

Explanatory Memorandum to the Additional Learning Needs and Education Tribunal (Wales) Act 2018 (Consequential Amendments) 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) Regulations 2021.

Jeremy Miles AS/MS
Gweinidog y Gymraeg ac Addysg
Minister for Education and Welsh Language

8 July 2021

1. Description

- 1.1 The Additional Learning Needs and Education Tribunal (Wales) Act 2018 (Consequential Amendments) Regulations 2021 make necessary amendments to primary legislation as a consequence of commencing provisions within the Additional Learning Needs and Education Tribunal (Wales) Act 2018 (“the 2018 Act”).

2. Matters of special interest to the Senedd Cymru

- 2.1 No specific matters identified.
- 2.2 Further amendments to the Care Planning, Placement and Case Review (Wales) Regulations 2015, and amendments to other secondary legislation, are likely to be made in consequence of the 2018 Act.

3. Legislative background

- 3.1 The relevant powers to amend other legislation by statutory instrument are contained under sections 97(1) and (2) of the 2018 Act. This instrument follows the Senedd’s draft affirmative procedure.

4. Purpose and intended effect of the legislation

- 4.1 The purpose of this Statutory Instrument is to make the necessary consequential amendments to relevant primary legislation to ensure the ALN system can begin to take effect from 1 September 2021 in relation to how the 2018 Act corresponds to other enactments.
- 4.2 These amendments are minor and technical in nature. A brief description of each consequential amendment is provided below, under the title of each Act we are seeking to amend.

Local Government Act 1974

- 4.3 Section 26 of the Local Government Act 1974 sets out what a Local Commissioner (such as the Local Government Ombudsman), who is a member of a body of Commissioners called the Commission for Local Administration in England, may and may not investigate.
- 4.4 Currently, the Local Government Act 1974 provides that matters relating to Special Educational Needs (SEN), which cannot be considered by a Tribunal, could be considered by the Local Commissioner. Although these powers are

available to English local authorities only, is it likely there will be some children or young people who reside in Wales but receive their education in England.

- 4.5 The proposed amendment would enable Local Commissioners (in England) to investigate an English authority's actions when providing Additional Learning Provision (ALP) to a child from Wales, in the same way they can investigate the provision of SEN to children from England.

Education Act 1997

- 4.6 Part V of the Education Act 1997 is about the supervision of the curriculum for schools and external qualifications in respect of Wales. Section 32 relates to Welsh Ministers' functions in respect of advancing education and training and promoting quality and coherence, and that they shall have regard to the reasonable requirements of persons with learning difficulties.
- 4.7 The proposed amendments will update the definition of "learning difficulties" used in section 32 to ensure these functions apply to children and young people with Additional Learning Needs (ALN).

Special Educational Needs and Disability Act 2001

- 4.8 In Schedule 8 (Minor and consequential amendments) of the above Act, paragraph 12 will be omitted. This is to ensure outdated terminology ("special educational needs") is no longer used in the Education Act 1996.

Education Act 2002

- 4.9 Section 1(3)(g) includes "the proprietor of any special school that is not maintained by a local authority but is for the time being approved by the Secretary of State or the National Assembly for Wales under section 342 of the Education Act 1996" as a qualifying body. The amendment will omit the reference to "National Assembly for Wales" to ensure outdated terminology is no longer in use.
- 4.10 Section 2(5) provides that Welsh Ministers may relax or exempt any of the provisions in the 2018 Act for up to 3 years. However, such an application or order may be refused by Welsh Ministers if it is likely to have an effect on the "education of children with special educational needs". The amendments will update the terminology to ensure the powers are appropriate for the ALN system.

Nationality, Immigration and Asylum Act 2002

- 4.11 Section 36 of the Nationality, Immigration and Asylum Act 2002 disapplies a general duty on local authorities (under the Education Act 1996) to contribute towards “the spiritual, moral, mental and physical development of the community by securing that efficient primary education and secondary education...” in respect of persons residing in an “accommodation centre”.
- 4.12 This section has not yet been commenced and there are currently no plans from the UK Government to commence it. However, if the section is commenced in the future, several references throughout the section will require amendments to its terminology, such as omitting “special educational needs” and inserting in its place “additional learning needs”. The consequential amendments proposed will update the relevant terminology under the section in case those provisions are commenced at a later date.

Education Act 2005

- 4.13 Section 28 of the Education Act 2005 relates to the duty to arrange regular inspections of certain schools. To reflect changes made to the education system in Wales, the amendment will omit “special schools which are not community or foundation special schools but are for the time being approved by the Assembly under section 342 of the Education Act 1996” from the list of schools which may be inspected.

Education & Inspections Act 2006

- 4.14 Section 16 of the Education & Inspections Act 2006 relates to consultations on proposals for discontinuance of schools maintained by a local authority. Amendments are required to update the reference to a local authority maintaining a “statement of special educational needs” to one that also maintains an “individual development plan.”
- 4.15 Section 88 relates to the responsibility of a governing body for discipline; that policies are designed to promote good behaviour and discipline on the part of its pupils are pursued at the school. In this section, an amendments is required to omit to words “or the Assembly” when listing “relevant schools” or “governing bodies” which are approved by the Secretary of State or the Assembly under section 342 of EA 1996.

Qualifications Wales Act 2015

- 4.16 Section 57 (General interpretation and index of defined expressions) requires an amendment to its terminology to include “additional learning needs” when defining “a learning difficulty” in relation to the Qualifications Wales Act 2015.

Wales Act 2017

4.17 Section 59 of the Wales Act 2015 relates to Welsh tribunals. An amendment is required to add “the Education Tribunal for Wales” to the list of Welsh tribunals in place of “the Special Educational Needs Tribunal for Wales”.

4.18 Additionally, section 62 (Cross-deployment of members of the Welsh tribunals) requires an amendment to omit the “Special Educational Needs Tribunal for Wales” from the section.

Coronavirus Act 2020

4.19 Schedule 17 of the Coronavirus Act 2020 requires an amendment to insert the Additional Learning Needs and Education Tribunal (Wales) Act 2018 (provisions relating to individual development plans) to enable the temporary disapplication or modification of the ALN system should the continuing pandemic force another lockdown.

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.