

## **Explanatory Memorandum to the Care Planning, Placement and Case Review (Wales) (Amendment) 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 Care Planning, Placement and Case Review (Wales) (Amendment) Regulations 2021.

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

22 June 2021

## **1. Description**

- 1.1 These Regulations amend the Care Planning, Placement and Case Review (Wales) Regulations 2015 (*“the 2015 Regulations”*) in consequence of the Additional Learning Needs and Education Tribunal (Wales) Act 2018 (*“the 2018 Act”*) amending section 83 of the Social Services and Well-being (Wales) Act 2014 (*“the 2014 Act”*).

## **2. Matters of special interest to Senedd Cymru**

- 2.1 No specific matters identified.

## **3. Legislative background**

- 3.1 Part 2 of the 2018 Act establishes the statutory system in Wales for meeting the additional learning needs (“ALN”) of children and young people. Under that ALN system, both local authorities and governing bodies of maintained schools have responsibilities for deciding upon ALN and preparing and maintaining individual development plans (“IDPs”) for children who are registered as pupils at maintained schools in Wales. An exception to this is in relation to children who are looked after by a local authority in Wales, where usually only the local authority that looks after the child is responsible for those duties. Where a local authority maintains an IDP for a looked after child, it must incorporate the IDP into the child’s personal education plan, if the child has one: section 16 of the 2018 Act inserts this requirement into section 83(2C) of the 2014 Act.
- 3.2 Currently the requirement that most looked after children have a personal education plan as part of their care and support plan is in regulation 5 of the 2015 Regulations. In order to insert the requirement that an IDP be incorporated into a personal education plan into the 2014 Act, the 2018 Act amended the 2014 Act to require that a care and support plan include a personal education plan: section 16 of the 2018 Act inserting subsection (2A) into section 83 of the 2014 Act. In order to preserve the scope for exceptions to the requirement to have a personal education plan, the 2018 Act also inserted a regulation power to prescribe exceptions: section 83(2B) of the 2014 Act. These Regulations are to be made under that power, as well as under sections 83(5), 84(b) and 196(2). They are subject to the draft affirmative procedure (see paragraph 3.6 below).
- 3.3 Sections 83(5) and 84(b) give powers for regulations about care and support plans to include provision on what personal education plans are to contain.
- 3.4 The 2018 Act has a narrower definition of a child being looked after than the 2014 Act (see section 15 for the definition) and in particular it does not include a child who is looked after under the 2014 Act but for whom no personal education plan is required under that Act (see regulation 5 of the Additional Learning Needs (Wales) Regulations 2021). Therefore the categories of

looked after children prescribed in these Regulations will not be treated as looked after for the purposes of the 2018 Act (they still have rights under that Act, it is just that the specific provisions for looked after children will not apply to them).

- 3.5 The Additional Learning Needs and Education Tribunal (Wales) Act 2018 (Commencement No 1) Order 2020 commenced, amongst other things, various provisions of the 2018 Act only for the purposes of making regulations. This included section 16 (see article 3(1)(a)).
- 3.6 The 2018 Act also amends the 2014 Act to require that the first regulations made under section 83(2B) (which these Regulations are) are subject to the draft affirmative procedure (see the 2018 Act, Schedule 1, paragraph 24(4)). The Additional Learning Needs and Education Tribunal (Wales) Act 2018 (Amendments to Commencement Orders No 2, No 3 and No 4) Order 2021 amends earlier commencement orders so that that amendment to the 2014 Act comes into force on 22 June 2021. As a result of that Order, section 16 of the 2018 Act will come into force fully from 1 September 2021, which is the date that the ALN system comes into force on a phased basis. It is also the date that these Regulations come into force.

#### **4. Purpose and intended effect of the legislation**

- 4.1 The purpose of this Statutory Instrument is to prescribe in the 2015 Regulations the categories of looked after child for whom no personal education plan is to be prepared and to make other changes to the 2015 Regulations consequential upon the requirement to have a personal education plan being inserted into section 83 of the 2014 Act.
- 4.2 The effect of these Regulations is to continue the existing position regarding-
- a. the looked after children who are required to have a personal education plan, and
  - b. the list of information that must be included in a personal education plan.
- 4.3 The categories of looked after child for whom no personal education plan is to be prepared (see regulation 5 inserting a new Part 1A into the 2015 Regulations) are:
- any child who has been placed for adoption under the Adoption and Children Act 2002, unless the child falls within regulation 56 (which is where a child is (i) remanded to local authority accommodation, (ii) remanded to youth detention accommodation, or (iii) detained; and see regulation 2 for the definition of these matters);
  - any child who is looked after by the local authority for short breaks (within the circumstances set out in regulation 62(2));
  - any child who is looked after only by reason of being remanded to youth detention accommodation.

4.4 These categories are not currently required to have a personal education plan by virtue of regulations 3, 57 and 62 of the 2015 Regulations.

## **5. Consultation**

5.1 No separate formal consultation has taken place as the regulations make only consequential technical amendments. The policy intent behind these amendments was included in the formal consultation on the ALN Code and other aspects of ALN implementation, which took place in 2018 – 2019.

## **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 and do not impose or reduce costs for business, charities or voluntary bodies or the public sector.