

RightsNOT

Consultation ALN – LCO

Q1 Would the terms of the provisional 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?

Response:

We do not know what the 'policy agenda for additional learning needs' is. None of the parents we have contacted recall seeing a document with this title and our searches have not identified one. None of the parents contacted knew the reasons for, nor the significance of, the change of wording from 'special educational needs' to 'additional learning needs'.

If the 'policy agenda' is documented, and surely it should be, we would like to see a copy please. In particular, we would like to know which 'persons' are included in the agenda and therefore, we assume, will be included in future changes in law by the National Assembly for Wales.

Until we have this information we are unable to respond to this question but, hopefully, some of our comments in response to the other questions may have some relevance to this question?

Q2 Is it appropriate for the proposed Order to cover all persons? If not, how should the proposed Order be re-drafted and why?

Response:

The parents we have asked all thought that the wording of this question is odd. It seems obvious that the wording of the proposed Order should not cover 'all persons' (ie:everyone in Wales), but that it should cover all those persons who the National Assembly for Wales might wish to include in future Measures relevant to 'additional needs'.

Because we do not know the 'agenda' we do not know who the National Assembly do intend should be included. This we would like to know.

The proposed Order refers to 'persons who have a greater difficulty in learning than the majority of persons of the same age as those persons'.

Most of the parents we have spoken to welcome the change from 'child / children' to 'person / persons'.

Apart from this the definition seems very similar to that in current law, both embodying the concepts of 'greater difficulty' and 'majority of'. Parents are not clear what is meant by either concept nor about who will make decisions. Parents are concerned that these decisions should not be left to Local Authorities, which will probably result in 22 different interpretations, but that this might be a consequence of the proposed wording for the Order.

Questions asked include:

'Greater difficulty in learning' what? How much difficulty is 'greater'?

What is 'the majority'? Is it 51%? If so, is it the top or middle 51%?

Some parents report being told, at pre-consultation meetings regarding possible future Measures, that the proposals would apply to "the bottom 2%" and that "all others will be provided for by schools". Presumably, the National Assembly for Wales will wish to include the '100%' in future Measures, but this takes us back to the question 'who will the 100% be?

We understand that these issues might be addressed in Measures to be made, but parents are very concerned that the proposed wording of the Order may not include 'all persons' who the National Assembly might wish to include in its Measures (ie that the wording is too narrow). Parents are also concerned that if the proposed wording (definition) is included in the Order made then LEA's might be able to exclude from their provisions groups who the National Assembly intended to include because LEA's will be able to determine who comes within this narrow definition.

Most (80%+) of the parents we have spoken to have children / young people who come within the existing definition of 'special educational needs'. Most of these parents, and all of the parents whose children do not come within the definition of 'sen', feel that the widest range of 'additional needs' should be included in the law making competence of the National Assembly. There is wide spread concern that this might not be the case under the terms of the proposed Order.

We know that the law in Scotland includes a very different definition and that it refers to 'additional support needs' rather than the 'additional learning needs' proposed for Wales. Namely:
"A child or young person has additional support needs for the purposes of this Act where, for whatever reason, the child or young person is, or is likely to be, unable without the provision of additional support to benefit from school education provided or to be provided" and
"the reference to school education includes, in particular, such education directed to the development of the personality, talents, and mental and physical abilities of the child or young person to their fullest potential". **Education (Additional Support for Learning)(Scotland) Act 2004.**

We understand that this definition allows the Parliament for Scotland to make laws for children or young people who have a very wide range of 'additional support needs', which might include for example (for 'children' please read 'children and young people'):

cared for children / children in care	children who are ill
children who are carers	children who are bereaved
children who are bullied	children who are not able to attend school
children whose parents are addicted	children whose first language is not English
children not achieving their full potential	

Parents are concerned that the National Assembly for Wales should have the power to make laws for such wide ranging groups and that the proposed wording for the Order might not allow this. We feel that the Committee should consider rewording of the proposed Order in wording which is the same as, or similar to, that used in Scotland.

Q3 Is the definition of disability in the proposed Order appropriate? If not, how should the proposed definition be redrafted and why?

Response:

Almost all of the parents we have spoken with are not happy that 'persons who have a disability' should be defined, in the proposed Order, as 'has a physical or mental impairment'.

Apart from seeming dated and politically incorrect, the definition seems to be very narrow and potentially restrictive or even exclusive. Parents have reported to us experiences of being told that their children do not qualify for additional provisions because they do not meet criteria based on similar wording.

Use of 'has' is likely to exclude the undiagnosed. We have responses from parents saying that LEA's and/or schools have refused provision, or even action, when they (the parents) knew that there was a problem which was subsequently confirmed by diagnosis, but by which time there had been a delay in making provision which made the 'problems' even greater. Inclusion of 'has' will be inconsistent with the delivery of 'early intervention' which is so important.

Specific reference to 'physical or mental impairment' might well, in practice if not in intent, exclude from additional support persons who have no physical impairment, whose cognitive ability might not amount to a 'mental impairment' (and might be average or better), but who have, for example:

- sensory disorders or difficulties
- language or communication disorders or difficulties
- motor disorders or difficulties
- social communication / social interaction disorders or difficulties
- attention / concentration disorders or difficulties.

The parents we have spoken with feel very strongly that the proposed definition of disability is unacceptable and that the National Assembly for Wales should reconsider this with a view to a much broader and inclusive definition.

Q4 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?

Response:


None of the parents who we have consulted feel that the wording of the proposed Order is appropriate. All felt that it is too narrow.

We are at an early stage of exchanging information with parents in Scotland. Indications are that 'all is not rosy' for children and young people who have 'additional support needs' in Scotland and this we hope to explore. However, the information we have so far includes a strong agreement that the Parliament for Scotland does have the power to make laws for all who may need 'additional support'.

Some parents report being told by their Assembly Members that the National Assembly for Wales was 'aware of the situation in Scotland', was 'following the example of Scotland' or 'using Scotland as a model'. If this is the case we do not understand why the proposed wording of the Order is so different from the wording of the Act for Scotland.

We ask the Committee to reconsider the wording of the proposed Legislative Competence Order and that the Committee should consider:

- 1 use of 'additional support needs' rather than 'additional learning needs'.
- 2 adopting the wording that applies in Scotland, or similar wording
- 3 the need to consult meaningfully with those who might be affected by the proposed new law making competence of the National Assembly.



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