



## Response to the National Assembly for Wales consultation on the proposed additional learning needs draft legislative competence order 2007

### Additional Evidence to the Committee

We were asked to provide further evidence on the following two points:

- The extent to which there is an overlap between the proposed Legislative Competence Order relating to Additional Learning Needs and the proposed Legislative Competence Order relating to Vulnerable Children and Child Poverty.
- Whether any of the issues raised in our written submission (and subsequent oral evidence) would be better addressed in the context of the proposed Order on Vulnerable Children and Child Poverty.

There will inevitably be some overlap between the orders since the proposed Legislative Competence Order relating to Vulnerable Children and Child Poverty places a duty to cooperate which extends to education services:

*Matter 15.5 Co-operation between persons who exercise functions or are engaged in activities relating to the well-being of children or young persons and arrangements to ensure that functions are discharged with regard to the need to safeguard and promote the well-being of children and young persons.*

*Legislative Competence Order relating to Vulnerable Children and Child Poverty*

In our original evidence to the committee we proposed that the LCO for Additional Learning Needs should be drafted so that groups of children not presently regarded as falling within the criteria of Additional Learning Needs could be considered for additional learning support within the Order:

*Children and young people may also require additional support for a variety of reasons and may include those who:-*

- are being bullied*
- are particularly able or talented*
- have experienced a bereavement*
- are looked after*
- are living with Parents who are abusing substances*
- are living with Parents who have a mental health problem*
- have English as an additional language*
- are not attending school regularly*
- have emotional and social difficulties*
- are on the child protection register*
- are young carers*

These groups of children will inevitably also be considered within the LCO relating to Vulnerable Children and Child Poverty. However, if any child is unable to realise their



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educational potential due to social, emotional or behavioural problems we would argue that they need additional learning support in order to achieve their right to education.

Current Welsh Assembly Government guidance on how schools should support pupils from these groups, e.g. *Circular 47/2006 Inclusion and Pupil Support*, is very much seen to be **education** guidance. The legal status is that schools must merely “have regard” to the guidance and we have seen much evidence that the guidance is ignored by schools.

Guidance on Vulnerable Children and Child Poverty would probably be seen as being more relevant to social services and, as such, may not be regarded as applying to schools.

Including these groups within the LCO on Additional Learning Needs would ensure that guidance to schools could be made statutory and, therefore, compliance enforceable.

We were also asked for further comments on School transport.

On 3<sup>rd</sup> October evidence was given to the Enterprise and Learning Committee for Pre-legislative Scrutiny of the Learner Travel (Wales) Measure in which we stated that concerns about school transport would better be dealt with within the Learner Travel Measure than the LCO on Additional Learning Needs. We consider that the definition of need should be broadened as submitted and the same definition should be used in the Learner Travel Measure.

The relevant extract from that draft transcript is:

[1] **Ms Battle:** As you know, that question was asked last week, because the particular LCO did not encompass travel measures. Having looked at this again, I think it more appropriate that travel is included in this Measure than in the LCO. However, there needs to be similarity in the definitions of the additional or special need. As you know, last week, you were presented evidence from a number of witnesses—ours was very inclusive, and the speech and language therapy service was there—about what should be included. Referring to the Measure, section 2 is the ‘Duty to assess learner travel needs’. Section 2(4) refers to:

[2] ‘(a) the needs of learners who are disabled persons;

[3] (b) the needs of learners with learning difficulties’.

[4] Section 4(5)(d) goes on to state:

[5] ‘In considering whether travel arrangements are necessary or suitable for the purposes of this section a local authority must have regard, in

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particular, to...any disability or learning difficulty of the child'.

[6] Turning to the general interpretations in the Measure on page 22, it gives the definition:

[7] “learning difficulty”...in respect of a person means—(a) a significantly greater difficulty in learning than the majority of persons of the same age’.

[8] It also states that disability is as is defined in section 1 of the Disability Discrimination Act 1995. We have to make sure that the definition that you are considering including in the LCO, what you wish to include for children there, is compatible with the definition that is in this particular Measure. The evidence that you had last week, from us and others, was to broaden the definition in that LCO. In our view, if we are to have just one measure applicable to the travel needs of children with special educational needs, it is more appropriate for that to be in this Measure. I would submit, however, that it should be broader than currently drafted.