

Legislative proposals for additional learning needs

Consultation response form

Your name:

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Responses should be returned by **25 July 2014** to:

Additional Needs Branch
Support for Learners Division
Department for Education and Skills
Welsh Government
Cathays Park
Cardiff
CF10 3NQ

or completed electronically and sent to:

e-mail: SENReforms@wales.gsi.gov.uk

Question 1 – New terminology

- a) Do you agree that a new term, 'additional learning needs', (ALN) should focus on children and young people who need additional and/or different support with learning to allow them to benefit as fully as possible from the education or training available to them?

Agree	<input checked="" type="checkbox"/>	Disagree	<input type="checkbox"/>	Neither agree nor disagree	<input type="checkbox"/>
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Supporting comments

The National Deaf Children's Society (NDCS) is the national charity dedicated to creating a world without barriers for deaf children and young people. We represent the interests and campaign for the rights of deaf children and their families. In referring to "deaf", we refer to all levels of hearing loss, including

mild, moderate, severe, profound, and temporary hearing loss.

There are around 3,000 deaf children in Wales. 90% of deaf children are born to hearing families with little or no prior experience of deafness.

Deafness is a low incidence SEN / ALN. This means that mainstream schools and local authorities are likely to be less familiar with the needs of deaf children. Around 80% of deaf children attend mainstream schools where, in many cases, they may be the only deaf child in that school. As a result, deaf children are particularly reliant on specialist support services for deaf children, which employ Teachers of the Deaf and other specialist staff, in order to ensure that their families and teachers get the advice and support they need.

Deafness is not a learning disability. However, in 2013, according to Welsh Government figures, just 47% achieved A* - C in English/Welsh, Maths and Science. Over the three year period 2011-2013 the relative gap between deaf and hearing children achieving this level was 27%.

http://www.ndcs.org.uk/about_us/campaign_with_us/wales/close_the_gap/attainment_data_2013.html

We welcome the new term "additional learning needs" as the term is a more accurate reflection of challenges faced by deaf children. We feel that the term is a better fit with the Equality Act's anticipatory duties. Education providers and local authorities have an anticipatory duty under the Equality Act to take reasonable steps to ensure disabled learners are not placed at a substantial disadvantage when accessing teaching and learning. This means that the providers should not wait until a child is failing to achieve his or her potential before providing support. It is imperative that the proposed Code of Practice reflects the Equality Act anticipatory duties.

We also welcome the change in terminology from that proposed in "Forward in partnership for children and young people with additional needs" in October 2012 which suggested the term "Additional Needs" (AN). Had the term AN been used this would have greatly increased the eligibility for an IDP. We were also concerned that using the term Additional Needs could risk moving the focus away from education and learning. Statements and IEPs contained a great deal of information on a child's additional learning needs, learning objectives and the provision required to meet those needs. While the new plans add other dimensions it is critical that the focus on education and what is needed to ensure educational support for deaf children and young people is not lost.

We note that there is no definition of Additional Learning Needs in the White Paper. We would welcome discussions with the Welsh Government on creating a definition which would capture all children and young people who would be entitled to an IDP.

We would suggest a slight rewording of the definition in the Children and Families Act to read as follows:

"When a child or young person has additional needs

(1) A child or young person has additional needs if he or she has a learning difficulty or disability which calls for additional learning provision to be made for

him or her.

(2)A child has a learning difficulty or disability if he or she—

(a)has a significantly greater difficulty in learning than the majority of others of the same age, or

(b)has a disability which prevents or hinders him or her from making use of facilities of a kind generally provided for others of the same age in mainstream schools or mainstream post-16 institutions."

- b) Do you agree that the new system should apply to children and young people from birth up to the age of 25? If so, what implications should we consider for the professionals involved in assessing and providing that support?

Agree	<input checked="" type="checkbox"/>	Disagree	<input type="checkbox"/>	Neither agree nor disagree	<input type="checkbox"/>
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Supporting comments

We welcome the inclusion of children and young people from birth to 25 in the new system. However we are concerned that the importance of support and provision in early years settings is not adequately addressed in this White Paper. Around half of deaf children are identified and diagnosed after Newborn Hearing Screening. Local authorities can provide specialist support, through Teachers of the Deaf and other specialist support, immediately after diagnosis and in the pre-school period which is crucial to the deaf child's development of speech and language.

