

Explanatory Memorandum to the Equality Act 2010 (Disabled School Pupils)
(Wales) Regulations 2021

This Explanatory Memorandum has been prepared by the Education Directorate of the Welsh Government and is laid before Senedd Cymru in conjunction with the above subordinate legislation 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 Equality Act 2010 (Disabled School Pupils) (Wales) Regulations 2021. I am satisfied the benefits justify the likely costs.

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

14 December 2021

PART 1

1. Description

1.1 The Equality Act 2010 (Disabled School Pupils) (Wales) Regulations 2021 make provision about the duties of local authorities in Wales under paragraphs 6B, 6C and 6D of Schedule 17 to the Equality Act 2010.

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

2.1 No specific matters identified.

3. Legislative background

3.1 The Equality Act 2010 (Disabled School Pupils) (Wales) Regulations 2021 are made in exercise of the powers in paragraphs 6B(3), 6C(4) and 6D(4) of Schedule 17 to, and section 207(2) of, the Equality Act 2010, by the negative procedure pursuant to section 209(5) of the Equality Act 2010.

4. Purpose and intended effect of the legislation

4.1 The purpose of this statutory instrument is to make regulations about the duties on local authorities under the Equality Act 2010 that relate to disability discrimination in schools.

4.2 Regulation 4 makes provision about the arrangements a local authority must make to provide advice and information about disability discrimination in schools to disabled pupils.

4.3 Regulation 5 makes provision about the appointment of independent persons to facilitate the resolution of disputes about disability discrimination in schools.

4.4 Regulation 6 makes provision about the appointment of persons to provide independent advocacy services for disabled pupils.

5. Consultation

5.1 Since the duties underpinning these Regulations have been in force since 2010, a formal consultation was not considered necessary. Given that similar duties relating to appeals under the Additional Learning Needs and Education Tribunal (Wales) Act have recently been made, it is considered appropriate to make these Regulations relating to

disability discrimination in schools, under the Equality Act 2010, to ensure a consistent approach is taken.

5.2 However, an informal, targeted consultation took place over the summer to establish what working practices were already in place by local authorities to undertake these duties.

5.3 A further targeted consultation asked local authorities to comment on the draft guidance, which will sit alongside these Regulations to help local authorities undertake the duties set out in the Regulations.

PART 2 – REGULATORY IMPACT ASSESSMENT

6. Options

- a) Do nothing
- b) Publish guidance only
- c) Make the Regulations without publishing the guidance
- d) Make the proposed Regulations and publish the accompanying guidance

7. Costs and benefits

7.1 To continue with the status quo and choose Option A (do nothing), there would be no impact on the financial costs or benefits to local authorities. However, since local authorities are already under the duties set out in these proposed Regulations, there is a risk that the duties will not be fulfilled in a way that is consistent with the duties under the ALNET Act.

7.2 Since there is also a regulation making power in the Equality Act 2010 that has not been used, it may also appear strange that these regulations have not been made.

7.3 Therefore, to do nothing could prevent an improved awareness of these existing duties which could lead to further divergence in the manner in which the duties are fulfilled. This could be considered a cost to the pupils who are engaged with a disability discrimination claim.

7.4 Option B, to publish the guidance but not make the Regulations would have a similar impact to Option A (no financial costs or benefits), but with some potential improvements to the consistency and approach taken by local authorities. The guidance has already been prepared and so the costs associated with developing the guidance are regarded as sunk costs and are therefore excluded from this analysis. However, there is a problem with publishing guidance without making the Regulations. The aim of the guidance is to add detail to the Regulations and help local authorities to undertake their duties with a consistent, high quality approach. The Regulations also give weight to the guidance by containing the duties local authorities must undertake; whereas the guidance is a non-statutory document and will have limited weight or relevance without the related Regulations.

7.5 Option C, to make the Regulations without publishing the guidance, would have the benefit of including the specific duties set out in regulations, where currently the duties are contained in primary legislation only. However, without the accompanying guidance which adds details to the Regulations and provides guidance and clarity to

local authorities, these benefits would be limited. No financial costs are expected with this option.

7.6 Option D is our preferred choice since it brings the most benefits without increasing costs. By making the Regulations and publishing the guidance, we do not envisage any changes to financial costs or benefits to local authorities because they will already have been having to comply with the underlying statutory duties for a number years.

7.7 However, we do feel there is a real benefit to pupils, by adding detail in the regulations and guidance to help bring about a consistent, Wales wide approach when local authorities undertake the relevant duties.

7.8 The Regulations and guidance should also make it clearer to local authorities on their role when supporting pupils with a disability discrimination claim.

7.9 Although the Regulations are not legally necessary, closing this gap should bring clarity to the existing duties, and brings the duties and guidance relating to Disability Discrimination in line with appeals under

the ALN system (both functions of the Education Tribunal for Wales), found in the ALN Code.

7.10 We therefore believe the best option is Option D; to make the proposed Regulations and guidance, since this option provides the most benefit without incurring additional costs.

8. Competition Assessment

8.1 The Regulations are not expected to have any impact on business, charities and/or the voluntary sector.

9. Post implementation review

9.1 We are not proposing a post implementation review for these Regulations.

9.2 Firstly, the Regulations are supplementing duties that are already set out in primary legislation. Since we are not introducing new duties, there can be no baseline to monitor compliance.

9.3 Secondly, there are duties contained in the guidance on local authorities to undertake their own assessment to determine and monitor the overall standard of some of the provisions they are responsible for undertaking.

9.4 We believe this is an appropriate means of review and will not be seeking anything further.