

Explanatory Memorandum to the Additional Learning Needs and Education Tribunal (Wales) Act 2018 (Consequential Amendments) (No. 3) Regulations 2021

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 Amendments) (No. 3) Regulations 2021.

Jeremy Miles AS/MS

Minister for Education and Welsh Language

17 December 2021

1. Description

- 1.1 The Additional Learning Needs and Education Tribunal (Wales) Act 2018 (Consequential Amendments) (No. 3) Regulations 2021 (“the 2021 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.
- 2.2 Further amendments to other secondary legislation, are likely to be made in consequence of the 2018 Act.

3. Legislative background

- 3.1 The 2021 Regulations are made under sections 97(1) and (2) and 98(2) of the 2018 Act. Section 97 gives the Welsh Ministers a regulation 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 2021 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 is being implemented over a 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 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.

Purpose and intended effect of the legislation

- 4.1 The purpose of the 2021 Regulations is to make consequential amendments to 3 sets of regulations: The Police Act 1997 (Criminal Records) Regulations 2002; the Education (Information About Individual Pupils) (Wales) Regulations 2007; and the Education (Information about Children in Alternative Provision) (Wales) Regulations 2009. The amendments are considered necessary or expedient 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. There are other, less urgent matters relating to the Education (Information About Individual Pupils) (Wales) Regulations 2007 and the Education (Information about Children in Alternative Provision) (Wales) Regulations 2009 which will require further consequential amendments in due course.

The Police Act 1997 (Criminal Records) Regulations 2002

- 4.2 The Police Act 1997 and these Regulations deal with the circumstances in which the Disclosure and Barring Service must issue an enhanced criminal record certificate. The definition of “health and social care service” in regulation 5B(9) is relevant to that matter. Amongst other things, the definition includes accommodation provided to an adult who is, or has been, a pupil attending one of certain types of residential institution. These include:
- a. an independent school in Wales approved by the Welsh Ministers under section 347;
 - b. an independent school which, with the consent of the Welsh Ministers under section 347(5)(b), provides places for children with special educational needs.
- 4.3 Regulation 2 of the 2021 Regulations amends these provisions to refer instead to:
- a. an independent school specially organised to make additional learning provision for learners with additional learning needs.
 - b. an independent school which, during any period before 1 September 2021 when the adult was attending it, either was approved under section 347 or, with the consent of the Welsh Ministers under that section, provided places for children with special educational needs.
- 4.4 The provision in sub-paragraph (a) reflects the independent schools in England that are covered in the definition. The provision in sub-paragraph (b) is to ensure that some of the situations that would have been captured prior to 1 September 2021, remain covered.

Education (Information About Individual Pupils) (Wales) Regulations 2007

- 4.5 The regulations above that allow Welsh Government to collect the Pupil Level Annual School Census (PLASC) require an amendment to ensure information about pupils with an individual development plan (IDP) under the ALN system, (either an IDP maintained by a school's governing body or a local authority), can be collected alongside the information about pupils with plans under the SEN system.
- 4.6 The proposed amendments will update terminology to include "additional learning needs" and the "2018 Act" at Regulation 3, and to include a reference to IDPs in Schedule 2. These changes are required to be made at this time to ensure the data collection that begins on 18 January can legally include the collection on data on IDPs.

Education (Information about Children in Alternative Provision) (Wales) Regulations 2009

- 4.7 These regulations allow for the local authority data collection for children in Education Other Than at School (EOTAS). The required amendments reflect those made to the Education (Information About Individual Pupils) (Wales) Regulations 2007 above. To allow for the data collection on pupils with an IDP maintained by a local authority or maintained by a school's governing body, amendments are required to include the new ALN terminology at Regulation 2, and a new paragraph in Schedule 1 that includes IDPs as part of the data collection.
- 4.8 The data collection for EOTAS takes place at the same time as PLASC, therefore the amendments should be made at the same time.

4. Consultation

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

5. Regulatory Impact Assessment (RIA)

- 6.1 A regulatory impact assessment has not been prepared in respect of these consequential amendment 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.