We also welcome the inclusion of older young people in the new system and are encouraged by the commitment to ensure improved transition planning for young people with ALN.

However there is also a need to ensure there is continuing investment in education hearing support services so that they can meet the needs of a much wider age group. There is still an unacceptable attainment gap between deaf and hearing pupils, as outlined above, so existing resources should not be removed or stretched from pre-16 children and young people to support up to the age of 25 years.

Question 2 – Individual development plans (IDP)

- a) Do you agree that all children and young people with ALN should be entitled to an IDP which sets out their agreed additional learning provision?

Agree	<input checked="" type="checkbox"/>	Disagree	<input type="checkbox"/>	Neither agree nor disagree	<input type="checkbox"/>
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- b) Do you agree that IDPs should replace statutory assessment and statements of SEN, assessments for learners over 16 (under section 140 of the Learning and Skills Act 2000) and non-statutory plans including individual education plans under School Action and School Action Plus?

Agree	<input checked="" type="checkbox"/>	Disagree	<input type="checkbox"/>	Neither agree nor disagree	<input type="checkbox"/>
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Supporting comments

We welcome the proposal that all children and young people with ALN should be entitled to an IDP and that they should replace statutory assessments and statements of SEN and Individual Education Plans under School Action and School Action Plus.

However, it is important that plans are underpinned by a full and rigorous assessment of need. An effective plan cannot be delivered without a full understanding of the child's needs. In this respect we have some concerns about the capacity of the existing workforce, who work with deaf children and young people, to undertake a full assessment of need. We acknowledge that issues around workforce development and specialist provision are being addressed separately, but it must be emphasised that having a workforce of sufficient size and specialist expertise that is sustainable is intrinsic to the success of this new system of ALN.

We feel that appropriate timescales should be put in place for the assessment of need and that this timescale should be centred around the needs of the child rather than the professionals involved in the assessment. Twelve weeks might not appear to be a long time in the life of a professional, but for a deaf child it is a whole term where he or she is failing to get the support needed to develop essential speech and language skills.

It is also of vital importance that the assessment of need takes into account the language in which support must be delivered, be that in English, Welsh or BSL. Every year the Consortium for Research into Deaf Education (CRIDE - of which NDCS is a member) conducts surveys of local authorities in Wales and across the UK about the number of deaf children and young people they support and the level of service that they provide. The latest CRIDE survey in 2013 demonstrated the paucity of Welsh language support for deaf children. Only 9 of the 16 Hearing Impairment Services in Wales could provide peripatetic support in Welsh from Teachers of the Deaf; only 3 services could provide peripatetic teaching assistant and communication support workers in Welsh.

http://www.ndcs.org.uk/professional_support/national_data/uk_education_.html

We believe that the right to ALN support in the Welsh language should be included on the face of the Bill.

We are also concerned that the IDPs do not appear to apply to apprenticeships, or government funded workplace learning programmes for young people and we would urge the Welsh Government to reconsider. There is a danger that deaf young people could fall between two stools with regard to the support they

receive, with Access to Work support being available in the workplace but no support provided for the learning element of the apprenticeship or programme

- c) Do you agree that local authorities should be ultimately responsible for preparing an IDP for children and young people aged 0–25 with ALN and for ensuring that agreed provision set out in the IDP is delivered and reviewed?

Agree	<input checked="" type="checkbox"/>	Disagree	<input type="checkbox"/>	Neither agree nor disagree	<input type="checkbox"/>
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Supporting comments

We agree with this point but would wish to ensure that the Bill includes a clear, consistent template for IDPs and a requirement that IDPs are transferable across local authority boundaries. We also have some concerns about the lack of clarity around the steps leading to the creation of an IDP, in particular who is responsible for taking the lead in creating an IDP. This matter needs to be properly addressed in the Code of Practice and we would welcome further discussions on this issue.

