and structures result in improvements for post-16 learners with ALN. With this in mind, there are a number of points on which NDCS Cymru and RNIB Cymru would welcome further information and reassurances:

- The legislation states that local authorities will have a mandatory duty to assess post-16 education and training needs where the learner has a statement of special educational needs. However, at present, there are some local authorities in Wales which have a policy of “de-statementing”. As a result, many deaf children and young people across the country who would be eligible for a statement of educational need are, in reality, on school action or school action plus. Furthermore, as local authorities are trialling the proposed new support plan under the ongoing ALN reforms, other children in Wales currently have an IDP as opposed to a Statement. NDCS Cymru and RNIB Cymru are concerned about, and seek reassurance on behalf of, those learners who are eligible for a statement but do not have one.

- Whilst the Explanatory Memorandum refers to assessing the needs of learners with “learning difficulties **and/or disabilities**,” the draft legislation only refers to “learning difficulties.” NDCS Cymru and RNIB Cymru seek assurances that the Bill will cover children with disabilities or that the meaning of “learning difficulties” within this legislation is the same as that within the Learning and Skills Act 2000.<sup>1</sup> Indeed some disabled learners, including deaf young people may not have a learning disability but could have access requirements in relation to their disability. For example, a deaf learner may require a sign language interpreter or a note-taker in order to access lessons. It is essential that this group of learners are acknowledged within the legislative framework.
- NDCS Cymru and RNIB Cymru also have reservations regarding pupils who are deaf or sight impaired who may currently only be on school action/school action plus. These young people may only require small measures in order to access lessons at school. For example, an IEP could refer to the need for teachers to have a basic level of deaf awareness to aid communication and lip-reading for the pupil. However, it is important that upon moving onto FE, the needs of these young people are still assessed and appropriately met. For example, it could be important to ensure that college lecturers have a basic level of deaf awareness to aid communication. It may also be necessary, given the more formal lecturing style of classes at FE level for the learner to access a note-taker due to the difficulty of simultaneously lip-reading and writing notes. A learner with visual impairment will also have specific access needs around teaching and learning styles and access to information. NDCS Cymru and RNIB Cymru would welcome further consideration of how local authorities could be encouraged to assess the needs of these groups of learners.
- NDCS Cymru is disappointed that local authorities will only have a discretionary duty to conduct assessments for learners under 25 who are returning to education and, as such, their previous statement has ceased. It is equally important that these learners are able to access the support they need to continue their education, but NDCS Cymru is concerned that the discretionary nature of the duty will mean that the needs of these learners are not prioritised. Even if a learner in this situation were to appeal a decision not to provide an assessment of need, NDCS Cymru is concerned that the

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<sup>1</sup> See Learning and Skills Act 2000, 13(5) “A person has a learning difficulty if – a) he has a significantly greater difficulty in learning than the majority of persons his age, or b) he has a disability which either prevents or hinders him from making use of facilities of a kind generally provided by institutions providing post-16 education or training.”

underlying legislation of a discretionary duty would mean that ultimately, a local authority would not have to provide an assessment in this case. NDCS Cymru seeks assurances that the wording of the draft legislation will be reconsidered to avoid this potential difficulty. These concerns are endorsed by RNIB Cymru.

- NDCS Cymru and RNIB Cymru are very disappointed that section 40C(4) implies that local authorities will not be accountable for providing transport costs to or from a specialist placement at an FEI. In some cases, local FE provision will not be accessible or suitable for a post-16 learner with ALN and a suitable specialist placement may be some distance from the area in which the young person is normally resident. Indeed, there are no specialist deaf colleges - or colleges catering specifically to the needs of learners with visual impairment - in Wales so learners requiring this specialist provision cross the border into England. NDCS Cymru and RNIB Cymru are concerned that some families may face barriers in accessing such provision if they are unable to secure financial support for travel costs.
- NDCS Cymru and RNIB Cymru would welcome further clarification on how the Welsh Government will determine the amount of funding to be provided to each local authority for specialist FE placements. Indeed, the numbers of learners requiring such specialist placements are likely to fluctuate year on year.
- NDCS Cymru and RNIB Cymru believe that national regulations on the way in which the assessment of needs is carried out and the information that is included in a subsequent report, will be crucial to ensuring that the new system is effective and transparent. Such regulations would also ensure that learners across Wales have equitable rights and would assist with providing legal clarity where an appeal is made. Given the fundamental importance of such regulations, we seek assurances that these regulations will be **statutory**. NDCS Cymru and RNIB Cymru are concerned that non-statutory guidance would not provide the same underlying support and transparency for the new system. We would also like to take this opportunity to urge that interested stakeholders, such as ourselves, are consulted on the development of such regulations. In addition to the points outlined within the draft Bill, we would urge that the regulations include:
  - Minimum timeframes for making an assessment and providing a report. This will help to safeguard against students receiving late decisions on specialist placements, which can then have an effect on their ability to apply for an alternative course or to appeal the decision.

