

Explanatory Memorandum to the Additional Learning Needs and Education Tribunal (Wales) Act 2018 (Consequential and Miscellaneous Amendments) Regulations 2022

This Explanatory Memorandum has been prepared by the Education Department of the Welsh Government and is laid before Senedd Cymru in conjunction with the above Regulations and in accordance with Standing Order 27.1.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Additional Learning Needs and Education Tribunal (Wales) Act 2018 (Consequential and Miscellaneous Amendments) Regulations 2022.

Jeremy Miles AS/MS

Minister for Education and Welsh Language

22 September 2022

1. Description

- 1.1 The Additional Learning Needs and Education Tribunal (Wales) Act 2018 (Consequential and Miscellaneous Amendments) Regulations 2022 (“the 2022 Regulations”) amend secondary legislation in consequence of the Additional Learning Needs and Education Tribunal (Wales) Act 2018 (“the 2018 Act”).

2. Matters of special interest to the Legislation, Justice and Constitution Committee

- 2.1 No specific matters identified.

3. Legislative background

- 3.1 The 2022 Regulations are made under sections 97(1) and (2) and 98(2) of the 2018 Act. Section 97 gives the Welsh Ministers a regulation making power to make consequential and other types of provision that they consider necessary or expedient in consequence of the 2018 Act. Such regulations may amend any enactment. In accordance with section 98(4) of the 2018 Act, the 2022 Regulations are subject to the Senedd’s negative procedure.
- 3.2 Part 2 of the 2018 Act establishes the new statutory system for meeting the additional learning needs of children and young people (“the ALN system”). For children, it replaces the system provided for in Chapter 1 of Part 4 of the Education Act 1996 (“the SEN system”). The ALN system began to be implemented over a 3 year period beginning on 1 September 2021, during which time, the SEN system will continue to apply in respect of some children.
- 3.3 The Additional Learning Needs and Education Tribunal (Wales) Act 2018 (Commencement No. 2) Order 2021 (S.I. 2021/373 (W. 116) (C. 12)) commenced the ALN system on 1 September in relation to certain children and subsequent commencement orders have made provision for commencement of the ALN system from 1 January 2022 for some other cohorts of children. As a result, from January onwards, there will be increasing numbers of children who have individual development plans (“IDPs”).
- 3.4 Article 8 of that Order provided for section 58 of the 2018 Act to come fully into force on 1 September 2021. Section 58 repeals section 347 of the Education Act 1996. Under section 347, the Welsh Ministers had the function of approving independent schools in Wales as suitable for the admission of children with statements of special educational needs, or in respect of a school not so approved, consenting to the placement of an individual child there.

4. Purpose and intended effect of the legislation

4.1 The purpose of the 2022 Regulations is to make consequential amendments to the following sets of regulations:

- *The Education (Special Educational Needs) (Wales) Regulations 2002*
- *The Education Standards Grants (Wales) Regulations 2002*
- *The Education (Admission Forums) (Wales) Regulations 2003*
- *The School Councils (Wales) Regulations 2005*
- *The Special Educational Needs Tribunal for Wales Regulations 2012*
- *The Selection of the President of the Welsh Tribunals Regulations 2017*

4.2 These amendments are to ensure that there is appropriate provision within the sets of Regulations being amended in light of the ALN system being partially in force and the repeal of section 347 of the Education Act 1996.

The Education (Special Educational Needs) (Wales) Regulations 2002

These Regulations relate to the assessment of special educational needs and to statements of such needs under Part IV of the Education Act 1996.

Regulation 2 of this instrument amends the Education (Special Educational Needs) (Wales) Regulations 2002 as a result of Section 347(5) of the Education Act 1996 being repealed by the 2018 Act which came into force on 1 September 2021. The provision can no longer apply as Welsh Ministers no longer have the function to consent the legislation is being updated as a result of the repeal.

The Education Standards Grants (Wales) Regulations 2002

Section 484 of the Education Act 1996 enables Welsh Ministers to make Regulations providing for the payment of grants in respect of expenditure incurred by Local Authorities in connection with education purposes and which appears to the Welsh Government that those Authorities should be encouraged to incur in the interest of education in Wales. The Education Standards Grants (Wales) Regulations 2002 provide for the payment of such grants.

Regulation 3 of this instrument amends the Education Standards Grants (Wales) Regulations 2002 by replacing the references to “Special Educational Needs” and “SEN” with “Additional Learning Needs” and “ALN” respectively. The amendments also insert new definitions of “*the 2018 Act*”, “*additional learning Needs*”, “*IDP review*” and “*individual development plan*”.

The Education (Admission Forums) (Wales) Regulations 2003

The Education (Admissions Forums) (Wales) Regulations 2003 contain provisions for the establishment of admission forums, the role of which is: to consider existing admission arrangements within a forum area; to promote

agreement on admission issues; to consider the admission literature produced by each admission authority; to monitor the admission of excluded children, looked after children, children with special educational needs and children who arrive outside the normal admission round; and to consider any other admissions issues arising.

Regulation 4 of this instrument amends the Education (Admissions Forums) (Wales) Regulations 2003 by inserting a reference to “children with additional learning needs” and is given the same meaning as in the 2018 Act.

The School Councils (Wales) Regulations 2005

The School Councils (Wales) Regulations 2005 set out the requirement for maintained schools to set up school councils, which provide pupils with the opportunity to discuss and make representations on matters relating to the school or other issues of concern to them. The amendments update terminology within the regulations to include “additional learning needs” (ALN).

Regulation 5 of this instrument amends the School Councils (Wales) Regulations 2005 by inserting a definition of “Additional Learning Needs” (which is given the same meaning as in the 2018 Act), as well as substituting “special educational” with “Additional Learning” where it occurs in regulations 2 and 4(4).

The Special Educational Needs Tribunal for Wales Regulations 2012

The Special Educational Needs Tribunal for Wales Regulations 2012 set out the procedure to be followed in proceedings before the Special Educational Needs Tribunal for Wales. These Regulations make provision relating to the exercise of the Tribunal’s jurisdiction under Part 4 of the Education Act 1996 which concern special educational needs appeals and Chapter 1 of Part 6 of the Equality Act 2010 which concerns claims of disability discrimination in respect of school pupils.

Regulation 6 of this instrument amends the Special Educational Needs Tribunal for Wales Regulations 2012 as a result of Section 347 (5) of the Education Act 1996 being repealed by the 2018 Act which came into force on 1 September 2021. The provision can no longer apply as Welsh Ministers no longer have the function to consent the legislation is being updated as a result of the repeal.

The Selection of the President of the Welsh Tribunals Regulations 2017

These Selection of the President of Welsh Tribunals Regulations 2017 contain provisions about the selection process to be applied for the appointment of a person to the office of President of Welsh Tribunals. They make provision for the composition of a selection panel, consultation by that panel, reporting of its selection to the Lord Chief Justice and the Lord Chief Justice's options when deciding upon that selection.

Regulation 7 of this instrument amends the Selection of the President of the Welsh Tribunals Regulations 2017 by updating the reference to the name of the tribunal in light of the Special Educational Needs Tribunal for Wales change of name to the Education Tribunal and specially in relation to provision under which the President is appointed.

5. Consultation

- 5.1 No formal consultation has taken place as the 2022 Regulations make only consequential technical amendments.

6. Regulatory Impact Assessment (RIA)

- 6.1 A regulatory impact assessment has not been prepared in respect of the 2022 Regulations as they make technical amendments to statute and do not impose or reduce costs for business, charities or voluntary bodies or the public sector.