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Dear Ms Hatton

RNID Cymru is pleased to have the opportunity to respond to this consultation exercise on the Legislative Competence Order on Additional Educational Needs.

RNID Cymru is the charity working to change the world for the 480,000 deaf and hard of hearing people in Wales. We do this by giving advice, information and providing services to improve the lives of deaf and hard of hearing people. We also conduct research and run campaigns to understand and change people's attitudes to deafness. And we work in partnership with others for the benefit of people who are deaf and hard of hearing.

Some useful background facts:

- An estimated 1 in 1,000 children are born deaf (i.e. with a level of permanent deafness severe enough to make a difference to the process of spoken language development normally observed in hearing children).
- An additional 50-90% of the population of deaf children develop hearing loss by the age of 9 (which raises incidence to ≥ 1.65 per 1,000 live births) (Fortum et al, BMJ September 2001).
- Roughly 17,000 children aged 0-16 across the UK have a permanent hearing loss > 40 dBHL (IHR MRC Study 2001) (UK birth cohorts 1980-1995).
- About 35% of deaf children have an additional, compounding learning difficulty or sensory impairment, the incidence of severe, profound and complex difficulties is rising, in part because of the increased survival of premature babies.

Our response to the consultation exercise follows the structure set out in the document. But before moving on to consider the individual questions posed, we would like to state two things:

- **RNID Cymru is fully supportive of devolution and believes the prospect of devolving Additional Educational Needs to Wales will be beneficial as decisions taken at a more decentralised level in general are more responsive and appropriate to need.**
- **RNID Cymru is happy to present oral evidence to the Committee on any aspect of the evidence which we are presenting.**

Q1. 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?

We believe that the terms of the proposed Order are appropriately broad to facilitate an active policy agenda on additional learning needs. The scope of the Order would allow a range of Measures to be brought forward that could improve radically the lives of many of the most vulnerable young people in our education system.

This question invites comment on “the policy agenda on additional learning needs”. An Explanatory Memorandum produced to aid the interpretation of this specific LCO indicates a range of issues which could be addressed by Assembly Measures following on from this LCO. This is helpful as a pointer to purpose and application.

RNID Cymru believes that amongst the Assembly Measures that could and should arise from this LCO would be Measures to address Statementing and Specialist Schools.

Statementing:

We agree with the Explanatory Memorandum’s reflection that “the formal system of statementing is highly prescriptive” and that the Assembly should accrue powers “to make fundamental changes to the structure of the statementing process.” RNID concurs with the views of the Special Educational Consortium (SEC)ⁱ that tensions and frustrations that continue to exist around the assessment of and provision for pupils with special educational needs. This was also reflected in the recent work of the Education and Lifelong Learning Committee of the National Assembly in its deliberations on Statementing.

This is not a new analysis. Our perspective was well realised in the House of Commons Education, Science and Arts Committee of 1987, when it concluded:

We are in no doubt that aspects of the present system are not working satisfactorily. [Bold as in the original] The weight of evidence shows on balance that it is the way these statutory procedures operate which is unsatisfactory, not their scope and purpose.

House of Commons Education, Science and Arts Committee (1987)

The ‘scope and purpose’ of the current system appear sound. It is the way the ‘statutory procedures operate’ that is problematic.

In her work examining local authorities that had reduced the number of statements issued, Pinney (2004)ⁱⁱ recommended a number of approaches that led to more successful implementation of local authority plans. These included:

- building the capacity of schools to respond to a wider range of pupil needs;
- developing a sharper focus on schools' performance on Additional Education Needs;
- improving the information for parents on the provision that should be made by schools and the local authority;
- the involvement of health and social services.

RNID Cymru believes that progress on all these aspects will relieve the pressure on the statutory assessment process. We hope that such perspectives would be included in any Assembly Measures that arise from the LCO. We want to see real improvements for disabled pupils and pupils with Additional Educational Needs, in:

- the capacity of early years settings and mainstream schools to respond to their needs;
- transparency about school and local authority responsibilities and their performance;
- accountability at all levels;
- expectations and outcomes;
- the statutory assessment system itself.

Changes to the system should also be properly reflective of greater accountability for the progress that pupils make and greater transparency for parents about what they can expect.