We consider that ensuring the IDP contains robust and clear information on a child's support needs will be central to the success of the reforms. We note that key information which must be included in an IDP will be listed on the face of the Bill. We welcome this development and suggest the list should include the following:

- A section to include a clear and succinct description of a child's needs (i.e. the level of a child's deafness and the type of equipment that he or she requires)
- A section outlining the additional provision required to meet those needs and who will deliver these provisions
- A section for agreed outcomes, short term and long term targets, including key information on a child's attainment levels and progress.
- A section on transition planning at key points in the child's IDP.
- A section on which languages the child needs for support
- A section to identify information about a child's named placement and travel arrangements
- A section to provide clear information regarding ongoing support services, as these services may not necessarily fall within a short term action plan.

The responsibility for delivery of an IDP needs to be accompanied by a robust accountability and quality assurance framework that includes:

- a) Collection and publication on key outcomes for children and young people with ALN by main type of additional learning
- b) Collection and publication of data and information on levels of provision for children and young people with ALN that is specific to each type of ALN
- c) The development of key standards for the discharge of duties towards

children with ALNs and the introduction of a robust inspection framework for schools and for LAs with regard to how well they meet standards and how well children and young people with ALN make educational progress

We would also wish to underline the responsibilities on schools and health services to support the delivery of IDPs.

Question 3 – A new code of practice

- a) Do you agree that a new code of practice on ALN should include mandatory requirements in accordance with which local authorities, schools, further education institutions, local health boards and the tribunal must act?

Agree	<input checked="" type="checkbox"/>	Disagree	<input type="checkbox"/>	Neither agree nor disagree	<input type="checkbox"/>
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Supporting comments

We agree that the new Code of Practice (CoP) on ALN should include mandatory requirements. We would also urge the Welsh Government to ensure that the CoP is consistent with the Equality Act and its anticipatory duties with regard to education and learning provision.

We have some concerns that private / voluntary / independent early years providers do not appear to be subject to these mandatory requirements. No mention is made either of the Flying Start programme, which supports the speech and language development of young children in particular areas. Early years support is crucial for deaf children. Around half of all deaf children are identified and diagnosed through the Newborn Hearing Screening Programme. Early intervention and support to families from Teachers of the Deaf and/or Speech and Language Therapists is vital in ensuring that deaf children are able to develop age-appropriate language before they reach school age.

We note that the Welsh Government is considering measures to modernise Disabled Student's Allowance (DSA) and will be consulting on this matter in due course. If there is a possibility that Higher Education Institutions (HEIs) will be required to provide support for disabled students (as in England) there is a strong argument for the mandatory requirements of the CoP to also apply to HEIs.

We note that Welsh Ministers will be able to exercise powers of intervention under the School Standards and Organisation (Wales) Act 2013 where local authorities and maintained schools fail to carry out their mandatory duties under the code. We would urge the Welsh Government to consider requiring Estyn to scrutinise local authority provision and monitor adherence to the CoP.

An essential element of monitoring adherence to the CoP will be accurate and comprehensive data collection on the attainment of pupils with ALN in ALL educational settings.

- b) Do you agree that the code of practice should set out guidance for any other bodies, such as third sector organisations or other providers of education and training?

Agree	<input checked="" type="checkbox"/>	Disagree	<input type="checkbox"/>	Neither agree nor disagree	<input type="checkbox"/>
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Question 4 – Securing provision

Do you agree that further education institutions should be included alongside schools, maintained nurseries and pupil referral units, as institutions that must use their 'best endeavours' to secure the additional learning provision called for in an IDP?

Agree	<input type="checkbox"/>	Disagree	<input type="checkbox"/>	Neither agree nor disagree	<input checked="" type="checkbox"/>
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Supporting comments

We agree that FEIs should be included alongside schools, maintained nurseries and PRUs as institutions that must secure additional learning provision, but we have concerns that the term "best endeavours" is not sufficiently strong. Under the Equality Act education providers must make reasonable adjustments to ensure that disabled children and young people are not placed at a substantial disadvantage compared to others when accessing teaching and learning and all other aspects of school/college life. They **MUST** make these adjustments. Using best endeavours to make reasonable adjustments is not acceptable under the Equality Act. By using the term "best endeavours" in the ALN Reform Bill (Wales) there is the potential of a conflict with the Equalities Act. We would prefer to see a "duty" on all these bodies to secure additional learning provision.