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- Templates of the information that local authorities should provide to students. For example, information on how students can request an assessment, access dispute resolution, lodge an appeal, as well as the core information that should be provided to students when a local authority decides not to outline a specialist placement or support.
  - The core information that FEIs and local authorities should consider within the assessment of need and resulting support plan.
- NDCS Cymru and RNIB Cymru seek clarification on how these reforms will work in conjunction with two other ongoing policy developments.

Firstly, NDCS Cymru and RNIB Cymru are aware that the Welsh Government intends to devolve funding for post-16 students with ALN who require a specialist placement to local authorities and funding for post-16 students who require support on a mainstream course directly to FEIs. Both organisations are concerned that this will leave local authorities, in the role of assessor of need, with a bias incentive towards supporting learners with ALN within a mainstream FEI placement. NDCS Cymru and RNIB Cymru acknowledge that the new right of appeal and the measures around independent dispute resolution will act as safeguards to some extent, but believes that further measures are needed to safeguard against this risk. For example, we would suggest that data be collated on the number of specialist placements that local authorities approve, the progress levels of post-16 learners with ALN, and details of disputes with local authorities. In addition, we would urge that Estyn inspections of local authorities are reviewed to take account of the new duties placed upon local authorities within this Bill and how local authorities can be held to account in these areas.

It is also unclear how FEIs, as holders of the purse strings for supporting learners with ALN in a mainstream setting will be held accountable to the provision outlined within a local authority's assessment. NDCS Cymru and RNIB Cymru require reassurances in this regard.

We very much welcome the proposals in the Education (Wales) Bill to improve the rights of appeal for post-16 learners and feel that these rights are necessary in light of the devolution of funding to local authorities. However, we would welcome clarification around how this legislation will work in conjunction with the planned ALN reforms, which includes the replacement of a statement with an IDP for young people aged 0-25. At present the proposals we have seen around the wider ALN reforms have focused largely on how the new system would operate within a school context as opposed to a post-16 context.



## **Dispute Resolution and Appeals regarding support for post-16 learners with ALN**

The principle within this Bill of extending the right of appeal to post-16 learners is to be welcomed both as a right that will generally enhance equality for learners with ALN and as one way of holding local authorities to account on their new responsibilities. In particular, NDCS Cymru and RNIB Cymru welcome the fact that there will be a right of appeal both on the content of an assessment and on a refusal to provide an assessment. It is crucial that both of these rights of appeal are in place to ensure that the system is robust.

We also believe it is important to have systems and structures in place for dispute resolution and appeals as a way of encouraging compliance with regulations/the code of practice.

NDCS Cymru and RNIB Cymru are pleased to note that independent persons must be appointed to facilitate disagreement resolution. However, it is imperative that all relevant persons are aware of these services and of their rights to appeal. The current wording within the legislation could mean that informing people of their right to appeal is left to the discretion of local authorities. We recommend that local authorities have a statutory duty to inform *all* persons requesting or receiving a post-16 assessment should of disagreement resolution services and of their right to appeal. We would also suggest that regulations include templates of the information to be provided to post-16 learners with ALN on these services to ensure that learners across Wales are provided with clear information on their rights.

NDCS Cymru and RNIB Cymru are disappointed that section 40G (4)(b) of the draft Bill states that learners will need to wait six months before lodging an appeal on the basis of a local authority failing to provide a decision on whether or not an assessment will be conducted. We would urge that statutory timeframes should be in place for the new assessment process and would sincerely hope that local authorities would be required to make a decision within a shorter time scale than six months. Indeed, if learners are left waiting for such a long period of time, any disputes in relation to a subsequent assessment of need could then have an impact on their ability to secure support in time for the start of their FE course. It is also worth noting that local authorities currently have a duty to respond to a request for a statutory Assessment within six weeks.

Both NDCS Cymru and RNIB Cymru welcome the call for independent advocacy support for young people wishing to lodge an appeal or to use dispute resolution services. We would welcome the opportunity to be involved in further discussions around this support and the relevant regulations.

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