Nevertheless, RNID Cymru argues that it is crucial that we have the statutory framework in place. For parents whose child with SEN learns and progresses well through mainstream provision, there is no need for recourse to the statutory framework but for those who encounter problems it is crucial that there is legislative protection in place. Over time we hope that the protection will be less needed but until the system is improved further it remains a vital backstop for those cases where the right provision is not provided.

Special Schools:

RNID Cymru's expectation is that the educational achievements of deaf children should reflect their intellectual ability and match educational outcomes for hearing peers, regardless of school placement. This aim can only be achieved if expectations for deaf children are raised and the quality of education available from the time of neonatal assessment onwards through to further education is radically improved. RNID supports the current practice of including deaf children in mainstream schools, but only where parents want it and only when the process is adequately resourced and supported.

At a time when an estimated 35 - 40% of deaf pupils have an additional disability or learning difficulty, over 75% (average hearing loss greater than 40dB) are being educated in mainstream schools.

RNID Cymru believes that a range of educational provision including special schools must be maintained to provide families with real choice. However, the level and type of support for deaf

children in mainstream schools should be driven by the individual needs of children and by the choice of parents - not by the need of LEAs to reduce expenditure. The gap between the best and the worst of what is currently available for deaf children and their families is unacceptably wide and the quality and type of schooling that children receive depends far too much on where a family happens to live.

It is crucial that the education provided takes into the account the need of the child. Far too often the child needs to fit the education. Personalised learning structured around the child is the optimum.

Any Assembly Measure brought forward to address Special Schools and educational location should address these perspectives.

RNID Cymru is happy to bring forward additional evidence on these and other areas at the point when Assembly Measures are brought forward.

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

RNID Cymru believes strongly that the proposed Order should be drafted broadly enough to cover all persons.

Q3. Is the definition of disability in the proposed Order appropriate? If not, how should the definition be re-drafted and why?

RNID Cymru believes that the Committee should give serious consideration to amending the LCO to include “communication” in its definition of disability.

Communication disability takes different forms but a common problem is how to deal with everyday communication barriers. This can often be an issue for deaf and hard of hearing people and is profound in its impact. Communication helps us to be a person and to take part in life and all its opportunities. All too often, people who communicate differently are left out, ignored, unable to take part. For example, information that is hard to understand or services that have not been adapted to a different way of communicating.

Examples of communication disability would be:

- Understanding and finding the right words
- Producing, ordering and discriminating between speech sounds
- Knowing how words, phrases and sentences are put together to convey meaning
- Using and understanding language in different social situations.

In short, communication includes being understood as well as understanding others, either in speaking and listening, or in reading and writing. Communication disability occurs when one or

more of the areas of communication is ineffective. A communication disability can be temporary or permanent. It can be mild, moderate or severe, and be present from birth or acquired later in life.

There are about 2.5 million people in the UK who live with different difficulties affecting speech, language and literacy. For example, not just deaf and hard of hearing people, but people with head injuries, those who have had a stroke, Aphasia, Multiple Sclerosis, Parkinsons, Alzheimers, Motor Neurone Disease, Cerebral Palsy and Learning Difficulties.

Yet the needs of people with communication disabilities are not always recognised. This is because communication itself and communication disability are often poorly understood by society. It is important that it is recognised that deafness and hearing loss can lead to specific communication difficulties and therefore support needs to be tailored.

The draft wording of the LCO indicates that “A person has a disability for the purposes of this matter if that person has a physical or mental impairment.” **RNID Cymru believes that a communication disability is a separate category to either “physical or mental impairment”; and that the LCO should be amended to reflect this.**

This LCO is an opportunity to redress the balance. It is time to give recognition and an equal voice to everyone who needs help with communication.

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?

We are content that the terms of the proposed Order have been drafted in an appropriate manner.

Yours sincerely,

Brian Lamb OBE

Acting Chief Executive.

ⁱ The Special Educational Consortium is convened under the auspices of the Council for Disabled Children to protect and promote the interests of children and young people with special educational needs and disabilities. SEC provides a policy forum on issues affecting children and young people with special educational needs and disabilities. SEC is a broad consortium consisting mainly of voluntary organisations but including professional associations and local government organisations as well. SEC defines its policies by identifying areas of consensus that exist among the wide range of groups represented within it.

ⁱⁱ Pinney A (2004) Reducing Reliance on Statements: An Investigation into Local Authority Practice and Outcomes DfES Research Report 508