Question 5 – Securing specialist provision for young people

Do you agree that local authorities should be responsible for securing specialist education provision for post-16 learners outside of the further education sector where the IDP indicates that this is necessary to meet a young person's ALN?

Agree	<input type="checkbox"/>	Disagree	<input type="checkbox"/>	Neither agree nor disagree	<input checked="" type="checkbox"/>
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Supporting comments

In principle we support this approach as it has the potential to improve the transition process for young people with ALN. But we are concerned that LAs will have an incentive to push students with ALN towards mainstream placements. This is because the existing funding of around £17.5 million for specialist provision will be transferred to the LAs through the Revenue Support Grant and will apparently not be ringfenced. At a time of budget restraint LAs will be under pressure to use the monies allocated for specialist provision for ALN students elsewhere. We would strongly recommend that when funding for specialist placements is transferred to LAs that it is ringfenced for that purpose.

The devolution of this funding to LAs should be based on accurate data on the needs of disabled young people in each area. Since the needs of a local population can change over time, particularly in the case of low incidence disabilities such as deafness or other complex needs, it is important that these funding calculations are regularly reviewed. It is worth noting that low incidence needs often require specialist support, which can be expensive.

Robust monitoring mechanisms are also required to ensure that this new funding mechanism does not disadvantage students with ALN. Local Authorities should be required to collate robust data on the number of students in post-16 provision with ALN, the support they receive, and their performance levels. This data should be collated centrally and would help to ensure that the needs of students with ALN are being broadly met on both a local and national basis. It is imperative that, across Wales, there is a clear complaints and appeals system so that students with ALN can seek redress if they are unhappy with decisions on their support or placement.

We recommend that Estyn's core inspection of LAs and FEIs includes an assessment of how effectively support is planned and arranged for students with ALN. We would also urge that DfES and Estyn monitor the number of and reasons for refused requests for specialist support /placements, as well as details of complaints. This will enable any trends to be identified, so that DfES can intervene where appropriate. We would also urge that data be collated on the destinations of students with ALN who have graduated from FE.

Question 6 – Placement at independent schools

Do you agree that local authorities should be prohibited from placing a child or young person at an independent school which has not been registered to provide the type of additional learning provision identified in their IDP?

Agree	<input type="checkbox"/>	Disagree	<input type="checkbox"/>	Neither agree nor disagree	<input checked="" type="checkbox"/>
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Supporting comments

Whilst we agree in principle with this point we would need to seek assurance that independent schools outside Wales will also be registered to provide ALN provision. There are no specialist schools for the deaf in Wales and deaf children and young people from Wales who need specialist support attend schools in England.

Question 7 – A multi-agency approach to planning and delivery

- a) Do you agree that local authorities, local health boards and further education institutions should be required to cooperate and share information in assessing, planning and delivering support to meet ALN?

Agree	<input type="checkbox"/>	Disagree	<input type="checkbox"/>	Neither agree nor disagree	<input checked="" type="checkbox"/>
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Supporting comments

We agree in principle that local authorities, health boards and FEIs should have a duty to share information.

NDCS Cymru is aware that many families currently face frustration with the lack of co-ordination between agencies. Therefore, we welcome the concept of greater multi-agency collaboration as a positive step forward.

However, we are conscious that a duty to share information (as described in the consultation document) is not equivalent to a duty to provide. If there is to be full partnership between education, health and social services, there will need to be very clear and explicit duties on all agencies to both share information AND to deliver provision for children with additional needs.

We note that the IDP Action Plan will be clear about which agency is responsible for delivering individual elements of the plan, will include a commitment from all parties to provide services and be transparent about funding for the package of support. However, in our view, this does not amount to a DUTY to PROVIDE support.

We note that Early Years settings and providers are not included in the duty to share information. We believe that it is vitally important for Early Years providers to be included for reasons outlined earlier.

