

Explanatory Memorandum to the Additional Learning Needs and Education Tribunal (Wales) Act 2018 (Consequential Amendments) (No. 2) 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. 2) Regulations 2021.

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Gweinidog y Gymraeg ac Addysg

Minister for Education and Welsh Language

11 August 2021

1. Description

- 1.1 The Additional Learning Needs and Education Tribunal (Wales) Act 2018 (Consequential Amendments) (No. 2) Regulations 2021 (“the 2021 Regulations”) amend and revoke 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 or revoke 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 to be 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)), commences the ALN system on 1 September 2021 in relation to certain persons. In addition, article 8 of that Order provides for the following provisions of the 2018 Act to come into force fully on 1 September 2021:
 - a. section 57, which abolishes the approval of non-maintained special schools in Wales by confining the application of section 342 of the Education Act 1996 to England;
 - b. section 58, which repeals section 347 of the Education Act 1996 on the approval of independent schools as suitable for the admission of children with statements of special educational needs.

4. Purpose and intended effect of the legislation

- 4.1 The purpose of the 2021 Regulations is to make consequential amendments to secondary legislation considered necessary or expedient to ensure that there is appropriate provision in light of the ALN system coming into force in relation to some children from 1 September 2021.
- 4.2 It is also the purpose of the 2021 Regulations to revoke provisions of secondary legislation that would otherwise lapse or become redundant in light of the coming into force on 1 September 2021 of sections 57 and 58 of the 2018 Act. It is considered expedient to revoke those provisions so as to help make Welsh law more accessible.
- 4.3 The 2021 Regulations come into force on 1 September 2021 to coincide with the ALN system starting to come into force.
- 4.4 A brief summary of the effect of the amendments is provided below under the title of each regulation.

The New School (Admissions) (Wales) Regulations 2006

- 4.5 The Schedule to these Regulations is amended so that section 48(1) to (5) of the 2018 Act applies in relation to new schools with the modifications set out in that Schedule. The effect is that a new school may be named under section 48 in a child's individual development plan and the person responsible for admissions to it will be required to admit a child, in the same way as would be the case if an established school were named.

The Child Minding and Day Care Exceptions (Wales) Order 2010

- 4.6 The amendment to this Order removes the reference (within the definition of "school" for the purposes of that article) to a school approved by the Welsh Ministers under section 342 of the Education Act 1996. This is because section 57 of the 2018 Act abolishes such schools (though currently there are no such schools).

The School Admissions (Infant Class Sizes) (Wales) Regulations 2013

- 4.7 These Regulations deal with the limit on class sizes for infant classes at maintained schools. There is an amendment to the definition of "suitable education" to take account of the ALN system. The 2021 Regulations also amend provisions on children who do not count towards the limit ("excepted pupils"). The effect is that a child falling within either of the following descriptions may be (depending on other circumstances – see regulation 5) an excepted pupil:

- a. a child with an individual development plan in which the school is named for admission purposes under section 48 of the 2018 Act and who is admitted to the school outside a normal admission round;
- b. a child who is normally educated in a unit within the school which is specially organised to provide education for pupils with special educational needs (where the SEN system still applies to them) or additional learning needs (where the ALN system applies to them), but who spends a minority of their time in the infant class.

4.8 There is currently a provision similar to that described in sub-paragraph (a) above in respect of the SEN system, which is preserved by the amendments (because the SEN system will continue to apply to some children from 1 September 2021).

The Education (Induction Arrangements for School Teachers) (Wales) Regulations 2015

4.9 The 2018 Act amends section 337 of the Education 1996 Act to define special schools in England and Wales separately, thereby creating two subsections. These Regulations are amended so that a cross-reference to section 337 is to the entirety of section 337 and not just section 337(1), which will only deal with when a school in England is a special school.

The Education (Inspection of Nursery Education) (Wales) Regulations 2015

4.10 These Regulations are amended in consequence of the repeal of section 347 of the Education Act 1996 (approval of independent schools as suitable for admission of children with statements of special educational needs). They currently require that where nursery education at an independent school approved under section 347 is inspected, the inspection report is sent to a local authority which pays the fees in respect of a registered pupil's attendance. The effect of the amendment is that if an independent school was so approved up until the repeal of section 347 on 1 September 2021 and a local authority is paying the fees for a registered pupil who is still within the SEN system, the local authority must be sent a copy of the report.

4.11 The amendment also requires an inspection report relating to nursery education at an independent school to be sent to a local authority that is securing a registered pupil's place at the school under Part 2 of the 2018 Act.

Consequential revocations

4.12 Regulation 7 revokes, in relation to Wales, regulations made, or taking effect as if made, under sections 342 or 347 of the Education Act 1996, which following the amendment and repeal (respectively) of those sections, will in relation to Wales only contain redundant provision.

5. Consultation

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

6. 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.