NDCS Cymru would recommend that the statutory code of practice is very specific on:

- a) What are the minimum standards and expectations with regard to cooperation

- b) The information and data to be provided
- c) The need to jointly commission integrated multi-agency care pathways that improve outcomes (for example a pathway that includes screening babies for deafness at birth, refers them on to audiological assessment and diagnosis, audiology support and management and family support and habilitation services such as speech and language therapy, Teachers of the Deaf and social care/family support)

b) As well as using the code of practice to provide guidance, are there any other ways in which you think multi-agency partnership working could be strengthened?

Supporting comments

We believe that independent scrutiny of multi-agency partnership working and funding decisions is of paramount importance. NDCS Cymru suggests that there could be a list/panel of specialist scrutineers whose services could be called upon to scrutinise funding decisions by random sampling.

Question 8 – Supporting looked after children

Do you agree that IDPs should be able to replace or function as personal education plans for children and young people who are looked after by a local authority?

Agree	<input type="checkbox"/>	Disagree	<input type="checkbox"/>	Neither agree nor disagree	<input type="checkbox"/>
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Supporting comments

Question 9 – Resolving disputes at an early stage

a) Do you agree that local authorities should be required to put in place disagreement resolution arrangements?

Agree	<input type="checkbox"/>	Disagree	<input type="checkbox"/>	Neither agree nor disagree	<input checked="" type="checkbox"/>
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Supporting comments

We agree in principle that local authorities should be required to put in place disagreement resolution arrangements. NDCS Cymru acknowledges, in principle, the benefits of being able to resolve issues without a lengthy and possibly stressful tribunal case. But we are fearful that a mandatory requirement to use the local disagreement arrangements will be seen by parents as another bureaucratic hoop and used as a delaying tactic by local authorities who fail to ensure appropriate provision is in place to meet the needs of the child as soon as possible.

We believe that the child / family should be able to submit an appeal to Tribunal at any time during the local complaints procedure to expedite the appeals process and achieve a satisfactory outcome for the child. We believe a mandatory timescale in relation to complaints procedure should be included in the new CoP.

We note that the requirement to establish local disagreement resolution arrangements only refers to disagreements about additional learning provision. We would welcome further information on how a dispute resolution system based within the local authority would be able to deal with disagreements in relation to an aspect of the IDP relating to health services. It is also unclear how a local authority based system would operate in relation to a disagreement regarding provision funded by an FEI or Early Years Provider.

It is also essential that any dispute resolution/complaints mechanism is easily accessible to parents and young people with a disability, communication need, or who do not speak English/Welsh.

NDCS Cymru would recommend that local authorities are required to report to the Welsh Government on an annual basis regarding the details and number of disagreements and complaints to have been referred to the local disagreement resolution mechanisms. This would both provide a quality assurance measure and would enable the Welsh Government to identify whether there are any recurring difficulties following the implementation of the new IDP process.

b) Do you agree that there should be a requirement to use the appropriate local complaints processes prior to appeal to tribunal?

Agree	<input type="checkbox"/>	Disagree	<input checked="" type="checkbox"/>	Neither agree nor disagree	<input type="checkbox"/>
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Supporting comments

We agree in principle that there should be a requirement to use the local complaints process prior to appeal to Tribunal, with the caveat outlined above that the child / family should have the option to submit an appeal to Tribunal before the conclusion of the local complaints process, if required.

We also have concerns about any complaints procedure with regard to ALN provision in FEIs. A similar process to that of LAs, with an independent person to facilitate the resolution of disagreements, must be put in place for all FEIs in Wales.

We would also add that communication support must be made available for deaf children and young people and deaf parents who are involved in the local complaints process.

Question 10 – Extending the right of appeal

Do you agree with our proposals in relation to extending rights of appeal to tribunal (see proposals 19, 20 and 21)?

Agree	<input checked="" type="checkbox"/>	Disagree	<input type="checkbox"/>	Neither agree nor disagree	<input type="checkbox"/>
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Supporting comments

We very much welcome the extension of the rights of appeal to Tribunal to all those with an IDP aged 0-25.
We would also wish to see in the Bill a provision for SENTW / ALNTW to have means of redress in the event a local authority or other body fails to comply with directions from the Tribunal.

Question 11

We have asked a number of specific questions. If you have any related issues which we have not specifically addressed, please use this space to report them.

We wish to add comments on several paragraphs in the White Paper. We will refer to paragraph numbers as in the document.

Para 9: We welcome the intention to ensure children, young people and their parents are involved, consulted and their views taken into account throughout the IDP process. However we would wish to see appropriate support mechanisms in place to empower people to take part in the process. This could include advocacy, accessible information and communication support.

Para 10. We welcome the recognition that IDPs can be reviewed more frequently than on an annual basis. This is particularly important for younger children in early years settings or at home. It is also particularly important for deaf children who might have glue ear. This condition can change over time,

either improving or deteriorating, disappearing or returning. It is vitally important that the needs of deaf children are reviewed on a regular basis.

Para 11. We feel that this paragraph fails to recognise that some children will be identified as having an ALN from birth. In the case of deaf children many are identified and diagnosed at Newborn Hearing Screening and effective support needs to be in place from a very early age, in the home. This support is essential to ensure language and speech development.

Para 14. We welcome the intention to require governing bodies to ensure ALNCOs have certain experience or qualifications or both. We would welcome mandatory training for ALNCOs which would include training on low incidence disabilities such as deafness. The training should also include awareness of the role of specialist support staff such as Teachers of the Deaf, Speech and Language Therapists, Educational Psychologists, Learning Support Assistants, Communication Support Workers, Note-takers and Deaf Instructors. We would also recommend that the ALNCOs are at a senior level in the school/college and are a member of the Senior Management team in order to ensure a whole school/college approach to ALN and CPD in this area.

Para 16. We feel that there should be a set template for local authorities to outline information about the support that is available for children with ALN. This information should be presented in a clear, accessible format, according to the type of ALN. By having a set template it will be easier to compare provision across local authorities and address any inconsistencies.

We believe strongly that specific Provision Pathways for learners with hearing impairments should be introduced because it is a low incidence disability. The vast majority of deaf children and young people are taught in mainstream schools and there might only be one deaf child in that school. We believe a specific provision pathway for deaf children with minimum standards would assist ALNCOs to ensure the appropriate support for deaf children. A similar level of deafness can affect different children in different ways. As such, a deaf child's level of need cannot be determined by his/her level of hearing loss. There are a range of aspects that should be considered in assessing a deaf child's support requirements and the development of a provision pathway would be a good way of securing a more consistent approach across Wales.

The provision pathway should be used to highlight the types of professionals who should be involved in assessing a deaf child's needs. In order to establish a deaf child's level of need, it is important that the assessment process includes professionals who understand deafness.

A provision pathway that includes this information and minimum standards could still be flexible enough to meet individual needs.

NDCS Cymru was involved in some early discussions with the Welsh Government around a provision pathway for deafness and would welcome the opportunity to develop this further.

Other Comments:

We note and welcome the fact that the ALN proposals have been developed with consideration to the United Nations Convention on the Rights Of the Child. We would also recommend that the United Nations Convention on Rights of People with Disabilities is also considered when further developing the legislation.

We note with some concern that there is no mention in the White Paper of the needs of children and young people Educated Other than at School or College. This group of children may be educated outside a school or college for a variety of reasons, including for health reasons or through parental choice. We feel that the needs of deaf children and young people in this category must be addressed in the legislation.

We have some concerns about the Children and Young People's Consultation exercise on this White Paper. We consulted with a group of deaf pupils on the proposals (the response has been submitted separately). The pupils and teachers found the children and young people's document to be difficult to understand. We also have concerns about the consultation exercise in schools and colleges and whether deaf children and young people were included in the process with their opinions and voice being heard. We would welcome discussions with the Welsh Government about the next phase of consultation on the Code of Practice to ensure that the documents and process are truly child-friendly and that deaf children and young people are properly involved.

This response from the National Deaf Children's Society has been endorsed by the British Deaf Association.

Responses to consultations may be made public, on the internet or in a report. If you would prefer your response to remain anonymous, please tick here: