

Agenda – Legislation, Justice and Constitution Committee

Meeting Venue:	For further information contact:
Video Conference via Zoom	Gareth Williams
Meeting date: 22 March 2021	Committee Clerk
Meeting time: 09.30	0300 200 6565
	SeneddLJC@senedd.wales

In accordance with Standing Order 34.19, the Chair has determined that the public are excluded from the Committee's meeting in order to protect public health. This meeting will be broadcast live on www.Senedd.TV

Informal pre-meeting (09.00–09.30)

- 1 Introduction, apologies, substitutions and declarations of interest
09.30
- 2 Proposed negative instruments that raise no reporting issues
under Standing Order 21.3B
09.30–09.35 (Page 1)
CLA(5)–10–21 – Paper 1 – Proposed negative statutory instruments with clear reports
 - 2.1 pNeg(5)41 – The Food, Animal Feed and Seeds (Miscellaneous Amendments and Transitional Provisions) (Wales) (EU Exit) Regulations 2021
- 3 Instruments that raise no reporting issues under Standing Order
21.2 or 21.3
09.35–09.40 (Pages 2 – 4)
CLA(5)–10–21 – Paper 2 – Statutory instruments with clear reports
Negative Resolution Instruments



3.1 SL(5)776 – The Education (Pupil Referral Units) (Management Committees etc.) (Wales) (Amendment) Regulations 2021

3.2 SL(5)781 – The Velindre National Health Service Trust Shared Services Committee (Wales) (Amendment) Regulations 2021

3.3 SL(5)784 – The Adoption and Fostering (Wales) (Miscellaneous Amendments) (Coronavirus) (Amendment) Regulations 2021

3.4 SL(5)785 – The Town and Country Planning (General Permitted Development) (Amendment) (Wales) Order 2021

4 Instruments that raise issues to be reported to the Senedd under Standing Order 21.2 or 21.3

09.40–09.55

Negative Resolution Instruments

4.1 SL(5)777 – The Independent Schools (Provision of Information) (Wales) (Amendment) Regulations 2021

(Pages 5 – 56)

CLA(5)–10–21 – Paper 3 – Report

CLA(5)–10–21 – Paper 4 – Regulations

CLA(5)–10–21 – Paper 5 – Explanatory Memorandum

4.2 SL(5)780 – The National Health Service (Charges to Overseas Visitors) (Amendment) (Wales) (EU Exit) Regulations 2021

(Pages 57 – 69)

CLA(5)–10–21 – Paper 6 – Report

CLA(5)–10–21 – Paper 7 – Regulations

CLA(5)–10–21 – Paper 8 – Explanatory Memorandum

4.3 SL(5)782 – The Digital Health and Care Wales (Transfer of Staff, Property, Rights and Liabilities) Order 2021

(Pages 70 – 93)

CLA(5)–10–21 – Paper 9 – Report

CLA(5)–10–21 – Paper 10 – Order

CLA(5)–10–21 – Paper 11 – Explanatory Memorandum

4.4 SL(5)786 – The Care and Support (Charging) (Wales) (Amendment) Regulations 2021

(Pages 94 – 105)

CLA(5)–10–21 – Paper 12 – Report

CLA(5)–10–21 – Paper 13 – Regulations

CLA(5)–10–21 – Paper 14 – Explanatory Memorandum

4.5 SL(5)787 – The Business Tenancies (Extension of Protection from Forfeiture etc.) (Wales) (Coronavirus) Regulations 2021

(Pages 106 – 121)

CLA(5)–10–21 – Paper 15 – Report

CLA(5)–10–21 – Paper 16 – Regulations

CLA(5)–10–21 – Paper 17 – Explanatory Memorandum

4.6 SL(5)791 – The Health Protection (Coronavirus, International Travel and Operator Liability) (Miscellaneous Amendments) (Wales) Regulations 2021

(Pages 122 – 141)

CLA(5)–10–21 – Paper 18 – Report

CLA(5)–10–21 – Paper 19 – Regulations

CLA(5)–10–21 – Paper 20 – Explanatory Memorandum

CLA(5)–10–21 – Paper 21 – Letter from the Minister for Health and Social Services, 12 March 2021

CLA(5)–10–21 – Paper 22 – Written statement, 12 March 2021

4.7 SL(5)793 – The Official Controls (Plant Health and Genetically Modified Organisms) (Wales) (Amendment) Regulations 2021

(Pages 142 – 153)

CLA(5)–10–21 – Paper 23 – Report

CLA(5)–10–21 – Paper 24 – Regulations

CLA(5)–10–21 – Paper 25 – Explanatory Memorandum

Affirmative Resolution Instruments

4.8 SL(5)789 – The Additional Learning Needs (Wales) Regulations 2021

(Pages 154 – 238)

CLA(5)–10–21 – Paper 26 – Report

CLA(5)–10–21 – Paper 27 – Regulations

CLA(5)–10–21 – Paper 28 – Explanatory Memorandum

4.9 SL(5)775 – The Education Tribunal for Wales Regulations 2021

(Pages 239 – 348)

CLA(5)–10–21 – Paper 29 – Report

CLA(5)–10–21 – Paper 30 – Regulations

CLA(5)–10–21 – Paper 31 – Explanatory Memorandum

4.10 SL(5)798 – The Equality Act 2010 (Capacity of parents and persons over compulsory school age) (Wales) Regulations 2021

(Pages 349 – 401)

CLA(5)–10–21 – Paper 32 – Report

CLA(5)–10–21 – Paper 33 – Regulations

CLA(5)–10–21 – Paper 34 – Explanatory Memorandum

4.11 SL(5)778 – The Animal Welfare (Licensing of Activities Involving Animals) (Wales) Regulations 2021

(Pages 402 – 461)

CLA(5)–10–21 – Paper 35 – Report

CLA(5)–10–21 – Paper 36 – Regulations

CLA(5)–10–21 – Paper 37 – Explanatory Memorandum

CLA(5)–10–21 – Paper 38 – Letter from the Kennel Club, 9 March 2021

CLA(5)–10–21 – Paper 39 – Letter to the Minister for Environment, Energy and Rural Affairs, 15 March 2021

4.12 SL(5)790 – The Agricultural Support (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2021

(Pages 462 – 511)

CLA(5)–10–21 – Paper 40 – Report

CLA(5)–10–21 – Paper 41 – Regulations

CLA(5)–10–21 – Paper 42 – Explanatory Memorandum

Made Affirmative Resolution Instruments

**4.13 SL(5)792 – The Health Protection (Coronavirus Restrictions) (No. 5) (Wales)
(Amendment) (No. 5) Regulations 2021**

(Pages 512 – 543)

CLA(5)–10–21 – Paper 43 – Report

CLA(5)–10–21 – Paper 44 – Regulations

CLA(5)–10–21 – Paper 45 – Explanatory Memorandum

CLA(5)–10–21 – Paper 46 – Letter from the First Minister, 12 March 2021

CLA(5)–10–21 – Paper 47 – Written statement, 12 March 2021

**4.14 SL(5)795 – The Public Health (Protection from Eviction) (No. 2) (Wales)
(Coronavirus) Regulations 2021**

(Pages 544 – 565)

CLA(5)–10–21 – Paper 48 – Report

CLA(5)–10–21 – Paper 49 – Regulations

CLA(5)–10–21 – Paper 50 – Explanatory Memorandum

CLA(5)–10–21 – Paper 51 – Letter from the Minister for Housing and Local
Government, 16 March 2021

CLA(5)–10–21 – Paper 52 – Written statement, 17 March 2021

**4.15 SL(5)796 – The Senedd Cymru (Representation of the People) (Amendment)
Order 2021**

(Pages 566 – 579)

CLA(5)–10–21 – Paper 53 – Report

CLA(5)–10–21 – Paper 54 – Order

CLA(5)–10–21 – Paper 55 – Explanatory Memorandum

CLA(5)–10–21 – Paper 56 – Letter from the First Minister, 17 March 2021

**5 Instruments that raise issues to be reported to the Senedd under
Standing Order 21.2 or 21.3 – previously considered**

09.55–10.00

**5.1 SL(5)758 – The Education Workforce Council (Interim Suspension Orders)
(Additional Functions) (Wales) Order 2021**

(Pages 580 – 584)

CLA(5)–10–21 – Paper 57 – Report

CLA(5)–10–21 – Paper 58 – Welsh Government response

5.2 SL(5)767 – The Corporate Joint Committees (Transport Functions) (Wales) Regulations 2021

(Pages 585 – 587)

CLA(5)–10–21 – Paper 59 – Report

CLA(5)–10–21 – Paper 60 – Welsh Government response

6 Subordinate legislation that raises no reporting issues under Standing Order 21.7

10.00–10.05

(Pages 588 – 590)

CLA(5)–10–21 – Paper 61 – Subordinate legislation with clear reports

6.1 SL(5)799 – The Additional Learning Needs Code for Wales 2021

6.2 SL(5)788 – The Candidate Election Expenses (Senedd Elections) Code of Practice 2021 (Appointed Day) Order 2021

6.3 SL(5)794 – The Senedd Cymru (Returning Officers' Charges) Order 2021

7 Written Statements under Standing Order 30C

10.05–10.10

7.1 WS–30C(5)218 – The Official Controls, Plant Health, Seeds and Seed Potatoes (Amendment etc.) Regulations 2021

(Pages 591 – 595)

CLA(5)–10–21 – Paper 62 – Written statement

CLA(5)–10–21 – Paper 63 – Commentary

7.2 WS–30C(5)219 – The Agricultural Products, Food and Drink (Amendment) (EU Exit) Regulations 2020

(Pages 596 – 601)

CLA(5)–10–21 – Paper 64 – Written statement

CLA(5)–10–21 – Paper 65 – Commentary

8 Papers to note

10.10–10.15

8.1 Letters from the Minister for Environment, Energy and Rural Affairs: The Exemptions from Official Controls at Border Control Posts (Amendment) Regulations 2021

(Pages 602 – 605)

CLA(5)–10–21 – Paper 66 – Letter from the Minister for Environment, Energy and Rural Affairs, 15 March 2021

CLA(5)–10–21 – Paper 67 – Letter from the Minister for Environment, Energy and Rural Affairs to the Chair of the Climate Change, Environment and Rural Affairs Committee, 15 March 2021

8.2 Correspondence with the Minister for Housing and Local Government: The Local Land Charges (Fees) (Wales) Rules 2021

(Pages 606 – 608)

CLA(5)–10–21 – Paper 68 – Letter from the Minister for Housing and Local Government, 15 March 2021

CLA(5)–10–21 – Paper 69 – Letter to the Minister for Housing and Local Government, 9 March 2021

8.3 Letter from the Llywydd: Welsh Elections (Coronavirus) Bill 2021 – impact on Senedd Committees

(Pages 609 – 610)

CLA(5)–10–21 – Paper 70 – Letter from the Llywydd, 15 March 2021

8.4 Letter from the Minister for Environment, Energy and Rural Affairs to the Parliamentary Under Secretary of State for the Department for Environment, Food and Rural Affairs: The Reservoirs Act (Panels of Civil Engineers) (Applications and Fees) Regulations 2021

(Pages 611 – 612)

CLA(5)–10–21 – Paper 71 – Letter from the Minister for Environment, Energy and Rural Affairs to the Parliamentary Under Secretary of State for the Department for Environment, Food and Rural Affairs, 15 March 2021

8.5 Written statement by the Counsel General: Improving the accessibility of Welsh law

(Pages 613 – 614)

CLA(5)–10–21 – Paper 72 – Written statement, 16 March 2021

8.6 Letter from the Minister for Housing and Local Government: British–Irish Council Digital Inclusion Work Sector Ministerial Meeting

(Page 615)

CLA(5)–10–21 – Paper 73 – Letter from the Minister for Housing and Local Government, 17 March 2021

8.7 Letter from the Minister for Housing and Local Government: British–Irish Council Joint Housing and Spatial Planning Work Sectors Ministerial meeting

(Page 616)

CLA(5)–10–21 – Paper 74 – Letter from the Minister for Housing and Local Government, 18 March 2021

8.8 Correspondence with the Minister for Finance and Trefnydd: Standing Order 30C Written Statement – The Greenhouse Gas Emissions (Kyoto Protocol Registry) (Amendments) (EU Exit) Regulations 2021

(Pages 617 – 620)

CLA(5)–10–21 – Paper 75 – Letter from the Minister for Finance and Trefnydd, 19 March 2021

CLA(5)–10–21 – Paper 76 – Letter to the Minister for Finance and Trefnydd, 15 March 2021

9 Motion under Standing Order 17.42 to resolve to exclude the public from the remainder of the meeting

10.15

10 Legislative Consent Memorandum on the Armed Forces Bill – consideration of draft report

10.15–10.25

(Pages 621 – 627)

CLA(5)–10–21 – Paper 77 – Draft report

- 11 Legislative Consent Memorandum on the Animal Welfare (Sentencing) Bill – consideration of draft letter to the Minister**
10.25–10.30 (Pages 628 – 629)
CLA(5)–10–21 – Paper 78 – Draft letter to the Minister for Environment, Energy and Rural Affairs
- 12 Statutory Instruments laid but not formally scrutinised by the Committee**
10.30–10.40 (Pages 630 – 632)
CLA(5)–10–21 – Paper 79 – Statutory instruments laid but not formally scrutinised by the Committee
- 13 Legacy work – consideration of draft report**
10.40–11.30 (Pages 633 – 695)
CLA(5)–10–21 – Paper 80 – Draft report
CLA(5)–10–21 – Paper 81 – Draft letter to Procedures Committee
- 14 Scrutiny of regulations made under the EU (Withdrawal) Act 2018 – update**
(Pages 696 – 697)
CLA(5)–10–21 – Paper 82 – Letter from the Minister for Finance and Trefnydd, 19 March 2021

Proposed Negative Statutory Instruments with Clear Reports

22 March 2021

Pn(5)41 – The Food, Animal Feed and Seeds (Miscellaneous Amendments and Transitional Provisions) (Wales) (EU Exit) Regulations 2021

Procedure: Proposed negative

The Food, Animal Feed and Seeds (Miscellaneous Amendments and Transitional Provisions) (Wales) (EU Exit) Regulations 2021 ("this Instrument") amend the statutory Instruments listed below relating to food and feed hygiene and safety, food compositional standards and labelling and seeds. These amendments are required to address deficiencies arising from EU Exit and ensure that the statute book can operate effectively following the UK's exit from the EU.

- Food Hygiene (Wales) Regulations 2006
- Quick-frozen Foodstuffs (Wales) Regulations 2007
- The Seed Marketing (Wales) Regulations 2012
- Food Additives, Flavourings, Enzymes and Extraction Solvents (Wales) Regulations 2013
- Honey (Wales) Regulations 2015
- The Animal Feed (Composition, Marketing and Use) (Wales) Regulations 2016
- The Caseins and Caseinates (Wales) Regulations 2016

These Regulations were laid for the purposes of sifting under the EU (Withdrawal) Act 2018 in accordance with Standing Order 27.9A.

Parent Act: European Union (Withdrawal) Act 2018

Sift Requirements Satisfied: Yes

We agree that the appropriate procedure for these Regulations is the negative resolution procedure.



Agenda Item 3

Statutory Instruments with Clear Reports 22 March 2021

SL(5)776 – The Education (Pupil Referral Units) (Management Committees etc.) (Wales) (Amendment) Regulations 2021

Procedure: Negative

These Regulations are made by the Welsh Ministers under section 569(4) and (5) of, and paragraph 15 of Schedule 1 to, the Education Act 1996 ("the 1996 Act"). The Regulations amend the Education (Pupil Referral Units) (Management Committees etc.) (Wales) Regulations 2014 ("the 2014 Regulations") in connection with the implementation of the Additional Learning Needs and Education Tribunal (Wales) Act 2018 ("the 2018 Act").

In accordance with paragraph 1 of Schedule 1 to the 1996 Act, the functions of a governing body of a maintained school under the 2018 Act are functions of a local authority in relation to a pupil referral unit ("PRU"). These Regulations amend regulation 22 of the 2014 Regulations to provide that a local authority must delegate those functions to a management committee of a PRU.

Paragraph 4.12 of the Explanatory Memorandum to the Regulations notes that:

"The intended effect is that management committees exercise, in relation to the PRU, the functions of a governing body under the [2018] Act."

These Regulations come into force on 1 September 2021.

Parent Act: Education Act 1996

Date Made:

Date Laid:

Coming into force date: 01 September 2021



SL(5)781 – The Velindre National Health Service Trust Shared Services Committee (Wales) (Amendment) Regulations 2021

Procedure: Negative

These Regulations amend the Velindre National Health Service Trust Shared Services Committee (Wales) Regulations 2012 (“the principal Regulations”) to make provision for the Chief Officers of Special Health Authorities established by the Welsh Ministers to become members of the NHS Wales Shared Services Partnership Committee.

The Regulations are made as part of a suite of legislation designed to support the launch of a new Special Health Authority called Digital Health and Care Wales (DHCW).

Regulation 2 amends the definition of “chief officers” in the principal Regulations to include the chief officer or chief executive of a Special Health Authority in Wales. Regulation 2 also amends the definition of “nominated representative” in the principal Regulations to include a nominated officer of each Special Health Authority.

Regulation 3 amends regulation 7 of the principal Regulations to include in regulation 7(2) a reference to a chief officer or chief executive of a Special Health Authority, and in regulation 7(3) and (4) a reference to an officer member of the chief officer or chief executive’s Special Health Authority.

Parent Act: National Health Service (Wales) Act 2006

Date Made:

Date Laid:

Coming into force date: 01 April 2021

SL(5)784 – The Adoption and Fostering (Wales) (Miscellaneous Amendments) (Coronavirus) (Amendment) Regulations 2021

Procedure: Negative

These Regulations amend the Adoption and Fostering (Wales) (Miscellaneous Amendments) (Coronavirus) Regulations 2020 (“the 2020 Regulations”).

These Regulations extend the expiry date of the 2020 Regulations in response to the COVID 19 pandemic to 30 September 2021.



Parent Act: Adoption and Children Act 2002, Social Services and Well-being (Wales) Act

Date Made: 05 March 2021

Date Laid: 08 March 2021

Coming into force date: 30 March 2021

SL(5)785 – The Town and Country Planning (General Permitted Development) (Amendment) (Wales) Order 2021

Procedure: Negative

This Order amends the Town and Country Planning (General Permitted Development) Order 1995 ("the GPDO").

Article 3 of, and Schedule 2 to, the GPDO confer permitted development rights in respect of certain developments. Where such rights are conferred, an application for planning permission is not required.

Article 3 of this Order amends paragraph A.2(c) of Part 3A of Schedule 2 to the GPDO (temporary building and changes of use for public health emergency purposes). Where paragraph A.2(c) applies, the timeframe for removing the development is amended so for those developments which begin before 10 April 2021, the period is extended from twelve to eighteen months. For those developments which begin on or after 10 April 2021, the period remains twelve months. In each case, the time begins from the date on which the development began.

Article 4 of this Order amends paragraph A.1(b) of Part 12A of Schedule 2 to the GPDO (emergency development by local authorities). Where paragraph A.1(b) applies, the timeframe for removing the development is amended so for those developments which begin before 30 March 2021, the period is extended from twelve to eighteen months. For those developments which begin on or after 30 March 2021, the period remains twelve months. In each case, the time begins from the date on which the development began.

Parent Act: Town and Country Planning Act 1990

Date Made: 04 March 2021

Date Laid: 08 March 2021

Coming into force date: 29 March 2021



SL(5)777 – The Independent Schools (Provision of Information) (Wales) (Amendment) Regulations 2021

Background and Purpose

These Regulations are made by the Welsh Ministers under sections 160(1), 168 and 210(1) and (7) of the Education Act 2002 ("the 2002 Act"). The Regulations amend the Independent Schools (Provision of Information) (Wales) Regulations 2003 ("the 2003 Regulations") in connection with the implementation of the Additional Learning Needs and Education Tribunal (Wales) Act 2018 ("the 2018 Act").

The Regulations relate to applications for registration of independent schools, and information to be provided to the Welsh Ministers by the proprietors of independent schools, under the 2002 Act. The Regulations require an application to enter an independent school in the register of independent schools in Wales to include information regarding the type(s) of additional learning provision made by the school for pupils with additional learning needs (if any), and for the Welsh Ministers to be provided with confirmation of the number of pupils at the school in respect of whom an individual development plan is maintained or who have otherwise been identified as having additional learning needs.

These Regulations come into force on 1 September 2021.

Procedure

Negative.

The Regulations were made by the Welsh Ministers before they were laid before the Senedd.

The Senedd can annul the Regulations within 40 days (excluding any days when the Senedd is: (i) dissolved, or (ii) in recess for more than four days) of the date they were laid before the Senedd.

Technical Scrutiny

No points are identified for reporting under Standing Order 21.2 in respect of this instrument.

Merits Scrutiny

The following point is identified for reporting under Standing Order 21.3 in respect of this instrument.

1. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Senedd.



Regulation 3 of these Regulations inserts three definitions into regulation 2 of the 2003 Regulations by reference to sections 2, 3 and 10 of the 2018 Act, which are not yet in force, and a further two definitions by reference to section 312 of the Education Act 1996, which is prospectively repealed by paragraph 4(9) of Schedule 1 to the 2018 Act.

Paragraph 3.7 of the Explanatory Memorandum to these Regulations confirms that:

“The Welsh Ministers intend to exercise their commencement powers (under section 100 of the Act) to provide for functions under the Act to come into force on a phased basis from 1 September 2021.”

Sections 2, 3 and 10 of the 2018 Act will therefore need to be brought into force by 1 September 2021 pursuant to a Commencement Order made by the Welsh Ministers under section 100(3) of the 2018 Act, and additionally paragraph 4(9) of Schedule 1 to that Act must not be brought into force by that date, in order for the provisions of these Regulations to operate effectively.

Welsh Government response

A Welsh Government response is not required.

Legal Advisers

Legislation, Justice and Constitution Committee

15 March 2021



W E L S H S T A T U T O R Y
I N S T R U M E N T S

2021 No. 217 (W. 54)

EDUCATION, WALES

**The Independent Schools
(Provision of Information) (Wales)
(Amendment) Regulations 2021**

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Independent Schools (Provision of Information) (Wales) Regulations 2003 (“the 2003 Regulations”). These amendments are required as a result of the implementation of the Additional Learning Needs and Education Tribunal (Wales) Act 2018 (“the 2018 Act”).

Regulation 3 inserts relevant definitions into regulation 2 (interpretation) of the 2003 Regulations. In particular, the 2018 Act is defined, as well as the terms “additional learning needs” and “additional learning provision”. These are both terms introduced in the 2018 Act and the amendments to the 2003 Regulations update the terminology. Regulation 3 also inserts definitions of “special educational needs” and “special educational provision” under section 312 of the Education Act 1996, to distinguish between the old system and the new.

Regulation 4 amends the Schedule to the 2003 Regulations. Paragraph 3 of the Schedule is amended to cover both “special educational needs” and “additional learning needs”. Paragraph 3(5) is omitted. Paragraph 3(6) is replaced to update the terminology and add the requirement for a list of the type of additional learning provision the school makes. Additionally, paragraph 5(1)(a) of the Schedule is amended to update the reference to statements of special educational needs to include individual development plans, and to remove the requirement to provide information that would identify individual pupils. Paragraph 5(2) is amended so that it refers to both additional learning needs and special educational needs.

The Welsh Ministers’ Code of Practice on the carrying out of Regulatory Impact Assessments was

considered in the light of these Regulations. As a result, it was not considered necessary to carry out a regulatory impact assessment as to the likely costs and benefits of complying with these Regulations.

W E L S H S T A T U T O R Y
I N S T R U M E N T S

2021 No. 217 (W. 54)

EDUCATION, WALES

**The Independent Schools
(Provision of Information) (Wales)
(Amendment) Regulations 2021**

Made 26 February 2021

Laid before Senedd Cymru 2 March 2021

Coming into force 1 September 2021

The Welsh Ministers, in exercise of the powers conferred on them by sections 160(1), 168 and 210(1) and (7) of the Education Act 2002⁽¹⁾ make the following Regulations:

Title, commencement and application

1.—(1) The title of these Regulations is the Independent Schools (Provision of Information) (Wales) (Amendment) Regulations 2021 and they come into force on 1 September 2021.

(2) These Regulations apply in relation to Wales.

Amendment to the Independent Schools (Provision of Information) (Wales) Regulations 2003

2. The Independent Schools (Provision of Information) (Wales) Regulations 2003⁽²⁾ are amended in accordance with regulations 3 and 4.

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- (1) 2002 c. 32. Section 212(1) defines “regulations” as regulations made under the Education Act 2002 (c. 32) by the National Assembly for Wales (in relation to Wales). The functions of the National Assembly for Wales were transferred to the Welsh Ministers by paragraph 30 of Schedule 11 to the Government of Wales Act 2006 (c. 32). Section 212(1) also defines “prescribes”. Section 210 of the Education Act 2002 was amended by section 21 of the Learner Travel (Wales) Measure 2008 (nawm 2).
- (2) S.I. 2003/3230 (W. 310).

Amendments to regulation 2 (interpretation)

3. In regulation 2, in the appropriate place insert—

““the 2018 Act” (*“Deddf 2018”*) means the Additional Learning Needs and Education Tribunal (Wales) Act 2018;”,

““additional learning needs” (*“anghenion dysgu ychwanegol”*) has the meaning assigned to it by section 2 of the 2018 Act;”,

““additional learning provision” (*“darpariaeth ddysgu ychwanegol”*) has the meaning assigned to it by section 3 of the 2018 Act;”,

““individual development plan” (*“cynllun datblygu unigol”*) has the meaning assigned to it by section 10 of the 2018 Act;”,

““special educational needs” (*“anghenion addysgol arbennig”*) has the meaning assigned to it by section 312 of the 1996 Act;”,

““special educational provision” (*“darpariaeth addysgol arbennig”*) has the meaning assigned to it by section 312 of the 1996 Act;”.

Amendments to the Schedule

4. In the Schedule—

(a) omit paragraph 3(5).

(b) for paragraph 3(6) substitute—

“(6) The type or types of—

(a) additional learning provision made by the school for pupils with additional learning needs (if any), and

(b) special educational provision made by the school for pupils with special educational needs (if any).”

(c) for paragraph 5(1) substitute—

“(1) The number of pupils at the school in respect of whom—

(a) the school or a local authority maintains an individual development plan, and

(b) a local authority maintains a statement of special educational needs under section 324 of the 1996 Act.”

(d) for paragraph 5(2) substitute—

“(2) The number of pupils at the school who do not fall within sub-paragraph (1), but who have been identified as having additional learning needs or special educational needs.”

Kirsty Williams

Minister for Education, one of the Welsh Ministers

26 February 2021

Explanatory Memorandum to:

1. The Additional Learning Needs Code for Wales;
2. The following Regulations;
 - The Additional Learning Needs (Wales) Regulations 2021;
 - The Education Tribunal for Wales Regulations 2021;
 - The Education (Pupil Referral Units) (Management Committees etc.) (Wales) (Amendment) Regulations 2021;
 - Independent Schools (Provision of Information) (Wales) (Amendment) Regulations 2021;
 - The Equality Act 2010 (Capacity of parents and persons over compulsory school age) (Wales) Regulations 2021.

This Explanatory Memorandum has been prepared by the Additional Learning Needs Transformation Team 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:

1. The Additional Learning Needs Code for Wales;
2. The Additional Learning Needs (Wales) Regulations 2021;
3. The Education Tribunal for Wales Regulations 2021;
4. The Education (Pupil Referral Units) (Management Committees etc.) (Wales) (Amendment) Regulations 2021;
5. Independent Schools (Provision of Information) (Wales) (Amendment) Regulations 2021;
6. The Equality Act 2010 (Capacity of parents and persons over compulsory school age) (Wales) Regulations 2021.

I am satisfied that the benefits justify the likely costs.

Kirsty Williams MS, Minister for Education
2 March 2021

PART 1 – EXPLANATORY MEMORANDUM

1. Description

- 1.1. Part 2 of the Additional Learning Needs and Education Tribunal (Wales) Act 2018 ('the Act') establishes the statutory system in Wales for meeting the additional learning needs of children and young people ('the ALN system'). The Additional Learning Needs (Wales) Regulations 2021 make provision about a range of matters related to the operation of the ALN system, for example prescribing time periods within which certain duties are to be performed to operate effectively and setting out the functions of an Additional Learning Needs Co-ordinator ('ALNCo'). The Additional Learning Needs Code for Wales ('the Code') also imposes requirements on the governing bodies of maintained schools in Wales, governing bodies of institutions in the further education sector ('FEIs') in Wales, local authorities and NHS bodies related to the operation of the ALN system and the exercise of functions under it. The Code also gives guidance to the public authorities that have functions under the ALN system, about the exercise of those functions under Part 2 of the Act.
- 1.2. Part 3 of the Act continues the Special Educational Needs Tribunal for Wales and renames it the Education Tribunal for Wales ('the Tribunal'). In addition to the Tribunal's jurisdiction set out in Part 2 of the Act, it has jurisdiction in relation to disability discrimination in schools (for provision about this, see section 116 of the Equality Act 2010 and Schedule 17 to that Act). The Education Tribunal for Wales Regulations 2021 make provision about the constitution of the Tribunal and set out the procedure to be followed in proceedings before the Tribunal.
- 1.3. The Education (Pupil Referral Units) (Management Committees etc.) (Wales) (Amendment) Regulations 2021 amend the Education (Pupil Referral Units) (Management Committees etc.) (Wales) Regulations 2014 ('the 2014 Regulations') to provide that a local authority must delegate the specified functions to a management committee of a pupil referral unit ('PRU'). The specified functions are the functions of the governing body under the Act which, in accordance with paragraph 1 of Schedule 1 to the Education Act 1996, are functions of the local authority in relation to a PRU.
- 1.4. The Independent Schools (Provision of Information) (Wales) (Amendment) Regulations 2021 amend the Independent Schools (Provision of Information) (Wales) Regulations 2003 in order to require an application to enter an independent school in the register of independent schools in Wales to include information about the types of additional learning provision made by the school for pupils with additional learning needs (if any).

- 1.5. The Equality Act (Capacity of parents and persons over compulsory school age) (Wales) Regulations 2021 modify certain provisions of the Equality Act 2010 in certain circumstances. The modifications ensure that the representative of child's parent who lacks capacity, or the representative of a young person who lacks capacity, can bring a claim on behalf of that individual under Schedule 17 to the Equality Act 2010.

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

- 2.1. The ALN Code, the regulations and the other regulations have been laid on 2 March 2021 as a single package. This is to show the interplay of the provisions in the respective instruments.
- 2.2. The sections of the Act containing the duties to designate people to the statutory roles (sections 60 to 62) came into force on 4 January. The Additional Learning Needs Co-ordinator (Wales) Regulations 2020 (S.I. 2020/1351) ("the ALNCo Regulations") also came into force on that date. Those Regulations set out the qualifications and experience required for a person to be designated as an ALNCo and the ALNCo's functions. Those Regulations will be revoked by the Additional Learning Needs (Wales) Regulations 2021, as the provisions in the former are re-enacted within the latter (see regulations 26 to 30).
- 2.3. The Additional Learning Needs (Wales) Regulations 2021 make three amendments to the Act.
 - 2.3.1. Regulation 4 amends section 88 of the Act about rules on giving notice and documents. The amendment is to provide that a notification or document given electronically is treated as having been given, unless the contrary is proved, on the day on which it is sent. This reflects the rule in section 14 of the Legislation (Wales) Act 2019, which does not apply to the Act.
 - 2.3.2. Regulation 19 amends section 44 of the Act to provide that an NHS body's duties under section 20(5)(a) and (c) of the Act about securing a relevant treatment or service which is additional learning provision for a detained person cease to apply from the beginning of the detained person's detention. In this situation, the home authority for the detained person already has a duty under section 42 of the Act to arrange appropriate additional learning provision and that duty is apt to deal with the detention situation. The NHS body may not practically be able to secure a relevant treatment or service for a detained person (particularly as it might not be responsible for the provision of health services to the detained person during the detention period) or the relevant treatment or service may no longer be appropriate.

- 2.3.3. Regulation 33 amends section 68 of the Act to provide that for the purposes of a local authority's duties to make arrangements for the avoidance and resolution of disagreements and independent advocacy services, a local authority is also responsible for detained persons for whom it is the home authority. It is appropriate for the home authority's arrangements to apply in relation to detained persons, as it is the authority exercising functions in relation to them and it avoids any difficulties in ascertaining which local authority would otherwise be responsible (given that the test for responsibility is based upon a person being in the area of a local authority, which is difficult to determine in a detention situation).
- 2.4. As explained elsewhere in the Explanatory Memorandum, the Code imposes requirements. Chapter 1 of the Code explains how those requirements are identified in the Code.
- 2.5. It is intended to implement the ALN system on a phased basis from 1 September 2021 (see paragraph 3.7 below), which is why the regulations do not revoke law relating to special educational needs.

3. Legislative background

- 3.1. Part 2 of the Act establishes the ALN system. At its heart, the system involves governing bodies of maintained schools and FEIs and local authorities having responsibility for deciding whether children or young people have additional learning needs and if they do, preparing and maintaining an individual development plan ('IDP') for them. An IDP sets out the needs that the child or young person has and the additional learning provision called for by those needs. There are duties to secure the additional learning provision and particular other things, set out in an IDP. The ALN system provides that children, their parents and young people have the right to appeal to the Tribunal about certain matters related to the identification of their needs and the provision to meet them.
- 3.2. The ALN system is to replace the system under Part 4 of the Education Act 1996 for identifying, assessing and making provision for children with special educational needs ('SEN'). Implementing the ALN system will take three years, from September 2021.
- 3.3. The Additional Learning Needs and Education Tribunal (Wales) Act 2018 (Commencement No 1) Order 2020 (S.I. 2020/1182) commenced various powers in the Act, provisions for the purposes of exercising powers within them and related provisions. It also commenced sections 60 to 62 which contain duties to designate people to the statutory roles and provisions related to the list of independent special post-16 institutions in Wales or England, which the Welsh Ministers must establish. The Additional Learning Needs (List of Independent Special Post-16 Institutions) (Wales) Regulations 2020 (S.I. 2020/1367) make provision about that list and applications to be included in it.
- 3.4. The Welsh Ministers are required by section 4 of the Act to issue a code on additional learning needs. The code may impose requirements about certain matters (set out at section 4(5) of the Act) and is required to include the particular requirements described in section 4(6) of the Act. It may also make provision setting out what is required to discharge the duties in sections 7(1) and 8(1) of the Act about local authorities and NHS bodies having regard to United Nations Conventions.
- 3.5. The Code may include guidance about the exercise of functions under the Act and any other matter connected with identifying and meeting additional learning needs (section 4(2) of the Act). It must include guidance about the exercise of a maintained school or FEI's governing body's function to take all reasonable steps to secure that the additional learning provision called for by a pupil or student's additional learning needs is made whilst an individual development plan is being prepared for the pupil or student (section 47(3) of the Act).

- 3.6. The Act also confers various regulation making powers on the Welsh Ministers which supplement the functions in the Act.
- 3.7. All of the sets of regulations provide that they come into force on 1 September 2021. If approved by the Senedd, for the Code to come into force, a commencement order must be made (section 5(4) of the Act). The intention is that the Code also comes into force on 1 September 2021. The Welsh Ministers intend to exercise their commencement powers (under section 100 of the Act) to provide for functions under the Act to come into force on a phased basis from 1 September 2021.
- 3.8. The Code is to be issued under the powers in section 4 of the Act (as well as containing provision made under sections 7(4) and 8(4) of the Act and the guidance required by section 47(3) of the Act). The procedure for making it is set out in section 5 of the Act, which requires that there has been consultation on a draft of it with particular persons (see below for details of the consultation) and that it cannot be issued unless a draft of it (which may be a modified draft following that consultation) has been laid before and approved by resolution of the Senedd.
- 3.9. The Additional Learning Needs (Wales) Regulations 2021 are to be made under sections 15(2), 21(10), 32(1)(b), 36(3), 37(1)(a) and (b), 45, 46, 60(4), 65(5), 67, 82, 83, 97 and 98(2) of the Act. These Regulations are subject to the approval of the Senedd by way of the draft affirmative procedure (as required by section 98(3) of the Act).
- 3.10. The Education Tribunal for Wales Regulations 2021 are to be made under sections 70(4), 74, 75, 76(3), 77, 91(6) and 92(2) of the Act and section 207(4) of, and paragraphs 6(1), (2) to (5) and (7) and 6A of Schedule 17 to, the Equality Act 2010. These Regulations are subject to the approval of the Senedd by way of the draft affirmative procedure (as required by section 98(3) of the 2018 Act and section 209(6) of the Equality Act 2010).
- 3.11. The Equality Act 2010 (Capacity of parents and persons over compulsory school age) (Wales) Regulations 2021 are to be made under section 207(4) of, and paragraph 6F of Schedule 17 to, the Equality Act 2010. These Regulations are subject to the approval of the Senedd by way of the draft affirmative procedure (as required by section 209(6) of the Equality Act 2010).
- 3.12. The Independent Schools (Provision of Information) (Wales) (Amendment) Regulations 2021 are made under sections 160(1), 168 and 210(1) and (7) of the Education Act 2002. These Regulations are subject to the negative resolution procedure (as required by section 210(4) of the Education Act 2002 and paragraph 34 of Schedule 11 to the Government of Wales Act 2006). The functions of the National Assembly for Wales under those provisions were transferred to the

Welsh Ministers by virtue of paragraph 30 of Schedule 11 to the Government of Wales Act 2006.

- 3.13. The Education (Pupil Referral Units) (Management Committees etc.) (Wales) (Amendment) Regulations 2021 are made under section 569(1), (4) and (5) of, and paragraph 15 of Schedule 1 to, the Education Act 1996. These Regulations are subject to the negative resolution procedure (as required by section 569(2) and (2C) of the Education Act 1996 and paragraph 33 of Schedule 11 to the Government of Wales Act 2006). The functions of the Secretary of State in Schedule 1 to the Education Act 1996 were transferred to the National Assembly for Wales by the National Assembly for Wales (Transfer of Functions) Order 1999 S.I. 1999/672 and then to the Welsh Ministers by virtue of paragraph 30 of Schedule 11 to the Government of Wales Act 2006.

4. Purpose and intended effect of the legislation

- 4.1. The purpose of the ALN system, including the Code and regulations under the powers in the Act, is to create a fully inclusive education system where all learners with additional learning needs are inspired, motivated and supported to reach their full potential.
- 4.2. The Code contains guidance about the exercise of functions under Part 2 of the Act and other matters connected with identifying and meeting additional learning needs. It describes and explains many of the functions in the Act and some of the provisions in regulations made under the Act. The Code itself also imposes requirements, pursuant to sections 4(5) and (6), 7 and 8 of the Act. The Code's statutory guidance includes guidance on those requirements. The guidance helps give further effect to the ALN system.
- 4.3. The purpose of many of the provisions in the Additional Learning Needs (Wales) Regulations 2021 and the requirements imposed by the Code, are intended to provide the necessary or desirable details of the ALN system to supplement the provisions in the Act, for example, setting time limits for compliance with duties under the Act, provisions affecting decisions on when an IDP is necessary and providing for a child's parent or young person's right to be exercised by a representative where that parent or young person lacks capacity. The intended effect is that the ALN system is able to operate effectively.
- 4.4. In addition, the ALN Code is intended to be the principal document used by those responsible for delivering the ALN system, especially local authorities and the staff of maintained schools and FEIs. It is, in effect, an operational handbook designed to assist those exercising functions under the Act, providing them with the details of functions involved in the ALN system and giving guidance on how to exercise them in the various circumstances in which they fall to be exercised.
- 4.5. The Code as a whole explains the operational requirements of the ALN system.
- 4.6. The Code has therefore been designed to allow those exercising functions under the Act to access the statutory guidance that applies to their individual responsibilities under the Act and to understand the process as it applies to a specific child or young person.
- 4.7. The content and format of the Code therefore focusses on an explanation of legal functions and guidance on their exercise, rather than case studies on good practice. It is intended to enable professionals (such as an Early Years ALN Lead Officer, an ALNCo in a maintained school or FEI, or a local authority officer) to understand the process as it applies to a specific child or young person, and take action so as to comply with the duties under the ALN system in a way

which is appropriate to the circumstances and gives effect to the principles underlying the ALN system.

- 4.8. The Education Tribunal for Wales Regulations 2021 make provision relating to the exercise of that Tribunal's jurisdiction under Part 2 of the Additional Learning Needs and Education Tribunal (Wales) Act 2018 which concerns additional learning needs appeals, and Chapter 1 of Part 6 of the Equality Act 2010 which concerns claims of disability discrimination in respect of school pupils. The purpose of the provisions in these Regulations is to provide for rules of procedure which allow for the Tribunal's proceedings to be conducted appropriately and effectively. The intended effect is that appeals and claims before the Tribunal are dealt with justly.
- 4.9. We have carried out a Justice Impact Assessment which has concluded the justice impact is low. We fully considered the impact of the reforms on Her Majesty's Courts and Tribunals Service with our colleagues in the Welsh Tribunals Unit during the development of the Bill – an overview of our assessment was included in the Regulatory Impact Assessment, which we published with the Bill. The provisions relating to onward appeals to the Upper Tribunal are not new as they replicate existing provisions within the Education Act 1996 and the SENTW 2012 Regulations. Consequently, there is no reason to believe that there will be any significant impact on the number of cases referred to the Upper Tribunal. Figures from 2018-2019 show that only five request for permission of the Tribunal to make an application were made, two of which were refused.
- 4.10. The proposals support the use of person centred practice (PCP). PCP encourages greater active participation by the learner and their family as well as seeking a greater understanding of decisions made. This should help learners and their families to understand the process and enable a greater feeling of ownership of those decisions made. It is expected this will reduce the level of confrontation, the number of disagreements and lower the level of animosity which prevents disagreements being resolved before they reach Tribunal.
- 4.11. We do not anticipate more appeals to the Tribunal as a result of the ALN reforms. The ALN system will be implemented in a phased approach over a 3 year period. The first year will not include the post 16 age group, which will help reduce any sudden impact on the Tribunal's service.
- 4.12. The purpose of the Education (Pupil Referral Units) (Management Committees etc.) (Wales) (Amendment) Regulations 2021 is to require a local authority to delegate to the management committee of a PRU the functions the local authority has in relation to the PRU by virtue of Schedule 1 to the Education Act 1996. The intended effect is that management committees exercise, in relation to the PRU, the functions of a governing body under the Act.

- 4.13. The purpose of the Independent Schools (Provision of Information) (Wales) (Amendment) Regulations 2021 is to amend, as required by section 160 of the Education Act 2002 (as amended by section 54(3) of the Act), the Independent Schools (Provision of Information) (Wales) Regulations 2003 so that applications to enter an independent school in the register of independent schools in Wales will include information about the types of additional learning provision made by the school for pupils with additional learning needs (if any). The intended effect is that this information will then be included in the register (see section 158 of the Education Act 2002 as amended by section 54 of the Act) and therefore the information will be available for local authorities when exercising their functions under the Act.
- 4.14. The purpose of the Equality Act 2010 (Capacity of parents and persons over compulsory school age) (Wales) Regulations 2021 is to modify references to parents and persons over compulsory school age in paragraph 3A of Schedule 17 to the Equality Act 2010. When a parent or young person lacks mental capacity (under the Mental Health Act 2005) at a time where they could take action under the Equality Act 2010, the references to them in paragraph 3A, which gives certain individuals the right to bring a claim to the Tribunal under the Equality Act 2010, are modified to read as references to their representative. The intended effect is that parents or young persons lacking capacity will, through their representative, be able to exercise the same right to bring a claim to the Tribunal under the Equality Act 2010 as those with capacity.

5. Consultation

- 5.1. A twelve week public consultation ran between 10 December 2018 and 22 March 2019 on the:
- draft ALN Code;
 - draft regulations relating to the Education Tribunal for Wales and ALN co-ordinators and the policy intention for the exercise of other regulation-making powers under the Act;
 - revisions to the Social Services and Well-being (Wales) Act 2014 Part 6 Code of Practice – Looked After and Accommodated Children.
- 5.2. The consultation included:
- the main consultation document containing 65 questions covering the above matters;
 - a version of the consultation for children and young people and an easy read version containing fifteen questions on aspects of the draft Code and proposed regulations;

- two half-day consultation events in each of the four regional education consortia areas in Wales;
 - a series of engagement sessions with children, young people and parents attended by 228 participants.
- 5.3. A summary of responses report was published on 14 June 2019 document and can be accessed at:
- <https://gov.wales/draft-additional-learning-needs-code>
- 5.4. As that report indicated, the draft ALN Code and proposed regulations cover a huge range of different topics and so the responses to the consultation were very wide ranging, containing a huge variation in opinion and very different focuses.
- 5.5. Overall, the majority of respondents responded positively. Critical responses were greatest for matters relating to:
- the definition and identification of ALN;
 - timescales within which duties must be performed;
 - the roles of the ALNCo, the Designated Educational Clinical Lead Officer ('DECLO') and Looked After Children in Education Co-ordinator;
 - arrangements for disagreement resolution, advocacy services and appeals;
 - the delegation of duties to pupil referral units;
 - individual development plan ('IDP') templates;
 - the provision of IDPs for young people not attending an education setting;
 - the ALN system as it will apply to detained persons.
- 5.6. It is worth noting that the comments received from respondents tended to come from those who were particularly opposed to certain aspects of the draft ALN Code, or who were unsure about aspects of those policies. This was also true in terms of comments on certain matters, even where the questions related to those matters in the consultation had a positive response overall. The comments also included a great number of suggested technical amendments to the ALN Code.
- 5.7. Respondents expressed concern about various terms that appear in the draft ALN Code. There were also calls for guidance on the meaning of particular terms. In considering those points further, we have been mindful of whether further elaboration would add value or whether it might risk an inadvertent narrowing or widening of the term's meaning and the constraints set by the Act.
- 5.8. In particular, some respondents questioned various aspects of the wording of the definitions of ALN and ALP. These definitions are set out in the Act and cannot be changed by the ALN Code. The wording of

the definitions of ALN and ALP used in the Act, which is repeated in the draft ALN Code, is deliberately similar to that currently used in relation to the definitions of SEN and special educational provision, with which many professionals will already be familiar.

- 5.9. Respondents also questioned other elements of the system laid down in the Act. For example, some disagreed with the principle of local authorities being responsible for preparing and maintaining IDPs for all looked after children. Others called for the creation of new requirements for which the Act makes no provision, such as making it compulsory for parties to engage in disagreement resolution before they are able to make an appeal, or requiring NHS bodies to comply with a Tribunal order. The ALN Code and regulations must align with the Act and cannot require any person to do something for which the Act provides no power.
- 5.10. Likewise, there were frequent calls to convert many of the “shoulds” included in the draft ALN Code to “musts”. The range of things about which the Act gives powers to make mandatory requirements is limited by the Act. Even where the Act does provide such a power, there is a question of whether a mandatory requirement (a “must”) or statutory guidance (a “should”) is more appropriate. An important consideration is whether there could be occasions when non-compliance would be justified and if so, whether these would be better dealt with by having specific exceptions to a mandatory requirement or by making the matter statutory guidance, which allows the person to justify a departure from it on a case-by-case basis.
- 5.11. Some respondents also expressed concern about the language style used in the draft ALN Code. As the ALN Code will impose mandatory requirements which are law, the language used must be suitably clear and precise. Similarly, the guidance in the Code needs to be suitably clear and precise so that those who must have regard to it can understand what it is they are to do unless they have a justification for not doing it. As a result, the language is quite formal in places, although on occasions where it may be difficult to follow, examples have been given to illustrate the meaning. It is also important to note that the ALN Code is primarily intended to be read and used by professionals working in the public authorities that have functions under Part 2 of the Act, as listed in Chapter 1 of the draft ALN Code. The draft ALN Code has not been written so as to be accessible to the wider public as that is not the ALN Code’s intended audience. However, local authorities are required by the Act to make arrangements to provide information and advice about the ALN system.
- 5.12. Some respondents were concerned that the draft ALN Code says little about mental capacity in relation to young people and parents. This issue has now been addressed in the revised ALN Code. Welsh Government is also working with partners in Whitehall to ensure the

Liberty Protection Safeguards Code of Practice takes account of the ALN Act and its Code and regulations.

- 5.13. Some respondents raised issues about transport provision for post-16 learners with learning difficulties or disabilities. As mentioned in the consultation document, the Welsh Government intends to consult on revisions to the Learner Travel Statutory Provision and Operational Guidance 2014. That consultation exercise is currently underway to better understand the implications of any future changes. A report on the responses to this targeted consultation will also contain recommendations for further work on revising the Measure, and is due to be published this spring. In the meantime, a non-mandatory section for transport has been included in the IDP template, provided in the Annex of the Code.
- 5.14. Some respondents suggested that the Code needs to include guidance on other relevant legislation or on matters set out elsewhere in statutory guidance. The Act is clear that the guidance the Code may contain is about the exercise of functions under Part 2 of the Act and about any other matter connected with identifying and meeting additional learning needs. Generally, therefore, it is not appropriate for the Code to provide guidance about other matters, although where appropriate, references are made to other relevant areas of law and guidance.
- 5.15. Many respondents considered that the implementation of the new ALN system would have a considerable financial impact, particularly on local authorities in Wales. The key financial implications of the Act were included in the Regulatory Impact Assessment (RIA) which accompanied the Bill. In particular, the RIA was subject to intense scrutiny by the National Assembly's Finance Committee, including a delayed vote on the financial resolution motion whilst further independent analysis was undertaken. This analysis was considered by the National Assembly before it passed the financial resolution in relation to this matter. The RIA for the Bill discussed the key provisions and associated costs with the ALN system, whereas the RIA for the Code provides further details on and considers these key provisions, reflecting more specifically on duties imposed by the Code. The Code's RIA also provides a detailed section on the amendments to the Code following the consultation in 2018/19. None of these areas were re-considered in this work, unless specific evidence was provided to counteract the original findings.
- 5.16. In recognition of the costs of moving from the current legislative framework to the new ALN system, implementation grant funding is being provided on a regional basis, co-ordinated by Regional ALN Transformation Leads, to roll-out regional, multi-agency training and professional development on the new legislative framework and its implications for all those involved in supporting learners with ALN. The training will target key practitioners with specific roles in the new

system (including the ALNCo and DECLO roles) to ensure the effective implementation of the new ALN system.

- 5.17. A number of respondents requested that the Welsh Government consider developing an electronic system to support the IDP process. Work is already underway in this area and we are currently undertaking an initial scoping exercise to establish both the feasibility and appropriateness of developing a Wales-wide online system.
- 5.18. Finally, respondents also raised concerns about the capacity of the specialist workforce, including educational psychologists, to deliver elements of the new system described in the draft ALN Code. Work is already being undertaken to improve the capacity of the specialist workforce).
- 5.19. The changes as a result of the consultation responses to the proposed revisions to the Social Services and Well-being (Wales) Act 2014 Part 6 Code of Practice – Looked After and Accommodated Children are being dealt with separately and are therefore not covered here.

Consultation on Representatives for Young People, and Parents of Children, Lacking Capacity

- 5.20. A separate consultation on proposals for representatives for young people, and parents of children, lacking mental capacity ran from 3 September to 29 October 2020.
- 5.21. The consultation documents included a draft version of Chapter 31 of the ALN Code (Representatives for young people, and parents of children, lacking mental capacity) and the draft “Young people, and parents of children, lacking capacity Regulations 2020”.
- 5.22. Following the consultation, those draft regulations were incorporated, with amendments, into the Additional Learning Needs (Wales) Regulations 2021 as Part 4.
- 5.23. The consultation found broad support for the proposals. A summary of responses was published on 22 January 2021 which can be accessed at <https://gov.wales/sites/default/files/consultations/2021-01/representatives-young-people-and-parents-of-children-lacking-capacity-summary-of-responses.pdf>

Changes to the draft Code following both consultations

- 5.24. A huge number of comments were received covering nearly every aspect of the consultation draft of the Code and proposed regulations. The Welsh Government have carefully considered what changes to make in the light of respondents’ comments. These changes, and the reasons for them, are explained in the following table. Welsh Government have also restructured the Code to improve its structure

and readability, including introducing some new chapters. Flowcharts have been removed because we found that they could be interpreted in different ways and there was a risk the flowcharts could detract from the legal text.

New Chapter	Old Chapter	What has changed
1 – Introduction	1	The introduction has been amended to reflect changes to the content of the Code (such as new chapters) and the provisions in the Additional Learning Needs (Wales) Regulations 2021. It has been streamlined to improve readability. There is also now more detailed explanations of how requirements imposed by the Code and descriptions of requirements in the Act or regulations are to be interpreted (for example, in relation to cases where a child has a case friend or a child's parent or a young person lacks capacity).
2 – The definition of ALN & ALP	7 (first part)	This chapter has been created from the first part of what was previously chapter 7 in the draft version of the Code. (The second part has created Chapter 20) Following consideration of the consultation responses; the chapter has been moved towards the beginning of the Code, with the structure and content amended to provide further guidance and greater clarity in relation to the definitions of ALN and ALP and their application in the ALN system.
3 – Principles of the Code	2	This chapter has been significantly cut back and streamlined to highlight the principles of the Code, without providing extensive examples which may have detracted from its key message.
4 – Involving and supporting children, their parents and young people	3	This chapter has been significantly redrafted to improve the structure and flow of the chapter; and to provide further guidance and greater clarity in certain areas. In particular, there is much more statutory guidance about young people's consent.
5 – Duties on local authorities & NHS bodies to have regard to UNCRC & UNCRDP	4	This chapter has only had minor amended; no significant changes were required.
6 - Advice and Information	6	This chapter has only had minor amendments, in order to reflect changes elsewhere in the Code and to improve clarity in some areas. One piece of

		statutory guidance is now a requirement and there is a little more statutory guidance.
7 – Duties on local authorities to keep additional learning provision under review	5	Chapter 7 (which was Chapter 5 in the consultation version) has been streamlined, with certain amendments made to clarify matters in some areas. Other changes have been made to bring the chapter in line with changes made elsewhere in the Code. The key aspects of this chapter have only had minor amendments, if any at all; it is mainly the supporting guidance around it which has been amended or the structure reorganised.
8 – Role of the ALN Co-ordinator	24	We have strengthened the chapter to provide further clarity on advice already provided within. Examples of this include the consideration a head of an education setting should give to the allocation of sufficient time for the ALNCo to undertake their role and the expectations around ALNCoS undertaking training and development. In accordance with the ALNCo Regulations, amendments have been made to some of the duties on ALNCoS set out within the chapter. These amendments include clarity on who has responsibility for undertaking certain tasks (regulations 5(h) and 6(h) of the draft ALNCo Regulations – previously regulations 5(i) and 6(i) of the previous version of the regulations consulted on in 2019) Furthermore, some ALNCo duties previously set out in the draft of this chapter have been removed, namely: the duty to prepare and review of information required to be published by the governing body pursuant to the code; and the duty to provide information to the individual (and in the case of a pupil, their parent) about their ALN, IDP and ALP being made. These have been removed from the chapter following their removal from the ALNCo Regulations.
9 – Role of the Designated Education Clinical Lead Officer	15 (second part)	This chapter was created by removing the section relating to the role of the Designated Education Clinical Lead

		Officer (DECLO) from the previous Chapter (15) on multi-agency working. This was done to allow a single chapter for each of the statutory roles within the ALN Code and system. The substance of the chapter has not been amended significantly, however it has been streamlined and there have been changes to improve clarity and for greater similarity in the structure to the other chapters on the statutory roles.
10 – Role of the Early Years ALN Lead Officer (ALNCo)	8 (second part)	The substance of this chapter has not significantly changed. There have been some structural changes, formatting changes and other small amendments to improve clarity.
11 – Duties on LA's about children under CSA (Compulsory School Age) and not at a maintained School	8	These chapters have been significantly amended. These chapters comprise the main duties in relation to the ALN system for the majority of children and young people. In the draft version of the Code, the requirements were set out across 4 chapters; however, having considered the responses to the consultation, they have been separated out into more specific circumstances and age ranges. Provisions related to the preparation of an IDP have been removed to Chapter 23, since many of them apply in most or all of the separate circumstances and can also be relevant when maintaining an IDP.
12 – Duties on maintained schools & LA's for children at a maintained school	9	
13 – Duties on LA's about children of CSA not attending a maintained school	11	
14 – Duties on LA about children they look after	New Chapter	
15 – Duties on Schools & LA's about Young People (YP) attending a maintained School	New Chapter	
16 – Duties on Further Education Institute (FEI) & LA about YP at a FEI	10	These structural changes are intended to make this part of the Code more user-friendly. The content itself has also been streamlined and amended significantly to provide greater clarity, consistency across the chapters, more details in some areas, to improve connections to other parts of the Code and to ensure that the requirements are clearer and effective. However, in the main, the essence of the requirements and guidance across these chapters remains unchanged. One of the most significant changes in terms of requirements, is in relation to

		requirements on local authorities to consult an Educational Psychologist. These requirements have been changed, so that when a local authority is required to decide whether a child or young person has ALN; the authority must consider whether to seek advice from an educational psychologist, and, where it considers such advice necessary to determine certain things, it must seek it. This change was as a result of responses to the consultation about the requirements being too burdensome and provides both a statutory footing for the Educational Psychologist role, but also reduces the potential significant burden that a blanket requirement to consult an Educational Psychologist in all circumstances could cause.
17 – Duties on LA's about YP not at a maintained school or FEI	12	This chapter has been significantly redrafted to correspond to the details in regulations 6 to 10 of, and Schedule 1 to, the Additional Learning Needs (Wales) Regulations 2021. However, the policy principles as originally set out in the previous draft chapter have not changed. The chapter sets out the considerations and requirements a local authority must undertake in determining whether an IDP is necessary to meet a young person's reasonable needs for education or training (where the young person is not at a maintained school or FEI in Wales). The principle considerations for securing a specialist post-16 placement reflect those under the existing system (whereby the Welsh Ministers secure such placements). In addition, other changes have been made along the lines of those described in respect of chapters 11 to 16.
18 – Children & young people in specific circumstances	23	This chapter has been significantly redrafted to improve the structure and flow of the Chapter; and provide more guidance on a range of different circumstances. There is also a new requirement in respect of children and young people whose parent is Service personnel.

19 – Children & young people subject to detention orders	22	There have been changes to explain more clearly how the ALN system applies in respect of children or young people subject to a detention order (including detained persons), including explaining what definitions mean in practice and mentioning other matters relevant to detention situations and giving more practical guidance. The Chapter also deals with referrals to NHS bodies under section 20 of the Act where an IDP is being prepared for a detained person, giving guidance on when this would be appropriate and imposing a related requirement where a relevant treatment or service is identified. The amendment to section 44 of the Act regarding an NHS body's duty under section 20 (about it not applying during the detention) is reflected. With regards to the timescales in this chapter, and in-keeping with similar amendments throughout the Code, there is now a specified period within which the action (e.g. to decide on ALN and prepare an IDP or to review an IDP) must be taken, subject to the usual exception. Previously, the requirement was just to take the action promptly. What was previously guidance about reviewing an IDP upon release of a detained person has become a requirement and there is supporting guidance around that requirement. There are also changes to align requirements with how similar ones elsewhere have been refined, to improve the cross-referencing (and reflect the structural changes) and changes to reflect requirements in the Additional Learning Needs (Wales) Regulations 2021, including the regulations dealing with the necessity of an IDP.
20 – Identifying ALN & deciding upon the ALP required	7 (second part)	As with Chapter 2 (Definition of ALN and ALP), this chapter has been created from the second part of what was previously Chapter 7 in the draft version of the

		Code. Following consideration of the consultation responses; the structure and content has amended to provide further guidance and greater clarity in relation to identifying ALN, deciding upon the ALP required, and gathering and using evidence to support those decisions and to align with changes elsewhere
21 – Multi Agency working	15 (first part)	This chapter has been amended to give greater clarity and more detail in certain places; but the majority of the content has not changed. The key change is that the section on the DECLO role has been removed and placed in a separate chapter (Chapter 9). In particular, statutory guidance on the Local Health Board to which a referral under section 20 should be made has been added, as has provision about where a Local Health Board ceases to be responsible for a child or young person.
22 – Meetings about ALN & ALP's	18	This chapter has been amended to give greater clarity and detail in certain places and to improve the structure; but the content and duties have not significantly changed. However, there is additional guidance about holding meetings virtually, as well as further guidance about matters that may need to be considered in order to enable better participation from children and young people.
23 – Preparing an IDP and its content	13	This chapter has been redrafted significantly. There were certain elements contained within the main duties chapters (now 11 to 17), relating to preparing or maintaining an IDP, which applied to all or most circumstances, and were repeated across each of those chapters and some elements that were only dealt with in one of those chapters but were potentially relevant in other situations. In order to streamline the main duties chapters, and to provide greater clarity and guidance when preparing an IDP or reviewing it, those elements of guidance have been moved and included here instead. The structure and wording within this chapter has also been amended to improve flow and ease of use. A section

		has also been added both here and in the standard form templates at Annexes A and B to provide for information about travel arrangements.
24 – Preparing an IDP and its content for LAC	14	This chapter has been amended in line with the changes to Chapter 23; and has been streamlined to avoid a duplication of the information contained in that Chapter. This Chapter now simply explains the difference in the process and the content of an IDP for a looked after child, but the guidance on the relevant content of each part of the IDP is set out in Chapter 23.
25 – Review and Revisions of IDP's	16	This chapter has been amended to give greater clarity and more detail in certain places. It has also been restructured and streamlined where possible but the essence of the content has not significantly changed.
26 – Local authority reconsiderations & taking over responsibility for IDP	17	This chapter has been amended to give greater clarity and more detail in certain places, including improving the connections to other parts of the Code. Structurally, the chapter has changed but the content has not significantly changed. Provisions about consulting an educational psychologist have been removed.
27 – Planning for and supporting transition	19	This chapter has been significantly redrafted. The chapter is now less prescriptive with less statutory guidance. This responds to the many conflicting comments received during the consultation which made apparent that transitions are flexible and will require an individualised approach. Details about seeking the consent of a child who becomes a young person to their IDP continuing to be maintained are now dealt with in Chapter 4.
28 – Transfer of responsibility for maintaining an IDP	20	This chapter has been amended to give greater clarity and more detail in certain places, including making connections to other parts of the Code and reflecting the detail of the Additional Learning Needs (Wales) Regulations 2021. Structurally, the chapter has changed but the content has not significantly changed.
29 – Ceasing to maintain an IDP	21	This chapter has been amended to give greater clarity and more detail in certain

		places. Structurally, the chapter has changed but the content has not significantly changed.
30 – Case friends for children who lack capacity	27	This chapter has been updated to reflect technical changes made to the regulations. It clearly explains how a child who lacks capacity, can use a case friend to act on their behalf when exercising certain rights. It also provides information on the role of a case friend, and how they are appointed and removed by the Tribunal.
31 – Representatives for parents of children & young people lacking capacity	New Chapter	Following the public consultation that ended on 29 October 2020, the chapter has been amended to include additional cross-references particularly to the Mental Capacity Act's Code of Practice. The chapter has also clarified that representatives can access independent advocacy services. The chapter also includes new footnotes referring to the impact of the Re: D case.
32 – Avoiding & resolving disagreements & Independent Advocacy	25	This chapter has been amended to give clarity and more detail where it was needed. Structurally, the chapter has not changed and the content and duties have not significantly changed.
33 – Appeals & Applications to the Education Tribunal	26	This chapter has been updated to reflect technical changes made to the regulations. To ensure that the chapter describes the appeal process and the timescales involved. It provides clarity in what can be appealed and by who. It includes information about how to make an application to the Tribunal regarding lack of capacity. It also includes a section about children bringing their own appeal to Tribunal.

PART 2 – REGULATORY IMPACT ASSESSMENT

ALN Code including post-consultation amendments

6. Options

- 6.1. This chapter outlines the options associated with establishing the Additional Learning Needs Code for Wales.
- 6.2. As part of these essential reforms, the ALN Code will replace the existing Special Educational Needs (SEN) Code of Practice for Wales. Over a phased three year implementation period starting from 1 September 2021, all statutory guidance in the SEN Code of Practice will be switched off with new provisions being introduced via the ALN Act, the ALN Code and related regulations.
- 6.3. This Regulatory Impact Assessment (RIA) has been developed to consider the regulatory implications for mandating requirements on local authorities and governing bodies in relation to duties set out in the ALN Code (and associated regulations).
- 6.4. The Welsh Government proposes to lay the ALN Code, along with related regulations, before the Senedd on 2 March with a plenary debate on 23 March. This RIA reviews the proposals on whether to bring into force the ALN Code.
- 6.5. The RIA reviews two options, described below.

Option one: do nothing

- 6.6. Under option one, the existing SEN system will continue with the SEN Code of Practice setting out the role of education providers in identifying and improving the experience of children with special needs.

Advantages

- 6.7. Option one does not involve any additional costs.
- 6.8. Additionally, part of the £20.244m funding agreed on 7 February 2017 to cover the costs of transition from one statutory system to another and deliver the wider system transformations could be spent elsewhere.

Disadvantages

- 6.9. The current system is inequitable. Children and young people with the most severe needs and who fall above the threshold for having a statement of SEN, have service provision which is protected by law.

In contrast, children and young people whose needs are less severe and who fall below the threshold for having a statement of SEN do not have protected provision or statutory rights.

- 6.10. The existing practices and processes associated with statements of SEN are inefficient and inflexible, and can result in ineffective provision for children and young people.
- 6.11. The current arrangements for reviewing and amending statutory plans are administratively cumbersome and involve schools inviting a prescribed set of professionals, regardless of whether their presence and input is necessary to the effectiveness of the review. Statutory reviews take considerable time to organise and prepare for. Amending a plan can, therefore, be a lengthy process and can result in learners experiencing delays in receiving the most appropriate support.
- 6.12. In addition, there is little flexibility when reviewing the provision for children and young people who are on the threshold for receiving statutory support. Where, for example, the outcomes of a statutory plan have been achieved for a child or young person, concern from parents about losing statutory entitlement may result in pressure for the plan and its provision to be maintained, despite this not necessarily being the most effective provision for the young person.
- 6.13. Finally, without the ALN Code, the reforms to the SEN system and the introduction of the new ALN system could not proceed.

7. Option two: replace SEN Code of Practice with ALN Code

- 7.1. Under option two, the existing SEN system including the SEN Code of Practice will be entirely replaced with the ALN system including the statutory ALN Code.
- 7.2. Option two is the preferred option.
- 7.3. A potential third option could have been to progress with the draft ALN Code as published in June 2019 before the consultation. However, this would not have been a genuine option given the legal requirements to conduct a meaningful consultation on the draft ALN Code, and the public commitment to making improvements to the Code before it is laid before the Senedd.

8. Advantages

- 8.1. The advantages of continuing with the planned reforms, including laying the revised ALN Code and introducing the legislative system the Code helps underpin, will be discussed in more detail under section 7. However, the key advantages relate to the reasons for reforming the SEN system in the first place; that the revised ALN

Code will make significant improvements to the support offered to children and young people with ALN in Wales.

9. Disadvantages

- 9.1. Likewise with the advantages, the disadvantages are discussed in detail below. However, the main point to note is the potential risks involved with introducing a new legislative system. There is a risk that costs will increase, both in terms of financial cost and pressure on resources. However, according to [Estyn Annual Report 2018-2019](#) "Schools and PRUs with clear leadership roles and excellent practice are well placed to make the transition from the current SEN system to the new ALN system."
- 9.2. There is also the risk of introducing these reforms at unprecedented times in education settings, with COVID-19 potentially impacting on the ability of local authorities and governing bodies (and other statutory bodies) to manage with implementation. However, this risk relates more to implementing the system rather than introducing the ALN Code.

10. Costs and benefits

- 10.1. The ALN Code includes statutory guidance about the exercise of functions under Part 2 of the ALN Act, which establishes the statutory system in Wales for meeting the ALN of children and young people. The Code also includes statutory guidance on other matters connected with identifying ALN and meeting the needs of children and young people with ALN, and describes relevant statutory requirements, including ones in the Act.
- 10.2. There are many hundreds of individual statutory duties throughout the Code, where the requirements (written as a "**must**" in the Code) takes its powers from subordinate legislation - either from the Code itself or from regulations - as opposed to deriving the powers directly from the ALN Act. These duties relate to the detail and processes of how the system will operate, including details on the roles and tasks set out in the ALN Act.
- 10.3. It is not the purpose of this RIA to discuss the impact of every statutory duty in the Code. Rather, this RIA discusses the duties in a thematic way, with specific references to the new duties as amended following consultation on the draft ALN Code.
- 10.4. To better understand the impact of the statutory duties made under subordinate legislation, every "**must**" in the Code was compiled, analysed and organised into categories of the likely cost of each duty in terms of their significance, rather than a financial estimate for each individual duty. All duties considered to be greater than a low cost

related to small, administrative tasks (such as sending a notification) were compiled into themes. These themes are discussed in detail below.

- 10.5. Where relevant, references to the costs as set out in the [Regulatory Impact Assessment](#) for the ALN Act (published in January 2018), are used here.

11. £20m funding package for delivering the ALN system

- 11.1. The £20.244m package of funding is being used to support implementation of the Act and delivery of the wider ALN Transformation Programme.
- 11.2. A large part of this funding will be used to develop the workforce so that all partners understand and are prepared for the changes being introduced. This includes workforce development to help build capacity and ensure practitioners have the skills to effectively operate the new system in order to meet learners' needs.
- 11.3. We are targeting workforce development at three levels; core skills development for all practitioners, advanced skills development through the establishment of the role of Additional Learning Needs Coordinators (ALNCos), which will replace the current SENCo role; and specialist skills development for local authority provided specialist support services available to education settings.
- 11.4. Five ALN Transformation Leads have also been in post since April 2018. Their role is to provide advice, support and challenge to local authorities, schools, early years settings and further education institutions, as they prepare for implementation of the reforms. This includes through readiness self-assessments and the development of local implementation plans. The ALN transformation leads will be responsible for rolling out implementation training on a multi-agency regional basis.

12. Themes identified from the statutory duties in the ALN Code

- Designating statutory roles (ALN co-ordinating officers)
 - DECLO
 - ALNCO
 - Early Years ALN Lead Officer
- Individual Development Plans (IDP)
 - Preparing an IDP
 - Securing ALP
 - Reviewing an IDP
- Independent Advocacy Services
- Costs for reviewing system

13. Costing of subordinate legislation

- 13.1. The RIA for the ALN Act concluded that the new ALN system itself should not increase in cost compared to the current SEN system.
- 13.2. Welsh Government has asked local authorities to provide evidence if they believe the new system will be more costly, but to date no such evidence has been received.
- 13.3. Based on the currently available evidence, we continue to support the position set out in the ALN Act's RIA. However, we do recognise there may be risks in implementing a new system when the level of funding available to local authorities, schools, FEIs and health boards is limited. This issue clearly goes wider than ALN, and relates to public sector finances more generally; however, these concerns continue to persist in any public discourse about the ALN reforms.
- 13.4. This RIA should assist the reader to understand the potential costs and benefits associated with the revised ALN Code, whilst giving an overview of the impact of the ALN Code in general, using the thematic method described above.
- 13.5. The costs and benefits discussed below are based on agreeing to Option 2.
- 13.6. The duty to designate Additional Learning Needs Co-ordinating Officers
- 13.7. Additional Learning Needs Co-ordinator (ALNCo)

14. Benefit

- 14.1. Option two will require all education settings including pupil referral units (PRUs) and FEIs to appoint an ALNCo. This extends current arrangements where existing non-statutory SENCo are used in most schools in Wales. Making the ALNCo a statutory role will bring a consistent approach to co-ordinating ALP for learners in Wales and help foster better working relationships across sectors.

15. Post-consultation additions

- 15.1. Following the consultation on the ALN Code, we have strengthened the ALNCo chapter to provide further clarity on advice already provided within. Examples of this include the considerations head teachers should give to the allocation of sufficient time for the ALNCo to undertake their role and the expectations around ALNCos undertaking training and development.
- 15.2. In accordance with the ALNCo Regulations 2020, amendments have been made to some of the duties on ALNCos set out within the chapter. These amendments provide clarity on who has responsibility for undertaking certain tasks (regulations 5(e) and 6(e) of the ALNCo regulations 2020) and on what aspects of record keeping the ALNCo must undertake (regulations 5(c) and 6(c) of the ALNCo regulations 2020). Furthermore, some duties previously set out in the draft of this chapter have been removed. These relate to what was the preparation and review of information required to be published by the governing body pursuant to the ALN Code, and the duty to provide information to the individual (and in the case of a pupil, their parent) about their ALN, IDP and ALP being made. These have been removed from the chapter and the ALNCo Regulations 2020 due to changes made elsewhere to the ALN Code in this regard.
- 15.3. These amendments are unlikely to make any significant impact on the cost or benefits associated with this part of the ALN Code, but may provide clearer support for those with statutory duties relating to the ALNCo role.

16. Cost

- 16.1. The cost for creating the ALNCo role were discussed in the ALN Act's RIA and the [integrated impact assessment](#) for the ALNCo regulations. Given the broad scope of the role and the way it will vary from setting to setting, it will not be possible to provide an estimated cost for the role. The most significant impact identified in this IIA was how the proposed regulations will contribute to the raising of standards in the co-ordination or ALP for children and

young people with ALN. Local authorities will do this by providing assurance that the new ALNCo role will be undertaken by qualified individuals (i.e. qualified teachers or experienced SENCOs) who are required to undertake the co-ordination of ALP in a consistent way, irrespective of education setting. This should result in an improvement in the way in which ALP is planned and delivered for children and young people.

- 16.2. No further financial costs have been identified within the ALNCo chapter of the ALN Code.
- 16.3. There is a theoretical risk that the new ALNCo requirements may be perceived as creating an additional burden on local authorities which may discourage current SENCOs from applying to become an ALNCo. However, there was broad support for making the ALNCo a professional role and we have not received any evidence to suggest this risk will transpire.

17. Designated education clinical lead officer (DECLO)

Benefit

- 17.1. Option two will ensure every local health board (LHB) will designate a DECLO to take responsibility for ensuring the day-to-day health provision for children and young people with ALN is effectively managed and co-ordinated.
- 17.2. Although much of the work the DECLO will be responsible for under the ALN system will already have been undertaken within each LHB currently, without this designated role the work involved to supervise the provision of health related special educational provision has been inconsistent and difficult to measure.
- 17.3. Appointing a DECLO within each health board will have the benefit of facilitating the delivery of effective, co-ordinated health services to improve outcomes for children and young people with ALN. The DECLO will also support the health board to discharge their responsibilities under the ALN system and facilitate the effective collaboration between health boards and their partners in the delivery of services for learners with ALN.
- 17.4. The DECLO will also ensure there is a robust structure for assuring the quality and safety of services and collect data about service quality, outcomes and performance; simplify the system for children, young people, parents and partners by providing a single point of contact for local authorities and others within health boards on ALN matters. In addition, the appointment of the DECLO should ensure ALN provision is a strategic priority for health boards.

- 17.5. One of the key benefits of introducing the DECLO role will be the improved links between health and other sectors, and the co-ordination of multi-agencies centred on the needs of the individual. The system is designed to cut the number of meetings and assessments required to receive ALP, and to ensure continuity of support for the individual as they transition, in age, key stages and educational development.

18. Post-consultation additions

- 18.1. There is a new chapter in the ALN Code on the role of the DECLO. This chapter was created by removing the section relating to the role of the DECLO from the Chapter 15 on multi-agency working. This was done to allow a single chapter for each of the statutory roles within the ALN Code and system. The substance of the chapter has not been amended significantly, but is now easier for the reader to follow.

19. Cost

- 19.1. The cost of introducing the DECLO role was discussed in the ALN Act's RIA where it was concluded there would be no new costs to local health boards.
- 19.2. This is because the role is expected to be fulfilled by an existing member of staff, and the DECLOs and other health professionals will undertake the required training within the hours allocated for them to undertake continuous professional development (CPD). Although the role itself is new, the duties the DECLO will be responsible for as set out in the Code are already being undertaken within health boards by exiting members of staff under the SEN system. The purpose of having a DECLO will be to standardise this role and improve multi-agency working by having a named individual in each health board. On average, each of the seven local health boards in Wales will have a healthcare professional undertaking DECLO responsibilities for approximately two days per week.
- 19.3. The duties in the ALN Code chapter relating to the DECLO role provides more details on the role itself, with guidance used to set out how DECLOs are expected to undertake their tasks. The introduction of the DECLO role and the estimation of the resource this will take poses a low and manageable risk to local health boards, particularly as DECLOs are not expected to be full time positions and will likely be undertaken by existing senior members of the health board.
- 19.4. With the duty to provide health related ALP for learners up to the age of 25, there could be an increase in the number of cases referred to

an NHS body requiring health related ALP. This risk, although not based on evidence the Welsh Government has seen, could potentially increase costs for LHBs in terms of the systems they introduce to support the DECLO role and their statutory functions under the ALN system. Although it is difficult to estimate how extending the age range to 25 will effect these costs, the Act's RIA did explain that young people who have the most complex needs and attend a specialist FE establishment will currently have a statutory learning and skills plan. Where a young person needs medical care whilst at a specialist FE establishment, the health board will be asked to contribute to the learning and skills plan. Under the ALN system, this practice will continue but health boards will be asked to contribute to the IDP instead. It was concluded that there will be no additional costs to health boards where a young person attends a specialist FE establishment.

20. Early years additional learning needs lead officer (Early Years ALNLO)

Benefit

- 20.1. Under option two, an Early Years ALNLO will be appointed by every local authority in Wales to have responsibility for co-ordinating the local authority's functions under the Act in relation to children under compulsory school age who are not attending maintained schools.
- 20.2. The Early Years ALNLO will play an important role in raising awareness of the ALN system and how it applies to children under compulsory school age; promoting early identification and prevention of ALN; and other strategic responsibilities. These duties will help families understand their children's ALN and the options available to support their education. The role should therefore include a social benefit by reducing the fears associated with ALN and reassuring parents that support is available in early years settings.
- 20.3. Another advantage of including this new role in the ALN Code will be to improve the co-ordination of provision for children in early years settings and ensure there is a single, named officer where issues can be directed to. This will help concerned families who under the SEN system may have struggled to engage with the relevant individuals.

21. Post-consultation additions

- 21.1. No significant changes to the content have been made since consultation.

22. Cost

- 22.1. The cost of introducing the Early Years ALNLO role was also mentioned in the ALN Act's RIA. As set out there, for illustrative purposes a salary of £49,700 is used to estimate the ongoing costs of introducing the early years ALN lead officer. The estimated ongoing cost to the 22 local authorities in Wales is, therefore, estimated to be approximately £1,093,400 a year. Since local authorities already undertake the functions associated with the early years ALN lead officer, this will not be an additional ongoing cost.
- 22.2. It is estimated local authorities will incur transition costs of £126,700 related to training early years ALN lead officers. The estimated cost of training early years ALN lead officers is based on the same cost model used to estimate the ALNCo training costs. That is, it is assumed the early years ALN lead officers will be trained to masters level at a cost of £3,600 per degree, with a total estimated cost of £79,200 to the 22 local authorities in Wales, and will take 10 days of paid study leave over the two year period at an estimated cost of £47,520.
- 22.3. There are no other duties in the Early Years ALNLO role chapter apart from the local authority's duty to designate an officer.

24. Individual Development Plans

- Preparing an IDP
- Securing ALP
- Reviewing an IDP

Context

- 24.1. Data shown in the Act's RIA has revealed the number of children and young people recorded as having SEN from 2011-12 to 2015-16 has been relatively stable at 23% of pupil population. Although the ALN system extends the age range to 25 years, the number of young people between the ages of 19-25 in education or training with ALN, who consent to having an IDP, is likely to be low. Welsh Government's latest figures show 83 post-19 specialist placements were secured in 2018/19. Using the figures available in the Act's RIA and from Stats Wales, there will be around 110,000 school age IDPs, with around 1,000 for below compulsory school age, and around 2,000 in all post 16 education and training.

25. Benefit

- 25.1. If option two is chosen, the introduction of the ALN Code will result in all children and young people with ALN being treated equally under the law, regardless of the severity of their need. All learners in early years settings, schools (including maintained nurseries, pupil referral units and special schools) and FEIs who require additional learning provision (ALP) will be entitled to a statutory, individual development plan (IDP) with rights of appeal. This will improve the equity of the system of support for learners whilst contributing a social benefit by extending the rights of children and young people and working towards improved educational outcomes.
- 25.2. Introducing statutory plans for all children and young people with ALN will enable a greater focus on early identification of need which should prevent or reduce conflict within the system. This could result in a long term reduction in the number of appeals going to Tribunal, however the number of potential appellants will necessarily grow with all children and young people with ALN having rights of appeal. Equitable statutory plans should also improve the way provision is secured and ensures it remains in place as long as it is required (up to the age of 25).
- 25.3. The duties in the ALN Code on local authorities and governing bodies to prepare an IDP, secure the ALP and review IDPs are broadly set out in the ALN Act and its impact has been documented in the ALN Act's RIA. However, the revised ALN Code sets out in detail how these arrangements must be undertaken. For example, many of the requirements imposed by the ALN Code and associated regulations related to IDPs are around the timescales to complete certain tasks. A local authority, for instance, should act "promptly" to decide whether it should take over responsibility for maintaining the IDP and give the notification within the period of 7 weeks from the request to take over responsibility for the IDP, unless it is unable to do so within that period due to circumstances beyond its control.
- 25.4. The benefit of imposing timescales to the specific duties related to this core function of the ALN system enables children, young people and their families to have a realistic expectation of when certain decisions or processes should be completed. This should help alleviate much of the current tension in the SEN system where delays and inconsistencies have caused significant anxiety in the past. It is also expected these timescales will help reduce the time it currently takes to complete certain decisions or processes, such as preparing a statutory plan of support. By using the word "promptly", the ALN Code expects duties to proceed without delay, whereas

only using a set timescale for every duty without first using the term “promptly” may lead to the maximum amount of time allowed to carry out any particular duty to become the default timescale.

26. Post-consultation additions

26.1. Chapters 11-15 of the ALN Code comprise the core duties in relation to the majority of children and young people with ALN. Additionally, chapters 16 and 17 comprise duties in respect of young people FEIs or not in a maintained school. These have been significantly redrafted in response to the consultation. They now appear in separate chapters, based on age specific circumstances to provide greater clarity on the roles of statutory bodies to support learners with ALN. The elements of guidance applicable to all these age groups now appear in a single chapter to provide greater clarity and guidance when preparing an IDP or considering the ALP it should contain. However, in the main, the essence of the key duties across these chapters remains unchanged.

27. Cost

- 27.1. As stated in the ALN Act’s RIA, local authorities will be responsible for preparing, maintaining and reviewing IDPs for all children with ALN who are looked after by them. It was estimated at the time of the Act’s RIA that local authorities will spend approximately one hour preparing the application at a cost of approximately £18 per application based on 20 applications each year (this number is not expected to change as a result of introducing the ALN system). As identified in the Act’s RIA, local authorities are not expected to incur any additional costs under option two. Currently, local authorities put together a case when applying to the Welsh Ministers for consent for a child or young person with a statement of SEN to be placed at an independent school which is not generally approved to admit learners with statements of SEN. Under option two, local authorities will continue to have to satisfy themselves the placement is appropriate.
- 27.2. Numerous calls for evidence, from the Deloitte research in 2015 to Welsh Government officers asking local authorities for data, has provided no indication to challenge the estimate in the ALN Act’s RIA, and ultimately that the new system is estimated to be cost neutral compared to the current SEN system.
- 27.3. Reviewing an IDP will be an ongoing process and although there are requirements to review IDPs (such as annual reviews), the work to inform these meetings should be done

continuously. The cost of reviewing IDPs will predominately be the time it takes for the ALNCo or other member of teaching staff to conduct the review meeting.

- 27.4. Likewise with preparing an IDP, there will be circumstances when plans start from scratch (a new learner from across the border, a new disability which calls for ALP), however in most cases, those with ALN will already have been identified and will likely have some provision already in place. Preparing an IDP will not be a significant cost to the school or local authority, although it could be seen as a moderate cost in the most complex cases. However, in cases where an FEI had a duty to prepare or maintain an IDP, this would be a new cost and could be seen as onerous to begin with. Therefore, FEIs may see an increase in their costs but the system as a whole is not expected to create an overall increase in cost.
- 27.5. In 2018/19, 11,095 young people, aged 16-24 years of age, were recorded as having learning difficulties and/or disabilities (LDD) in FEIs. Although it is not expected FEIs will need to prepare all IDPs from scratch (in time, many young people will arrive in the FEI with an IDP), as part of the implementation planning for the roll out of the new ALN system, consideration is given to ways of supporting FEIs to undertake their new duties.
- 27.6. Given that Statements of SEN are already being prepared for children and young people up to the age of 19 years, and individual education plans (IEPs) are in place for many more learners, the exact duties in the ALN Code are new, but in reality, they replace and improve the existing duties within the SEN system.
- 27.7. Increasing the number of children and young people who have statutory entitlement to provision could result in increased pressure for those responsible for securing ALP. Although the previous RIA for the ALN Act did not identify unmet need within the SEN system (and we do not believe the ALN system will create new demand), there is a risk the improved system may be challenging with regards to the resource currently used to deliver the SEN system.
- 27.8. With regards to the introduction of new timescales on many duties in the ALN Code and regulations, there is a small risk that the current level of resources dedicated to the SEN system will not be adequate to fulfil duties (with new timescales) under the ALN system. Although there is no evidence to suggest this, and the timescales introduced by the ALN system have been carefully chosen in consultation with stakeholders, there is a

potential for the new system to require greater resources to fulfil duties within the set timeframe.

28. Advocacy

Benefit

- 28.1. The ALN Code sets out duties on local authorities to establish independent advocacy services (IAS) for the children and young people for whom it is responsible.
- 28.2. IAS will provide expert advice and assistance, by way of representation or otherwise, to a child or young person, where the child or young person is:
- making, or intending to make, an appeal to the Tribunal;
 - considering whether to appeal to the Tribunal; or
 - taking part in, or intending to take part in arrangements for avoiding or resolving disagreement.
- 28.3. The service will be provided free of charge at the point of delivery.
- Although advocacy is frequently used under the SEN system, there is no requirement to provide an equivalent service under SEN Code of Practice. IAS is therefore necessary to provide a consistent approach to advocacy service that specifically deals with issues relating to ALN. IAS, along with a local authority's duty to make arrangements for avoiding and resolving disagreements is intended to significantly reduce the number of disputes that currently occur within the SEN system, and should, in the medium to long term, reduce the numbers of cases going to the Tribunal. This could potentially save time and money for those who may have pursued an appeal had these services not been available.

29. Post-consultation additions

- 29.1. The amendments made post-consultation have clarified the difference between IAS and other advocacy services. It is also now clearer that representatives for young people, and parents of children, who lack capacity, also have the right to access these services. These amendments will benefit those reading the ALN Code without increasing any costs.

30. Cost

- 30.1. The cost of running the new service will be met by local authorities, and will vary considerably from one authority to another. The Act's RIA provided an estimate cost of £5,300 to the local authority for dispute resolution services relating to appeals under the SEN system. Many of the advocacy

services currently available in Wales are provided by the third sector or volunteers, where costs are sometimes covered by contributions from Welsh Government. However, there are other professional advocacy services that will charge for their service.

- 30.2. There is a potential risk with the introduction of IAS over the cost of running the service to local authorities. This is related to its potential use, and the difficulty in estimating how much demand there will be for advocacy services. As the new ALN system beds in, there is a risk of an increase in cases requiring arrangements for avoiding and resolving disagreements or using IAS, which could be costly and time consuming, although careful planning and a successful implementation of the new system should counter such difficulties.

31. Reviews

Benefit

- 31.1. Under option two, the ALN Code will set out the details regarding the Welsh Ministers' duty to review the demand for, and supply of, ALP delivered through the medium of Welsh. The requirement is that such a review is undertaken once every 5 years from implementation.
- 31.2. The review will facilitate the ability to make informed policy decisions about ALP through the medium of Welsh and support the Welsh Government's Cymraeg 2050 strategy.

32. Cost

- 32.1. There will be a financial cost to reviewing the Welsh ALP which has not been worked out. However, the cost will be met by Welsh Government rather than statutory bodies, and is on the face of the Act. As an estimate, this work may be undertaken by a small team made up of one Senior Executive Officer (£47,000 per annum) and one Team Support (£23,830 per annum) for a total of 3 months. This assumes the Welsh Government will not require any external researches, and instead rely on their own Knowledge and Analytical Services to undertake any analysis of the data. The estimated costs associated with these two roles for 3 months is £17,707.50.

33. New musts in ALN Code (post-consultation)

33.1. The table below contains all new duties (**musts**) included in the ALN Code following the public consultation, with the exception of small, administrative tasks (such as sending notifications) which have been filtered out.

33.2. The table below is designed to help the reader understand the potential costs of these new duties.

Ref.	Text	Topic	Cost
19.81	Where a relevant local authority has to decide whether the child or young person has ALN, it must : (a) designate an officer to be responsible for coordinating the actions required to make that decision, any decision as to whether an IDP is necessary for a young person and, if an IDP is subsequently required, to be responsible for preparing it; (b) record the date on which it is brought to its attention, or otherwise appears to it that the child or young person may have ALN; (c) in the case of a young person, record the date on which they consented to the decision being made; (d) record a summary of how the possibility that the child or young person has ALN has been brought to its attention or why it otherwise appears to the authority that they may have ALN; (e) give the relevant notification referred to in paragraphs 22.64 – 22.65.	LA duty to designate a co-ordinator	Low The designation itself is a relatively straightforward administrative task.
16.14	The decision must be taken and the notification given promptly and in any event within the period of 35 term time days from the young person consenting to the decision being made	Decision and time scale	Low to Medium
16.26	The FEI must make the decision on ALN, prepare the plan and give a copy of it promptly and in any event within the period of 35 term time days from the young person consenting to the decision being made.	Decision and time scale	Low to Medium
19.65	A local authority maintaining an IDP for a previously detained person following their release must review the IDP and complete that review (including, as the case may be, giving a copy of the revised IDP or notification of another conclusion of the review) promptly and in any event, by the end of the period of 7 weeks starting with the person's release from detention. But this requirement to complete the review by the end of the 7 week period does not apply if it is impractical for the local authority to do so due to circumstances beyond its control.	IDP review	Low to Medium
19.67	In cases where the released child or young person is to attend a maintained school or FEI in Wales, the local authority may consider that it would be more appropriate for the school or FEI to maintain the IDP. Depending upon the circumstances, it might also be more appropriate for that institution to review the IDP. This might be the case where, for example, the IDP was recently prepared by the authority and the released person has low level needs or where the	IDP review	Low to Medium

	institution previously maintained the IDP and the period of detention was very short. If the IDP is transferred to a school or FEI[775 This would be following a direction by the local authority under section 14(4) of the Act in the case of a school or following an FEI agreeing to the authority's request under section 36(2) that the FEI become responsible for the IDP. Also, a transfer can only take place if the released person is a registered pupil of the school or is a young person enrolled as a student at the FEI. Without the local authority having reviewed it following release, the school or FEI must review the IDP promptly and in any event within the period of 35 term time days from the child or young person's release from detention. But the requirement to complete the review by the end of that period of 35 term time days, does not apply if it is impractical for the school or FEI to do so due to circumstances beyond its control.		
15.60	As part of the process of deciding whether a young person has ALN, a local authority must consider whether to seek advice from an educational psychologist and, where it considers that seeking such advice is likely to be worthwhile, it must do so.	Consider and seek advice	Low Consideration will not be overly burdensome, and will likely become part of the process. Since educational psychologists are already involved in the current system, this new provision is designed to standardise the process rather than creating something brand new. Seeking advice will therefore be small administrative task.
17.32	The local authority must first identify if the young person has desired outcomes and what they are.	Review	Low to medium. Local authorities should already be adopting a person centred approach to understanding the needs of the individuals and this could include in respect of identifying desired outcomes. In many cases, the LA will be aware of the individual through any previous engagement they had with them through the IDP process.

17.36	The local authority must consider what programmes of study may be available that would be suitable for enabling the young person to meet their desired outcomes.	Review	Low to medium. This will be a largely new requirement on Local authorities who until now have only had to consider post16 education for those who remain in school. This should become less burdensome over time as LAs develop their knowledge of post-16 education and training that is on offer.
17.38	Otherwise, the local authority must first consider programmes of study at mainstream maintained schools or FEIs (this could include such schools and FEIs in England). More often than not, those settings will be able to provide a suitable programme of study for a young person with ALN and the young person's reasonable needs to ALP would be met in undertaking it.	Review	Low to medium. This will be a largely new requirement on Local authorities who until now have only had to consider post16 education for those who remain in school. This should become less burdensome over time as LAs develop their knowledge of post-16 education and training that is on offer.
31.12	The local authority must ensure that the staff delivering these arrangements are impartial to the outcome of any potential disagreements.	Training	Low This may require staff training or guidance to ensure staff are reminded of their duties.
32.13	The local authority must ensure the arrangements made are accessible to children and young people and delivered in a way which meets their communication preferences and needs (see Chapter 3 on involving and supporting children, their parents and young people).	Accessible information	Low or medium Every local authority should already ensure the information they provide to the public is accessible. There may be a one-off cost for preparing these materials, but little to no ongoing costs.

32.11	The local authority must ensure that the staff delivering these arrangements have a detailed understanding of the ALN system. To do so, the local authority should ensure that staff providing the arrangements receive appropriate training and development to undertake their role effectively and training is refreshed to improve standards.	Training	Low This training may be adapted from the Welsh Government training material, keeping the cost low.
32.63	The local authority must ensure that all advocates: (a) understand the ALN system including the arrangements for avoiding and resolving disputes and Tribunal procedures; (b) are suitably trained, including in communicating with children and young people and those with communication difficulties, and continue to receive appropriate training and development to undertake their role effectively and to improve standards; (c) have relevant knowledge of the child's or young person's ALN; (d) maintain confidential records; (e) are not on the children's barred list (in the case of advocates for children) or the adults' barred list (in the case of advocates for young people who are considered to be "at risk"). If this information is not held by the advocacy providers, the local authority must ensure the advocates apply for an enhanced level disclosure and barred list check from the Disclosure and Barring Service before they can proceed.	Training	Low or medium The costs for training advocates should be relatively low. Welsh Government are investing in training for the ALN system and will provide free training material online. It may take some time to train everyone, but given the low numbers involved, the cost should low.

34. Consultation

34.1. A consultation on the draft ALN Code was held between 10 December 2018 and 22 March 2019.

34.2. The consultation sought views on the draft ALN Code and proposed regulations in order to consider comments and make improvements before it is laid before the Senedd.

34.3. The consultation was aimed at maintained schools, further education institutions, local authorities, local health boards, early years settings, third sector organisations and anyone else with an interest in additional learning needs.

35.4. 65 consultation questions were asked covering the following five themes:

1. The draft ALN Code;
2. Draft Education Tribunal for Wales regulations;
3. Draft ALN Co-ordinator regulations;
4. Looked after children; and
5. Impact of proposals.

35.5. A total of 644 people responded to the main consultation. A summary report can be found here:

<https://gov.wales/sites/default/files/consultations/2019-06/summary-of-responses-draft-additional-learning-needs-code.pdf>

35.6. The main themes raised during the consultation included;

- frequent calls to convert many of the “shoulds” included in the draft ALN Code to “musts”;
- concern about the language style used in the draft ALN Code;
- issues about transport provision for post-16 learners with learning difficulties or disabilities;
- calls for guidance on other relevant legislation or on matters set out elsewhere in statutory guidance;
- concerns that the new ALN system would have a considerable financial impact;
- requests to develop an electronic system to support the IDP process; and
- the capacity of the specialist workforce, including educational psychologists, to deliver elements of the new system described in the draft ALN Code.

35.7. A summary of the changes made to the ALN Code following the consultation can be found in the table from page 15 of the Explanatory Memorandum.

36. Competition Assessment

36.1. The provisions within the Act will not affect business, or charities and/or the voluntary sector in ways that raise issues related to competition. The competition filter has not been applied.

36.2. The provisions in the Act are not expected to have any impact on competition or place any restrictions on new or existing suppliers. The majority of the costs associated with the legislation are expected to fall on public bodies, who already meet these costs.

36.3. The legislation is not expected to have any negative impact on small and medium sized enterprises (SMEs) in Wales.

37. 10. Post implementation review

37.1. The phased rollout of the new ALN system will be monitored and evaluated by the Welsh Government during and post implementation. During implementation, the main focus of the work will be to establish the extent to which stakeholders are compliant with the provisions in the Act and to consider the initial effects and impacts of the Act using available data.

37.2. Additionally, Welsh Government has committed to undertaking a post-implementation review of the Act in 5 years' time; this will consist of a baseline study of the current system to inform a future evaluation of the impact of the Act. The baseline study was published by Arad Research in February 2019. The post-implementation review will be predominately focused on the outcomes of the Act for young people and parents.

37.3. Section 89 of the ALN Act sets out the duty on Welsh Ministers to reviews the sufficiency of additional learning provision in Welsh and to publish a report on the outcome within five years of the new system coming into force.

37.4. In the meantime, local authorities have an ongoing duty under section 63 of the Act keep under review the arrangements made by the authority and by the governing bodies of maintained schools in its area for children and young people who have additional learning needs.

37.5. To ensure the arrangements for providing health related ALP are sufficient and appropriate, the ALN Code sets out expectations on the DECLO to oversee the development of processes to collect and analyse robust data to measure its compliance with duties under the Act. It should also measure the effectiveness of arrangements for partnership working, and provide quality assurance of its activities in relation to children and young people with ALN.

37.6. This provides a counterweight to similar duties on local authorities to ensure both health related ALP and the ALN system itself are continuously reviewed, allowing for internal systems to be improved where necessary.

SL(5)780 – The National Health Service (Charges to Overseas Visitors) (Amendment) (Wales) (EU Exit) Regulations 2021

Background and Purpose

These Regulations amend the National Health Service (Charges to Overseas Visitors) Regulations 1989 (the Principal Regulations). Amendments to the Principal Regulations are required to ensure that the law remains operable.

The Principal Regulations allow Local Health Boards (LHBs) in Wales to recover charges from overseas visitors who are not ordinarily resident in the UK for certain categories of healthcare provided to them in Wales, unless the overseas visitor, or the service they receive, falls within an exemption.

These Regulations provide an exemption to any overseas visitor who has an entitlement to the provision of health services without charge by virtue of a right arising from the Social Security Co-ordination (SSC) Protocol provisions of the UK Trade and Cooperation Agreement (TCA) as a consequence of the UK's withdrawal from the European Union.

These Regulations also ensure that visitors from Ireland and Norway remain exempt from charging for particular NHS care following new/revised reciprocal healthcare arrangements between those countries and the UK.

Procedure

Negative.

These Regulations were made by the Welsh Ministers before they were laid before the Senedd.

The Senedd can annul the Regulations within 40 days (excluding any days when the Senedd is: (i) dissolved, or (ii) in recess for more than four days) of the date they were laid before the Senedd.

Technical Scrutiny

No points are identified for reporting under Standing Order 21.2 in respect of this instrument.

Merits Scrutiny

The following 2 points are identified for reporting under Standing Order 21.3 in respect of this instrument.



1. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Senedd.

These Regulations add Ireland and Norway to Schedule 2 to the Principal Regulations in order to reflect the UK's agreed reciprocal healthcare arrangements set out in a Memorandum of Understanding with Ireland and an agreement with Norway respectively. The Memorandum of Understanding between the UK and Ireland and the agreement between the UK and Norway each came into effect at 11:00pm on 31 December 2020.

As these arrangements commenced over 2 months ago, the Government is asked to explain the delay for making these Regulations. The Government are also asked whether any visitors from Ireland or Norway have been adversely effected due to the delay in making these Regulations.

2. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Senedd.

The Principal Regulations were amended by the National Health Service (Charges to Overseas Visitors) (Amendment) (Wales) (EU Exit) Regulations 2020 (the 2020 Regulations). The Committee considered the 2020 Regulations, and raised two technical scrutiny points and two merits scrutiny points in its report on the 2020 Regulations. The first technical scrutiny point was noted by the Government. The Government responses to the second technical scrutiny point and the second merits scrutiny point each stated that the Government would *"correct this at the earliest possible opportunity"*.

It is specifically noted that the technical point which the Government agreed to correct related to the amendment of Schedule 2 to the Principal Regulations in relation to countries that are members of the European Free Trade Association (EFTA). The Committee's report stated:

"It is not clear why Lichtenstein is inserted into Schedule 2 to the Principal Regulations when Iceland is omitted."

This lack of clarity remains with the insertion of Norway into the Schedule, alongside Lichtenstein, whilst Iceland remains omitted.

Welsh Government is asked to explain:

- (a) why these Regulations were not used as an opportunity to correct issues identified by the Committee, and which the Welsh Government noted and in two instances committed to correct *"at the earliest possible opportunity"*; and
- (b) why Lichtenstein and Norway are included in Schedule 2 to the Principal Regulations whilst Iceland remains omitted.



Welsh Government response

Merits Scrutiny point 1:

Response:

The Welsh Government notes the scrutiny point.

Delaying the making of these changes in Welsh law did not change Wales' obligation to operate the requirements of the Memorandum of Understanding with Ireland and a reciprocal healthcare agreement with Norway respectively as they are binding on the UK as a whole.

Officials also assessed the movement of people from Ireland and Norway would be low due to the closure of countries' borders and recommendations by governments over recent months to not travel in response to a further surge of Covid cases. Having regard to this it was considered not necessary to contravene the 21 day period for the amendment regulations.

Officials understand from Local Health Boards that no Irish or Norwegian citizens have been affected in Wales by the later introduction of these Regulations compared to the timing in England.

Merits Scrutiny point 2:

Response:

The Welsh Government notes the scrutiny point.

It was an oversight by officials to not use these amendment regulations as an opportunity to correct issues identified by the Committee previously and which officials noted and committed to correct "*at the earliest possible opportunity*", this includes removing Liechtenstein and Sweden from Schedule 2.

Officials' initial understanding was that UK Government negotiations with the EFTA countries on reciprocal healthcare agreements would be concluded early in 2021 and the intention was for all these amendments to be made together in an effort to reduce the number of Statutory Instruments and improve clarity for LHBs. However, it became apparent to officials that these negotiations were unlikely to be fully concluded before the Senedd elections, therefore not reflecting the Social Security Co-ordination Protocol provisions of the UK Trade and Cooperation Agreement and the agreements with Ireland and Norway in the Welsh Charging Regulations would have resulted in the law in Wales being inaccurate until after the elections. Consequently the amendment regulations were made at the earliest point to ensure the 21 day period was completed before Easter recess but unfortunately we overlooked making the corrections previously identified by the Committee and failed to



remove Liechtenstein and Sweden from Schedule 2. These will all be corrected at the next set of changes to the Wales' Charging Regulations which is expected to be when the UK Government signs reciprocal healthcare agreements with the ETFA countries and the Charging Regulations require amendment to the countries listed in Schedule 2.

Sweden will be removed from Schedule 2 as Sweden is covered by the Social Security Co-ordination Protocol provisions of the UK Trade and Cooperation Agreement and therefore does not need to be separately listed in Schedule 2.

It is correct that Liechtenstein and Iceland should not be included in Schedule 2 until any new reciprocal healthcare agreements are put in place with those countries by the UK Government.

Norway should however be listed in Schedule 2 as the UK Government has resurrected an old reciprocal healthcare agreement with this country which provides for limited medically necessary treatment for UK citizen passport holders until any new reciprocal healthcare agreement is put in place.

Legal Advisers

Legislation, Justice and Constitution Committee

15 March 2021



W E L S H S T A T U T O R Y
I N S T R U M E N T S

2021 No. 221 (W. 55)

**EXITING THE EUROPEAN
UNION, WALES**

**NATIONAL HEALTH
SERVICE, WALES**

The National Health Service
(Charges to Overseas Visitors)
(Amendment) (Wales) (EU Exit)
Regulations 2021

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the National Health Service (Charges to Overseas Visitors) Regulations 1989 (“the principal Regulations”), which provide for the making and recovery of charges for relevant services provided under the National Health Service (Wales) Act 2006 (c. 42) to certain persons not ordinarily resident in the United Kingdom.

Regulation 3 inserts regulation 4E into the principal Regulations to provide that persons who are within the scope of the SSC Protocol provisions of the Trade and Cooperation Agreement are able to receive relevant services without charge where there is a right arising from the agreement.

Regulation 4 inserts Ireland and Norway into the list of countries in Schedule 2 to the principal Regulations, meaning that no charges may be made or recovered in respect of relevant services provided to an overseas visitor where the provision of those services is covered by that reciprocal agreement.

The Welsh Ministers’ Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result a regulatory impact assessment has been prepared as to the likely costs and benefits of complying with these Regulations. A copy can be obtained from the Department of Health and Social Services, Welsh Government, Cathays Park, Cardiff, CF10 3NQ.

WELSH STATUTORY
INSTRUMENTS

2021 No. 221 (W. 55)

**EXITING THE EUROPEAN
UNION, WALES**

**NATIONAL HEALTH
SERVICE, WALES**

**The National Health Service
(Charges to Overseas Visitors)
(Amendment) (Wales) (EU Exit)
Regulations 2021**

Made 2 March 2021

Laid before Senedd Cymru 3 March 2021

Coming into force 26 March 2021

The Welsh Ministers make these Regulations in exercise of the powers conferred by sections 124 and 203(9) and (10) of the National Health Service (Wales) Act 2006(1).

Title and commencement

1.—(1) The title of these Regulations is the National Health Service (Charges to Overseas Visitors) (Amendment) (Wales) (EU Exit) Regulations 2021.

(2) These Regulations come into force on 26 March 2021.

**Amendment of the National Health Service
(Charges to Overseas Visitors) Regulations 1989**

2. The National Health Service (Charges to Overseas Visitors) Regulations 1989(2) are amended as follows.

-
- (1) 2006 c. 42. See section 206(1) for the definition of “prescribed” and “regulations”.
- (2) S.I. 1989/306; relevant amending instruments are S.I. 1991/438, 1994/1535, 2004/1433 (W. 146), 2009/1512 (W. 148) and 3005 (W. 264), 2010/927 (W. 94), 2011/2906 (W. 310) and 2020/1607 (W. 334).

Insertion of regulation 4E

3. After regulation 4D (persons who make late applications under Appendix EU to the immigration rules) insert—

“Overseas visitors with Trade and Cooperation Agreement Rights

4E.—(1) No charge may be made or recovered in respect of any relevant services provided to an overseas visitor who has an entitlement to the provision of those services without charge by virtue of a right arising from the SSC Protocol provisions of the Trade and Cooperation Agreement.

(2) In paragraph (1), “the SSC Protocol” has the same meaning as in section 26(5) of the European Union (Future Relationship) Act 2020⁽¹⁾ (“the 2020 Act”) and “the Trade and Cooperation Agreement” has the same meaning as in section 37(1) of the 2020 Act.”

Amendment of Schedule 2

4. In Schedule 2 (countries or territories in respect of which the United Kingdom Government has entered into a reciprocal arrangement), in the appropriate places insert “Ireland” and “Norway”.

Vaughan Gething

Minister for Health and Social Services, one of the
Welsh Ministers

2 March 2021

(1) 2020 c. 29.

Explanatory Memorandum to the National Health Service (Charges to Overseas Visitors) (Amendment) (Wales) (EU Exit) Regulations 2021.

This Explanatory Memorandum has been prepared by Health and Social Services Department and is laid before Senedd Cymru in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1

Minister Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the National Health Service (Charges to Overseas Visitors) (Amendment) (Wales) (EU Exit) Regulations 2021. I am satisfied that the benefits justify the likely costs.

Vaughan Gething MS

Minister for Health and Social Services

3 March 2021

PART 1

1. Description

These Regulations amend the National Health Service (Charges to Overseas Visitors) Regulations 1989 (SI 1989/306) (the Principal Regulations).

The Principal Regulations allow Local Health Boards (LHBs) in Wales to recover charges from overseas visitors who are not ordinarily resident in the United Kingdom (UK) for certain categories of healthcare provided to them in Wales, unless the overseas visitor, or the service they receive, falls within an exemption.

These Regulations are being made to ensure that they reflect the Social Security Co-ordination (SSC) Protocol provisions of the UK Trade and Cooperation Agreement (TCA) as a consequence of the UK's withdrawal from the European Union (EU); and to include new/revised reciprocal healthcare agreements. Amendments to the Principal Regulations are required to ensure that the law remains operable.

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

None.

3. Legislative background

The instrument is being made under section 124 of the National Health Service (Wales) Act 2006 (the 2006 Act) which confers a power on the Welsh Ministers to make regulations for the making and recovery of charges from persons who are not "ordinarily resident" in the United Kingdom for NHS services.

The instrument is also being made under section 203(9) and (10) of the 2006 Act and is subject to the negative resolution procedure.

4. Purpose and intended effect of the legislation

The regulations will make provision for those EU State visitors who have an entitlement to the provision of health services without charge by virtue of a right arising from the SSC Protocol provisions of the UK TCA and ensure that visitors from countries with new/revised reciprocal healthcare agreements with the UK remain exempt from charging for particular NHS care.

The Regulations:

- Provide an exemption to any overseas visitor who has an entitlement to the provision of health services without charge by virtue of a right arising from the SSC Protocol provisions of the UK TCA.
- Amend Schedule 2 to the Principal Regulations to add Ireland and Norway.

5. Consultation

No public consultation was undertaken. The purpose of the instrument is to enable the law still operates effectively as a consequence of the UK TCA with the European Union and updates the countries with reciprocal healthcare agreements with the UK.

PART 2 – REGULATORY IMPACT ASSESSMENT

6. Options

Two options have been considered:

Option 1: - Do nothing, retain the National Health Service (Charges to Overseas Visitors) Regulations 1989 (SI 1989/306) as currently in force.

Option 2: - Amend the National Health Service (Charges to Overseas Visitors) Regulations 1989.

Option 1: Do nothing, retain The National Health Service (Charges to Overseas Visitors) Regulations 1989 (SI 1989/306) as currently in force

The UK left the EU on 31 December 2020, with a UK Trade and Cooperation Agreement (TCA).

Article 67 of the Social Security Co-ordination (SSC) Protocol (provisions of the UK TCA), notes that the Parties shall ensure in accordance with their domestic legislation that the provisions of the Protocol on Social Security Coordination have the force of law, either directly or through domestic legislation. The European Union (Future Relationship) Act 2020 (EU(FR)A) gives the SSC Protocol that effect.

The provisions in the SSC Protocol ensure that individuals who move between the UK and the EU in the future will have their social security position in respect of certain benefits protected. For example, where the UK or an EU Member State is responsible for the healthcare of an individual, they will be entitled to reciprocal healthcare cover. This includes certain categories of cross-border workers and state pensioners who retire to the UK or to the EU. In addition, the Protocol ensures necessary healthcare provisions – akin to those provided by the European Health Insurance Card (EHIC) scheme – continue. This means individuals who are temporarily staying in another country, for example a EU Member State national who is in the UK for a holiday, will have their necessary healthcare needs met for the period of their stay. The Protocol also protects the ability of individuals to seek authorisation to receive planned medical treatment in the UK or the EU, funded by their responsible State.

The UK has also agreed and signed a reciprocal healthcare memorandum of understanding (MOU) with Ireland (under the Common Travel Agreement (CTA)) in addition to Ireland being included in SSC/TCA.

The CTA is a long-standing arrangement between the UK, the Crown Dependencies (Bailiwick of Jersey, Bailiwick of Guernsey and the Isle of Man) and Ireland that pre-dates both British and Irish membership of the EU and is not dependent on it. The MOU is thus separate to the SSC/TCA arrangements (which also include Ireland) and therefore requires listing in Schedule 2 to the Principal Regulations for the law to be correct. However, the MOU is without prejudice to the SSC/TCA and will be reviewed by the UK and Ireland to clarify

the interaction between the two. However in the interim the MOU exists and should be included in Schedule 2 to the Principal Regulations.

Whilst Norway is one of the four countries outside of the TCA, in relation to reciprocal healthcare, the UK has revised and agreed a pre-EU reciprocal healthcare agreement with Norway which is currently being used until a more comprehensive agreement can be negotiated.

Not reflecting the SSC Protocol provisions of the UK TCA and the agreements with Ireland and Norway in the Welsh Charging Regulations would leave Welsh law incorrect, as the agreements are binding on the UK as a whole and Wales is required to implement them. There would also be a lack of clarity for our LHBs if the Welsh regulations do not reflect the UK position as they use the regulations in meeting their legal obligation to establish if people to whom they are providing NHS hospital services are chargeable or exempt from charging.

Under option 1 there would still be minimal impact on costs in the day to day delivery of the service as citizens from the EU and Norway were exempt from charging prior to 31 December 2020 and will remain exempt under the new UK level agreements. The SSC Protocol ensures the majority of existing reciprocal healthcare provisions – including those provided by the European Health Insurance Card (EHIC) scheme – continue. Where the UK is responsible for the healthcare of an individual, they will be entitled to reciprocal healthcare cover, as will citizens of EU countries covered by SSC Protocol or by individual healthcare agreements. The Local Health Boards currently receive a recurring annual allocation of £822,000 from Welsh Government for the treatment of overseas visitors who are not chargeable due to reciprocal healthcare agreements (this covers both EU and non EU agreements). The continuation of this allocation will assist LHBs in cases where no costs are recoverable from overseas visitors.

Option 2: - Amend the National Health Service (Charges to Overseas Visitors) Regulations 1989

The objective is to ensure the law remains operable reflecting the SSC Protocol provisions of the TCA and the UK reciprocal healthcare agreements with Ireland and Norway.

In summary, the amendment regulations will:

- Provide an exemption to any overseas visitor who has an entitlement to the provision of health services without charge by virtue of a right arising from the SSC Protocol provisions of the UK TCA.
- Amend Schedule 2 to the Principal Regulations to add Ireland and Norway.

The changes being made essentially relate to ensuring the law operates correctly now that the EU Exit implementation period has ended and the UK has agreed the Protocol on Social Security Coordination in the TCA and new/revised reciprocal healthcare agreements with Ireland and Norway.

Not making these changes would not change Wales' obligation to operate the requirements of the SSC Protocol of the TCA or the reciprocal healthcare

agreements with Ireland and Norway, as the SSC/TCA and all other reciprocal agreements are binding on the UK as a whole. However, there would be a lack of clarity for LHBs if the Welsh regulations do not reflect the UK position as they use the regulations in meeting their legal obligation to establish if people to whom they are providing NHS hospital services are chargeable or exempt from charging.

It is estimated that under option 2 there would be minimal impact on costs in the day to day delivery of the service as citizens from the EU and Norway were exempt from charging prior to the 31 December 2020. LHBs will continue to receive the current annual allocation of £822,000 from Welsh Government for the treatment of overseas visitors who are not chargeable due to reciprocal healthcare agreements (this covers both EU and non EU agreements). The continuation of this allocation will assist LHBs in cases where no costs are recoverable from overseas visitors.

Agenda Item 4.3

SL(5)782 – The Digital Health and Care Wales (Transfer of Staff, Property, Rights and Liabilities) Order 2021

Background and Purpose

This Order forms part of a suite of legislation to support the launch of a new Special Health Authority called Digital Health and Care Wales (DHCW). DHCW has been established under section 22 of the National Health Service (Wales) Act 2006.

DHCW's functions will relate to the provision of digital platforms, systems and services and supporting the intended improvement of such systems. Until now, a number of these functions have been exercised by the National Health Service Wales Informatics Service ("NWIS"). NWIS forms part of the shared services hosted by Velindre University National Health Service Trust ("Velindre University NHS Trust").

This Order makes provision for the transfer of particular staff (article 3), property (article 4), rights and liabilities (article 5) from Velindre University NHS Trust to DHCW.

Article 6 makes provision for the transfer of data, records and information.

Article 7 makes provision for the continuity of things done by, or in relation to, Velindre University NHS Trust.

Procedure

Negative.

The Order was made by the Welsh Ministers before it was laid before the Senedd.

The Senedd can annul the Order within 40 days (excluding any days when the Senedd is: (i) dissolved, or (ii) in recess for more than four days) of the date it was laid before the Senedd.

Technical Scrutiny

No points are identified for reporting under Standing Order 21.2 in respect of this instrument.

Merits Scrutiny

One point is identified for reporting under Standing Order 21.3 in respect of this instrument.

1. Standing Order 21.3(ii) - that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Senedd

This Order forms part of a suite of four pieces of subordinate legislation.

Paragraph 2.1 of the Explanatory Memorandum accompanying the Order states as follows:



"The four statutory instruments being brought forward as part of the go-live of DHCW are being made together, are inextricably linked, and would be difficult to understand if read in isolation. It is therefore considered beneficial to bring forward a single composite Explanatory Memorandum and Regulatory Impact Assessment."

At the time of writing, only two of the instruments have been laid, on 4 March 2021. As such, those two instruments have needed to be considered in isolation, without reference to the other two instruments.

Welsh Government response

Merit Scrutiny point: A Joint Explanatory Memorandum was created reflecting that four pieces of legislation, relating to the establishment of DHCW and the transfer of the NHS Wales Informatics Service from Velindre into DHCW, are required ahead of the planned go-live of the new organisation on 1 April 2021. Only two of the four pieces of legislation were required to be laid before the Senedd - *The Digital Health and Care Wales (Transfer of Staff, Property, Rights and Liabilities) Order 2021*; *The Velindre National Health Service Trust Shared Services Committee (Wales) (Amendment) Regulations 2021*. The four pieces of legislation are linked in terms of their sequencing so that the new organisation may operate from 1 April 2021 and so the Joint Explanatory Memorandum refers to all four.

The Velindre National Health Service Trust (Establishment) (Amendment) Order 2021 can be viewed here: [2021 No. 232 \(W. 58\)](#). The Digital Health and Care Wales (Functions) Directions 2021 are due to be issued on 1 April 2021.

Legal Advisers

Legislation, Justice and Constitution Committee

17 March 2021



W E L S H S T A T U T O R Y
I N S T R U M E N T S

2021 No. 233 (W. 59)

**NATIONAL HEALTH
SERVICE, WALES**

**The Digital Health and Care Wales
(Transfer of Staff, Property, Rights
and Liabilities) Order 2021**

EXPLANATORY NOTE

(This note is not part of the Order)

A Special Health Authority, Digital Health and Care Wales (“DHCW”) has been established under section 22 of the National Health Service (Wales) Act 2006. DHCW’s functions will relate to the provision of digital platforms, systems and services and supporting the improvement of such systems. To date, a number of these functions have been exercised by the National Health Service Wales Informatics Service (“NWIS”). NWIS forms part of the shared services hosted by Velindre University National Health Service Trust (“Velindre University NHS Trust”).

This Order makes provision for the transfer of particular staff (article 3), property (article 4), rights and liabilities (article 5) from Velindre University NHS Trust to DHCW.

Article 6 makes provision for the transfer of data, records and information.

Article 7 makes provision for the continuity of things done by, or in relation to, Velindre University NHS Trust.

The Welsh Ministers’ Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to this Order. As a result, a regulatory impact assessment has been prepared as to the likely costs and benefits of complying with this Order. A copy can be obtained from the Department of Health and Social Services, Welsh Government, Cathays Park, Cardiff, CF10 3NQ.

W E L S H S T A T U T O R Y
I N S T R U M E N T S

2021 No. 233 (W. 59)

**NATIONAL HEALTH
SERVICE, WALES**

**The Digital Health and Care Wales
(Transfer of Staff, Property, Rights
and Liabilities) Order 2021**

Made 3 March 2021

Laid before Senedd Cymru 4 March 2021

Coming into force 1 April 2021

The Welsh Ministers make the following Order in exercise of the powers conferred on them by sections 22(2) and (4) and 203(9) and (10) of the National Health Service (Wales) Act 2006⁽¹⁾ and after consultation in accordance with section 22(7) of that Act.

Title and commencement

1.—(1) The title of this Order is the Digital Health and Care Wales (Transfer of Staff, Property, Rights and Liabilities) Order 2021.

(2) This Order comes into force on 1 April 2021.

Interpretation

2. In this Order—

“the Act” (“*y Ddeddf*”) means the National Health Service (Wales) Act 2006;

“DHCW” (“*IGDC*”) means Digital Health and Care Wales established by article 2 of the Digital Health and Care Wales (Establishment and Membership) Order 2020⁽²⁾;

(1) 2006 c. 42.

(2) S.I. 2020/1451 (W. 313).

“NWIS” (“*GGGC*”) means the National Health Service Wales Informatics Service in Velindre University NHS Trust;

“NWIS’s functions” (“*swyddogaethau GGGC*”) means managing and providing to, or in relation to, the health service in Wales, a range of information technology systems and associated support and consultancy services, desktop services, web development, telecommunications services, and healthcare information services;

“the transfer date” (“*y dyddiad trosglwyddo*”) means 1 April 2021;

“Velindre University NHS Trust” (“*Ymddiriedolaeth GIG Prifysgol Felindre*”) means the NHS Trust established by the Velindre National Health Service Trust (Establishment) Order 1993⁽¹⁾.

Transfer of staff to DHCW

3.—(1) This article applies to any person who—

- (a) immediately before the transfer date is employed by Velindre University NHS Trust in connection with NWIS’s functions, and
- (b) has been notified in writing by Velindre University NHS Trust prior to the transfer date that they are to be transferred to DHCW.

(2) The contract of employment of any person to whom paragraph (1) applies is, on the transfer date, to be transferred to DHCW.

(3) The contract of employment of a person whose employment has transferred to DHCW under paragraph (2)—

- (a) is not terminated by the transfer, and
- (b) has effect from the transfer date as if originally made between that person and DHCW.

(4) Without prejudice to paragraph (3)—

- (a) all the rights, powers, duties and liabilities of Velindre University NHS Trust under, or in connection with, the contract of employment of any person whose employment transferred to DHCW on the transfer date under paragraph (2), are to transfer to DHCW, and
- (b) any act or omission before the transfer date by, or in relation to, Velindre University NHS Trust, in respect of that person or that person’s contract of employment, is deemed

(1) S.I. 1993/2838, amended by S.I. 1999/826, S.I. 2002/442 (W. 57), S.I. 2002/2199 (W. 219), S.I. 2009/2059 (W. 178), S.I. 2012/1262 (W. 157), S.I. 2017/912 (W. 223), and S.I. 2018/887 (W. 176).

to have been an act or omission of, or in relation to, DHCW.

(5) Paragraphs (2) to (4) do not have effect to transfer the contract of employment of a person to whom paragraph (1) applies, or any rights, powers, duties and liabilities under, or in connection with, that contract, if, before the transfer date, that person informs Velindre University NHS Trust that they object to becoming employed by DHCW.

(6) Where a person to whom paragraph (1) applies has objected to the transfer of that person's contract of employment to DHCW as described in paragraph (5), the transfer operates so as to terminate that person's contract of employment with Velindre University NHS Trust.

(7) Subject to paragraph (8), a person whose contract of employment is terminated in accordance with paragraph (6) is not to be treated, for any purpose, as having been dismissed by their employer.

(8) Where the transfer involves or would involve a substantial change in the working conditions to the material detriment of a person whose employment is or would have been transferred under paragraph (2), that person may treat the contract of employment as having been terminated, and that person is to be treated for any purpose as having been dismissed by their employer.

(9) No damages are to be payable by an employer as a result of a dismissal falling within paragraph (8) in respect of any failure by the employer to pay wages to a person in respect of a notice period which the person has failed to work.

(10) Paragraphs (2), (3), and (5) to (8) are without prejudice to any right of a person arising apart from this article to terminate that person's contract of employment without notice in acceptance of a repudiatory breach of contract by the employer.

(11) Records of Velindre University NHS Trust relating to the employment of those persons to whom paragraph (1) applies and whose contracts of employment are to transfer to DHCW pursuant to this article are to transfer to DHCW on the transfer date.

Transfer of property

4.—(1) This article applies to property held by Velindre University NHS Trust immediately before the transfer date—

- (a) which is identified in the Schedule;
- (b) which is used or held by Velindre University NHS Trust—
 - (i) for the performance of NWIS's functions, or

(ii) in connection with the performance of NWIS's functions.

(2) Any property to which paragraph (1) applies is, on the transfer date, to transfer to DHCW.

(3) Any rights or liabilities that Velindre University NHS Trust has in relation to any property to which paragraph (1) applies are, on the transfer date, to transfer to DHCW.

(4) Any property to which paragraph (1) applies which consists of land or buildings is transferred subject to, and with the benefit of—

- (a) any existing leases, tenancies and licences and any rights of occupiers and their successors;
- (b) any other interest in, and matter affecting, it.

(5) In paragraph (4), the transfer of "property" includes the transfer of the contents of the property, including any item or property of whatever description which is—

- (a) the property of Velindre University NHS Trust immediately prior to the transfer date, and
- (b) present in or on the property on the transfer date,

including any vehicle or moveable property which is normally kept on such land or in such buildings when not in use.

Transfer of rights and liabilities

5.—(1) Any rights and liabilities of Velindre University NHS Trust which exist immediately before the transfer date that relate to Velindre University NHS Trust in the exercise of, or in connection with, NWIS's functions are to transfer on the transfer date to DHCW.

(2) Any liabilities of Velindre University NHS Trust which exist immediately before the transfer date that relate to Velindre University NHS Trust in the exercise of, or in connection with, NWIS's functions are enforceable against DHCW.

Transfer of information, data and records

6.—(1) Any property, rights and liabilities that Velindre University NHS Trust has, immediately before the transfer date, in relation to information, data and records that relate to Velindre University NHS Trust in the exercise of, or in connection with, NWIS's functions are to transfer on the transfer date to DHCW.

(2) The transfer of any information, data and records to which this article applies is subject to any third party rights which exist in relation to that information or those data and records.

Provision for continuity in the exercise of functions

7.—(1) Anything which immediately before the transfer date, has been done or is in the process of being done by or in relation to Velindre University NHS Trust in the exercise of, or in connection with NWIS's functions, is on or after the transfer date to have effect as if done by or in relation to DHCW.

(2) So far as is required for giving effect to paragraph (1), a reference in any document to Velindre University NHS Trust is to be construed on and after the transfer date as a reference to DHCW.

(3) Subject to article 3(8), no right to terminate or vary a contract, arrangement or instrument is to operate or become exercisable, and no provision of any contract, arrangement or instrument is to operate or become exercisable or be contravened, by reason of any transfer under or other operation of this Order.

(4) The transfers provided for by this Order are to be made—

- (a) irrespective of any requirement for consent that would otherwise apply (whether arising under any enactment, instrument, agreement or otherwise),
- (b) whether or not they would otherwise be capable of being transferred, and
- (c) regardless of any provision (of whatever nature) which would otherwise prevent or restrict those transfers.

Vaughan Gething

Minister for Health and Social Services, one of the
Welsh Ministers

3 March 2021

SCHEDULE

Article 4

Property Transferring to DHCW

Lease dated 4 January 2016 made between Velindre University NHS Trust (1) and Second Horizon Limited (2)

Lease dated 28 January 2020 made between Velindre University NHS Trust (1) and Second Horizon Limited (2) in relation to Bocam Park

Lease dated 18 December 2019 made between Velindre University NHS Trust (1) and Castlebridge Investments Ltd (2) in relation to Castlebridge

Lease dated 29 July 2013 made between Velindre University NHS Trust (1) and Johnsey Estates UK Limited (2) in relation to Mamhilad Park Estate (ground floor)

Lease dated 29 July 2013 made between Velindre University NHS Trust (1) and Johnsey Estates UK Limited (2) in relation to Mamhilad Park Estate (first floor)

Lease dated 29 July 2013 made between Velindre University NHS Trust (1) and Johnsey Estates UK Limited (2) in relation to Mamhilad Park Estate (second floor)

Lease dated 1 April 2016 made between Velindre University NHS Trust (1) and University of Wales: Trinity Saint David (2) in relation to Technium 2 (part of first floor)

Lease dated 1 April 2016 made between Velindre University NHS Trust (1) and University of Wales: Trinity Saint David (2) in relation to Technium 2 (The Madoc room)

Lease dated 8 December 2014 made between Velindre University NHS Trust (1) and Mark Andrews & Others (2) in relation to Tŷ Glan-yr-Afon

Lease dated 14 May 2018 made between Velindre University NHS Trust (1) and Mark Andrews & Others (2) in relation to Tŷ Glan-yr-Afon

Lease dated 10 January 2021 made between Velindre University NHS Trust (1) and Mojo 2 Limited (2) in relation to Media Point

Explanatory Memorandum to

The Digital Health and Care Wales (Transfer of Staff, Property, Rights and Liabilities) Order 2021;

The Velindre National Health Service Trust (Establishment) (Amendment) Order 2021;

The Velindre National Health Service Trust Shared Services Committee (Wales) (Amendment) Regulations 2021

And

The Digital Health and Care Wales (No.2) Directions 2021

This Explanatory Memorandum has been prepared by the Department for Health and Social Services 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 **Digital Health and Care Wales (Transfer of Staff, Property, Rights and Liabilities) Order 2021**, the **Velindre National Health Service Trust (Establishment) (Amendment) Order 2021**, the **Velindre National Health Service Trust Shared Services Committee (Wales) (Amendment) Regulations 2021** and the **Digital Health and Care Wales (No.2) Directions 2021**.

I am satisfied that the benefits justify the likely costs.

Vaughan Gething

Minister for Health and Social Services

4 March 2021

1. Description

1.1 The Legislation summarised below will support the launch of a new Special Health Authority called Digital Health and Care Wales (DHCW).

a. The Digital Health and Care Wales (Transfer of Staff, Property, Rights and Liabilities) Order 2021

1.2 The order provides for the transfer of NWIS staff, property, rights and liabilities from Velindre NHS Trust into Digital Health and Care Wales.

b. The Velindre National Health Service Trust (Establishment) (Amendment) Order 2021

1.3 This Order makes an amendment to the existing Velindre Establishment Order to reflect the transfer of NWIS functions from Velindre NHS Trust into Digital Health and Care Wales.

c. The Velindre National Health Service Trust Shared Services Committee (Wales) (Amendment) Regulations 2021

1.4 This amends the existing Shared Services Committee Regulations to make provision for the Chief Officers of Special Health Authorities established by Welsh Ministers to become members of the NHS Wales Shared Services Partnership Committee.

d. The Digital Health and Care Wales (No.2) Directions 2021

1.5 This sets out the functions that DHCW is to perform, building on the principal functions set out in the Digital Health and Care (Establishment) Order 2020. These functions have been developed following a public consultation process that ran from 7 September 2020 to 30 November 2020.

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

2.1 The four statutory instruments being brought forward as part of the go-live of DHCW are being made together, are inextricably linked, and would be difficult to understand if read in isolation. It is therefore considered beneficial to bring forward a single composite Explanatory Memorandum and Regulatory Impact Assessment.

3. Legislative background

3.1 The Welsh Ministers have powers in section 22 of the National Health Service (Wales) Act 2006 ('the 2006 Act') to establish a Special Health Authority for the purpose of exercising any functions which may be conferred on them by or under the 2006 Act.

- 3.2 Section 22(7) of the 2006 Act provides that the Welsh Ministers must, before they make orders in relation to Special Health Authorities, consult with respect to the order such bodies as they may recognise are representing officers who in the opinion of the Welsh Ministers are likely to be transferred or affected by transfers in pursuance of the order.
- 3.3 Section 24 of the 2006 Act also provides that the Welsh Ministers may direct a Special Health Authority to exercise any functions of the Welsh Ministers relating to the health service which are specified in directions.

4 Purpose & intended effect of the legislation

Background

- 4.1 The NHS Wales Informatics Service ('NWIS') is the organisation leading on the delivery of national digital health and care services for NHS Wales. Established on 1 April 2010 (as part of the NHS Wales Healthcare Reform Programme) it brought together:
- Informing Healthcare (IHC),
 - Health Solutions Wales (HSW),
 - Business Services Centre (Information Management and Technology element only),
 - Corporate Health Information Programme (CHIP), and the
 - Primary Care Informatics Programme (PCIP).
- 4.2 NWIS is a non-statutory organisation, hosted under the statutory framework of Velindre NHS Trust. It has its own Directors and Corporate Structure, with staff located across Wales.

Purpose

- 4.3 In 2019, Welsh Government commissioned two major reviews of digital delivery in Wales looking at how digital systems are designed to work together ('the Digital Architecture Review') and at delivery structures and decision-making arrangements ('the Digital Governance Review'). These two reviews provide the context to our approach and delivery.
- 4.4 Given the sensitivity of the recommendations raised by the 'Digital Governance Review', officials developed options based on the general engagement undertaken by both reviews, including the stakeholder task and finish groups, on consideration of existing governance and hosting models across NHS Wales (which provide several examples of different approaches), and discussions with the Minister.
- 4.5 In a written statement on 30 September 2019, the Minister for Health and Social Services announced:

“The NHS Wales Informatics Service (NWIS) will transition from its current structure, as part of Velindre Trust, to a new Special Health Authority. Establishing our national digital services organisation as a dedicated organisation reflects the importance of digital technology as a key enabler of change, as set out in A Healthier Wales. This change will strengthen governance and accountability, both in terms of relationships with other NHS Wales organisations and through stronger leadership and oversight, through an independent chair and board members, with experience and understanding of digital change.”

- 4.6 On 30 December 2020, Digital Health and Care Wales was established through the Digital Health and Care Wales (Establishment and Membership) Order 2020.

Intended effect of the legislation

The Digital Health and Care Wales (Transfer of staff, property, rights and liabilities) Order 2021 (“the Transfer Order”)

- 4.7 The Transfer Order makes provision for the transfer of particular staff, property, rights and liabilities from Velindre University NHS Trust to Digital Health and Care Wales on 1 April 2021.
- 4.8 The Transfer Order transfers the contracts of employment of Velindre employees who are employed in connection with the discharge of NWIS functions and who have been notified in writing by Velindre ahead of 1 April that they are to be transferred into DHCW.
- 4.9 The Transfer Order also transfers property, rights and liabilities from Velindre to DHCW. This includes the transfer of leases for all accommodation and estates currently occupied by NWIS, as well as commercial agreements made by Velindre on behalf of NWIS and any information, data and records that relate to Velindre in the exercise of, or in connection with, NWIS functions.

The Velindre National Health Service Trust (Establishment) (Amendment) Order 2021 (“the Amendment Order”)

- 4.10 The Amendment Order amends the Velindre National Health Service Trust (Establishment) Order 1993 to remove those functions currently being exercised by NWIS, this is to reflect that these functions will now be conferred on DHCW.

The Velindre National Health Service Trust Shared Services Committee (Wales) (Amendments) Regulations 2021 (“the Shared Service Regulations”)

- 4.11 The Shared Service Regulations amend the Velindre National Health Service Trust Shared Services Committee (Wales) Regulations 2012 (“the 2012 Regulations”). The 2012 Regulations make provision for the

establishment, functions, constitution and membership of the Velindre National Health Service Trust Shared Services Committee. Regulation 5 provides that the members of the committee consist of a chair, the chief officers or their nominated representatives; and the person who has been designated as the accountable officer for shared services. Chief Officer is defined in regulation 2 as meaning the chief officer of each LHB and NHS Trust. The Shared Services Regulations amend the definition of 'chief officer' in regulation 2 to include a chief officer or chief executive of a SHA established by the Welsh Ministers under section 22 of the Act. This means that in addition to chief officers of the LHBs and Trusts, the Shared Services Committee will include the chief officer of HEIW and the chief executive of DHCW and any other SHA that is established by the Welsh Ministers.

The Digital Health and Care Wales (No.2) Directions 2021 ("the Functions Directions")

- 4.12 Sections 23(1) of the National Health Service (Wales) Act 2006 gives Welsh Ministers the power to provide Directions to Special Health Authorities. Section 24(1) gives Welsh Ministers the power to direct a Special Health Authority to exercise any of the functions of the Welsh Ministers in relation to the health service.
- 4.13 The Functions Directions were developed following a public consultation on the proposed functions for DHCW. They set out a broad range of functions, some of which were previously delivered by NWIS.
- 4.14 The Functions Directions are designed to provide DHCW with the necessary scope to design, develop, deliver and support national digital platforms, systems and services. The Functions Directions also cover a range of additional areas such as workforce development, information governance, data collection and cyber security. The Functions Directions are intended to provide DHCW with the basis to deliver digital transformation within Health and Care in Wales in line with the strategic policy objectives of the Welsh Government.

5 Consultation

- 5.1 Between 7 September 2020 and 30 November 2020, Welsh Government sought views from stakeholders on the proposed functions of a new Special Health Authority called Digital Health and Care Wales (DHCW).
- 5.2 The consultation described why Welsh Government are proposing the change; the proposed functions currently being undertaken by NHS Wales Informatics Service (NWIS) that will be taken forward by DHCW; and how these functions can facilitate the evolution of digital maturity across the health and care sector in Wales.

- 5.3 The consultation requested views on the following areas and stakeholders were asked to submit their comments via an online form, email or post.
- The proposed functions of DHCW.
 - The proposed board structure for DHCW.
 - Whether one or more of the proposed functions of DHCW overlaps with a function already being undertaken by a different organisation in Wales (that is not NWIS).
 - Additional functions that should be included within the responsibility of DHCW.
 - Any impacts the proposed functions may have on the Welsh language.
- 5.4 There were a total of seventy eight responses to the consultation. Some of the written responses reflected the consolidated views of organisations within NHS Wales.
- 5.5 In general, responses tended to elicit comments from respondents which were broadly supportive of the proposals. The open nature of the consultation form meant many provided additional information, added caveats or raised issues for further consideration. These were varied and, in many cases, were specific to the respondent and/or the organisation that they represented.
- 5.6 Some cross-cutting issues included the need to integrate any changes in the context of the current policy landscape and with regard to existing structures, as well as to learn from and use the experience of existing bodies and programmes and the need to share best practice.
- 5.7 The consultation focussed on the proposed functions of DHCW, however, some respondents highlighted operational concerns for the new organisation which do not directly correlate to the functions Welsh Government propose to confer on DHCW. Where this is the case these concerns will be highlighted for consideration by the DHCW board once appointed.
- 5.8 A published summary of the responses can be found here:
<https://gov.wales/sites/default/files/consultations/2021-02/digital-special-health-authority-for-wales-summary-of-responses.pdf>

PART 2 – REGULATORY IMPACT ASSESSMENT

1. Approach

- 1.1 In developing this RIA, the Welsh Government considered the costs and implications of the Establishment of Digital Health and Care Wales and the associated transfer of staff, property, assets and liabilities associated with the Transfer Order. The legislation set out in the EM above relates directly to the transfer from Velindre to DHCW of NWIS staff, property, liabilities and functions. This means that the cost implications of the Transfer apply only to the creation of additional governance arrangements to ensure that the appropriate assurance and accountability is provided for the delivery of digital services that DCHW will provide to NHS Wales. The RIA therefore sets out the cost implications of the establishment of DHCW and its Board arrangements and not the transfer of staff, property, liabilities and functions as these are part of the core budgetary allocation provided by Welsh Government to NWIS, which will also be transferring to DHCW.
- 1.2 The financial implications of the Velindre Amendment Order and Shared Services Regulations are not expected to give rise to any significant additional costs so are not considered as part of this RIA.

2. Options

- 2.1 The Welsh Government considered a number of options in response to the recommendations made in the 'the Digital Architecture Review' and 'the Digital Governance Review'. These options were:
1. Do Nothing
 2. No change of structure, but add a 'joint committee' governance wrapper around NWIS in Velindre
 3. Move NWIS to another organisation such as Public Health Wales, HEIW or the NHS Executive
 4. Transition NWIS to a new standalone Special Health Authority
- 2.2 An assessment was made of the extent to which each of these options delivers the recommendations made in the two commissioned reports.

Option 1 – Do Nothing

- 2.3 This option would not address any of the recommendations from the Wales Audit Office (WAO) and Public Accounts Committee (PAC) reports or the Governance Review. Pursuing this option would further undermine confidence and engagement across NHS Wales and could have a detrimental impact on the reputation of Welsh Ministers and the ability to deliver/develop national digital systems and services.
- 2.4 This option was therefore **rejected** but is retained in the RIA to act as the baseline against which to assess the costs and benefits of the alternative options.

Option 2 – No change of structure, but add a ‘joint committee’ governance wrapper around NWIS in Velindre

2.5 While this option would address some of the recommendations from the WAO and PAC reports around governance and accountability and would move towards a ‘shared services’ model as described in the governance review, it was felt this option would maintain the currently ambiguous hosting arrangements, lack financial accountability and would be seen as a largely ‘cosmetic’ change. For these reasons, this option was **rejected**.

Option 3 – Move NWIS to another organisation such as Public Health Wales, HEIW or the NHS Executive

2.6 This option would go further than options 1 and 2 in addressing the recommendations by the WAO and PAC, showing ‘significant’ change. However, this approach stops short of addressing the key governance changes required. There would however be some disruption in transitioning from Velindre to a different organisation with different processes and requirements, even within the wider NHS Wales system. Given the scale of NWIS there could also be an impact on the receiving organisation which could distract senior leadership from their existing priorities and focus. As a result, this option was **rejected**.

Option 4: Transition NWIS to a new standalone Special Health Authority

2.7 This option was felt to address the WAO and PAC recommendations to their fullest extent, and to maximise the direct and transparent accountability of NWIS as a national digital service. As such, this option was identified as the **preferred option**.

2.8 In September 2019, the Minister for Health and Social Services announced his intention to transition the NHS Wales Information Service (NWIS) into a Special Health Authority.

2.9 In light of the above, the following options have been taken forward for further consideration in the RIA:

- Option 1 – Do Nothing
- Option 4 - Transition NWIS to a new standalone Special Health Authority

3. Costs

Option 1 – Do Nothing

Costs

2.1 This is the baseline option and as such, there are no additional costs associated with this option.

Benefits

2.2 Given that current systems would continue, there would be no benefits to this option in terms of value for money against the investment made into this area of the system. However, there would be a benefit in that no additional establishment or transitional costs would be required. There would be no policy benefit in relation to digital services across the NHS in Wales. There could however, be an unquantifiable potential benefit for the staff involved, in that they would continue within their current roles, organisations and locations.

Option 4 (Preferred Option) - Transition NWIS to a new standalone Special Health Authority

Costs

2.3 This option is likely to require more resources than options 1, 2 and 3, although the task is relatively straightforward (compared for example to establishing HEIW) because NWIS is an established organisation with existing people, premises, processes and policies.

2.4 There would also be costs associated with transitioning NWIS into a 'clean' SHA and establishing a new Board. These costs have been identified as **£2m** per annum and have been benchmarked against similar sized NHS Wales organisations to ensure that the funding level is appropriate.

2.5 The costs to "Transition NWIS to a new standalone Special Health Authority" will mainly be incurred in the 2020-21 financial year. However, some costs may flow into 2021-22 to support programme closure activity.

2.6 The costs for the operation of the DHCW Board will be recurring costs for each financial year beyond 1 April 2021.

Resource	Description	Cost
Programme Team	Costs for Programme Team <i>Staff costs incurred by Welsh Government to deliver the programme.</i>	£160,000
Legal	Costs for Legal Advice and Legislative Drafting <i>Legal costs incurred by Welsh Government to provide legal advice and drafting of legislation.</i>	£20,000
Communications and Engagement	Costs for Communications and Engagement Activities <i>Wider communication and engagement activities to support the programme.</i>	£10,000

People	Non-Officer Member costs. <i>Remuneration and associated costs for a Chair, Vice Chair and Five independent members.</i>	£126,500
Other Costs	Other Ad hoc programme costs (such as Gateway Reviews etc.).	£20,000
Transition Costs	See Appendix B for details	£717,800
SHA Board Operational Costs	Recurring annual costs for the running of Board activities, statutory and mandatory processes and governance activities	£2,000,000
	Total	£3,054,300

Benefits

2.7 There are some short-term benefits linked to the governance and transparency of establishing the new SHA, which are set out below:

- 2.7.1 Establishment of NHS Wales Organisation, with its own Board and governance arrangements, with a specific remit and responsibility for Digital Services
- 2.7.2 An all-Wales organisation with a clear legal basis for the collection, processing, analysis and dissemination of Welsh Citizen data.
- 2.7.3 Clear lines of accountability, underpinned by Board Governance arrangements.
- 2.7.4 Establishment and 'bedding in' of transparent reporting arrangements for the delivery of digital health and care services in Wales.
- 2.7.5 The creation of a strong and robust board to lead on the governance and delivery of DHCW's vision and strategy

2.8 Longer term benefits the new organisation will provide across the system in Wales will be identified and addressed by the Board of the new organisation as part of their business and IMTP plans.

4. Summary

3.1 Option 4 provides opportunities for a clean break, which allows addressing the recommendations of the Wales Audit Office and Public Accounts Committee to the fullest, without negatively affecting the digital services provided to professionals and patients.

3.2 Aligning the Special Health Authority to a new formalised governance framework will not just improve transparency, reporting and accountability of digital services within NWIS Wales but will also provide much needed confidence across the system that the changes undertaken are substantial in nature and not just cosmetic.

5. Consultation

Wales Audit Office Review - Informatics Systems in NHS Wales – 10 January 2018

- 4.1 Work to develop policy in this area started in 2018 when the Wales Audit Officer (now Audit Wales) commissioned a review into Informatics Systems in NHS Wales. Whilst compiling their report, the WAO interviewed a range of people including Welsh Government officials, NWIS Staff and a range of officers from Health Boards and Trusts.

The Parliamentary Review of Health and Social Care in Wales – January 2018

- 4.2 The Parliamentary Review of Health and Social Care in Wales was undertaken in January 2018. In formulating their views, the Parliamentary Review heard from a wide range of people including members of the public, service users, staff in health and social care, and the third sector, and considered evidence about national and international models of care.

Public Accounts Committee Report – November 2018

- 4.3 Based on the recommendations set out in the Wales Audit Officer and Parliamentary Review, the Public Accounts Committee agreed to undertake an inquiry into informatics systems in NHS Wales, covering a wide range of issues. The Committee received extensive written and oral evidence as part of their inquiry. There have been a number of Public Accounts Committee Evidence Sessions to date and the transcripts of all oral evidence sessions and written evidence received are openly available¹.

The NHS Wales Digital Architecture Review

- 4.4 Welsh Government and NHS Wales engaged Channel 3 Consulting to undertake a review of the NHS Wales Digital Architecture, recognising the ambition for digital transformation across Wales at pace.
- 4.5 The focus of this review was to assess the extent to which the current Digital Architecture of NHS Wales is ready to meet the ambition set out in “A Healthier Wales”, and whether it is scalable to support digital transformation across Welsh health and social care.
- 4.6 The review involved technical reviews with NWIS and workshops and interviews with over one hundred key stakeholders from NWIS, all Health Boards, and the universities, augmented by three “deep dives” at Aneurin Bevan and Cwm Taf Health Boards, and Public Health Wales Trust.

The NHS Wales Digital Governance Review

¹ <http://senedd.assembly.wales/mglIssueHistoryHome.aspx?lId=20803>

- 4.7 The review had a whole system scope, covering local and national services, all NHS services, and the Welsh Community Care Information System (WCCIS) and undertaken by independent consultants, who engaged very widely with all stakeholders across Wales, including NHS Wales Informatics Service (NWIS) and Velindre NHS Trust.
- 4.8 The Review engaged widely with stakeholders on an open and collaborative basis. The findings and recommendations from the Review have been widely shared with NHS Wales Stakeholders through an engagement programme.
- 4.9 The Digital Governance Review found that there was widespread support for change across NHS Wales.

The Ministerial Written Statement – 30 September 2019

- 4.10 In his written statement, the Minister for Health and Social Services set out actions in response to the two reviews, which has been widely reported announcing that:

“The NHS Wales Informatics Service (NWIS) will transition from its current structure, as part of Velindre Trust, to a new Special Health Authority. Establishing our national digital services organisation as a dedicated organisation reflects the importance of digital technology as a key enabler of change, as set out in A Healthier Wales. This change will strengthen governance and accountability, both in terms of relationships with other NHS Wales organisations and through stronger leadership and oversight, through an independent chair and board members, with experience and understanding of digital change.”

- 4.11 The Minister for Health and Social Services also agreed there should be a new set of arrangements for Wales in regards to delivering informatics and Digital transformation. This will help underpin key commitments published by Welsh Government such as A Healthier Wales and Informed Health and Care Strategy. Officials therefore consider there is a mandate for this change

External Consultation

- 4.12 Welsh Government published a consultation on the functions of the Digital Special Health Authority for Wales on 7 September 2020 and ran for twelve weeks, closing on 30 November 2020.
- 4.13 The high level functions subject to consultation were as follows:
- Application Development and Support
 - Digital Services design, commissioning, planning & delivery
 - Information and Communications Technology
 - Quality Management & Regulatory Compliance
 - Information Management

- Information Governance
- Cyber Security
- Finance and Business Assurance
- Reporting Services
- Workforce Improvement

4.14 Overall, the consultation responses welcomed the establishment of DHCW and were very supportive of the proposals.

6. Competition Assessment

5.1 The competition assessment has been completed and is included at Appendix A.

7. Post implementation review

6.1 The RIA sets out the anticipated potential costs of this legislation, in addition to the benefits and opportunities and realising these benefits is how success will be measured.

6.2 It is anticipated that a review will take place within five years of the full implementation of this legislation; with a further review at the ten year point, whereby the longer term benefits will have had the opportunity to be realised.

6.3 The key factors in measuring whether those benefits have been realised are as follows:

- A reduction in vacancies across the digital workforce across NHS Wales.
- A reduction in skills gaps across digital professions.
- Improved satisfaction ratings from patients and health care professionals through the national survey.
- Improved staff survey results in relation to digital platforms, systems and services.
- Improved value for investment, measured by an increase in outputs and/or service provision for similar investment against that made under the current system.
- A reduction in consultancy and contractor spend on digital activity across the NHS in Wales.

APPENDIX A –The Competition Assessment

The competition filter test	
Question	Answer yes or no
Q1: In the market(s) affected by the new regulation, does any firm have more than 10% market share?	No
Q2: In the market(s) affected by the new regulation, does any firm have more than 20% market share?	No
Q3: In the market(s) affected by the new regulation, do the largest three firms together have at least 50% market share?	No
Q4: Would the costs of the regulation affect some firms substantially more than others?	No
Q5: Is the regulation likely to affect the market structure, changing the number or size of businesses/organisation?	No
Q6: Would the regulation lead to higher set-up costs for new or potential suppliers that existing suppliers do not have to meet?	No
Q7: Would the regulation lead to higher ongoing costs for new or potential suppliers that existing suppliers do not have to meet?	No
Q8: Is the sector characterised by rapid technological change?	No
Q9: Would the regulation restrict the ability of suppliers to choose the price, quality, range or location of their products?	No

APPENDIX B – Detailed Transitional Costs

Transition Costs		
Resource	Description	Option 4
Communications and Engagement	Covering the branding and messaging for Digital Health and Care Wales as well as launch events and ancillary marketing activities.	£54,000
Statutory Financial Services Readiness	Ensuring the appropriate financial controls, processes and reporting procedures are in place and tested prior to 1 April 2021 go-live date. This includes key staff costs as well as supplier costs associated with the building of the organisation's Financial ledger and purchase of capital asset register for the new organisation.	£247,700
Workforce and Organisational Development Readiness	Supplier costs relating to the setting up of new ESR and expenses systems for the organisation in readiness for the go-live date.	£57,400
Governance Readiness	Supporting the ongoing development of the Board and Governance processes for Digital Health and Care Wales, this includes consultancy costs as well as staffing costs for the transition project manager, Board Secretary and Chair and Independent Members (following their appointment by Welsh Government).	£312,200
Legal Preparation	Legal advice to support the commercial activities relating to the transition such as the novation of contracts from Velindre to the SHA, Employment Law advice relating to the TUPE transfer and the setting up of employment licences and general legal advice relating to the creation of the Statutory Instruments to establish the SHA	£46,500
	Total:	£717,800

Agenda Item 4.4

SL(5)786 – The Care and Support (Charging) (Wales) (Amendment) Regulations 2021

Background and Purpose

These Regulations are made by the Welsh Ministers under sections 50, 52, 53(3), 61, 196(2) and 198(1) of the Social Services and Well-being (Wales) Act 2014 ("the 2014 Act"). The Regulations amend the Care and Support (Charging) (Wales) Regulations 2015 ("the 2015 Regulations").

The 2015 Regulations set out the requirements which local authorities must follow when making a determination of the amount of the charges which apply in relation to care and support which they are providing or arranging, or propose to provide or arrange, in the course of carrying out their functions under Part 4 of the 2014 Act. The 2015 Regulations also contain parallel provisions setting out requirements which apply where a local authority makes direct payments to meet a person's need for care and support.

The Regulations amend the 2015 Regulations to increase (by £1) the minimum income amount to which a person provided with care home accommodation or receiving direct payments in respect of such accommodation is entitled to retain for personal expenditure, from £32 to £33 per week.

The Regulations come into force on 12 April 2021.

Procedure

Negative.

The Regulations were made by the Welsh Ministers before they were laid before the Senedd.

The Senedd can annul the Regulations within 40 days (excluding any days when the Senedd is: (i) dissolved, or (ii) in recess for more than four days) of the date they were laid before the Senedd.

Technical Scrutiny

No points are identified for reporting under Standing Order 21.2 in respect of this instrument.

Merits Scrutiny

The following point is identified for reporting under Standing Order 21.3 in respect of this instrument.

1. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Senedd.



The Regulatory Impact Assessment notes that the effect of these Regulations is to share:

“...the increased income which local authority supported residents would have from April 2021 as a result of uplifts to their state pensions and welfare benefits. Residents in this position would be able to retain a £1.00pw of these uplifts to spend on personal items, while authorities would receive the balance in increased contributions from residents towards the cost of their resident care.”

Welsh Government response

A Welsh Government response is not required.

Legal Advisers

Legislation, Justice and Constitution Committee

10 March 2021



W E L S H S T A T U T O R Y
I N S T R U M E N T S

2021 No. 255 (W. 68)

SOCIAL CARE, WALES

**The Care and Support (Charging)
(Wales) (Amendment) Regulations
2021**

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Care and Support (Charging) (Wales) Regulations 2015 (“the 2015 Regulations”).

The 2015 Regulations set out the requirements which local authorities must follow when making a determination of the amount of the charges which apply in relation to care and support which they are providing or arranging, or propose to provide or arrange, in the course of carrying out their functions under Part 4 of the Social Services and Well-being (Wales) Act 2014 (“the Act”). The 2015 Regulations also contain parallel provisions setting out requirements which apply where a local authority makes direct payments to meet a person’s need for care and support.

These Regulations amend Part 2 of the 2015 Regulations (charging under Part 5 of the Act) so that the weekly minimum income amount where a person is provided with accommodation in a care home is increased from £32 to £33.

These Regulations amend Part 4 of the 2015 Regulations (contributions and reimbursements for direct payments) so that the net weekly minimum income amount where a person is provided with accommodation in a care home and receives direct payments under the Act is increased from £32 to £33.

The Welsh Ministers’ Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, a regulatory impact assessment has been prepared as to the likely costs and benefits of complying with these Regulations. A copy can be obtained by contacting the

Health and Social Services Group, Welsh Government,
Cathays Park, Cardiff CF10 3NQ.

W E L S H S T A T U T O R Y
I N S T R U M E N T S

2021 No. 255 (W. 68)

SOCIAL CARE, WALES

**The Care and Support (Charging)
(Wales) (Amendment) Regulations
2021**

Made 5 March 2021

Laid before Senedd Cymru 8 March 2021

Coming into force 12 April 2021

The Welsh Ministers, in exercise of the powers conferred by sections 50, 52, 53(3), 61, 196(2) and 198(1) of the Social Services and Well-being (Wales) Act 2014⁽¹⁾, make the following Regulations.

Title and commencement

1.—(1) The title of these Regulations is the Care and Support (Charging) (Wales) (Amendment) Regulations 2021.

(2) These Regulations come into force on 12 April 2021.

**Amendment of the Care and Support (Charging)
(Wales) Regulations 2015**

2. The Care and Support (Charging) (Wales) Regulations 2015⁽²⁾ are amended as follows—

- (a) in regulation 13 (minimum income amount where a person is provided with accommodation in a care home) for “£32” substitute “£33”;
- (b) in regulation 28 (minimum income amount where a person is provided with accommodation in a care home) for “£32” substitute “£33”.

⁽¹⁾ 2014 anaw 4.

⁽²⁾ S.I. 2015/1843 (W. 271); amended by S.I. 2017/214 (W. 58), S.I. 2018/123 (W. 29), S.I. 2019/234 (W. 53), and S.I. 2020/131 (W. 24).

Julie Morgan

Deputy Minister for Health and Social Services under
the authority of the Minister for Health and Social
Services, one of the Welsh Ministers
5 March 2021

Explanatory Memorandum to the Care and Support (Charging) (Wales) (Amendment) Regulations 2021

This Explanatory Memorandum has been prepared by the Health and Social Services Group and is laid before the Senedd 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 Care and Support (Charging) (Wales) (Amendment) Regulations 2021 in relation to charging for social care and support under Parts 4 and 5 of the Social Services and Well-being (Wales) Act 2014. I am satisfied that the benefits justify the likely costs.

Julie Morgan MS
Deputy Minister for Health and Social Services
8 March 2021

PART 1 - OVERVIEW

1. Description

The Social Services and Well-being (Wales) Act 2014 (the “Act”) brings together local authorities’ duties and functions in relation to improving the wellbeing of people who need social care and support, and carers who need support. The Act provides the foundation, along with regulations and codes of practice made under it, to a statutory framework for the delivery of social care in Wales to support people of all ages as part of families and communities.

Under the Act, local authorities have discretion to charge for the care and support they provide or arrange for a person, or the support they provide or arrange for a carer. They also have discretion to set a contribution or reimbursement for direct payments they provide to a person to enable them to arrange their care and support themselves. This applies to care and support in a person’s own home, within the community, or in residential care. Where an authority wishes to apply this discretion to set a charge, contribution or reimbursement, regulations made under the Act govern the arrangements applicable to this.

The Care and Support (Charging) (Wales) Regulations 2015 (“the Charging Regulations”) govern local authorities in discharging their discretion to set a charge, contribution or reimbursement under Part 4 (meeting needs) and Part 5 (charging and financial assessment) of the Act. These came into force on 6 April 2016.

Since then a number of policy changes have been agreed which required amendments to the Charging Regulations. Amending regulations to effect those changes are: the Care and Support (Choice of Accommodation, Charging and Financial Assessment) (Amendment) (Wales) Regulations 2017 that came into force on 10 April 2017; the Care and Support (Charging) (Wales) (Amendment) Regulations 2018 that came into force on 9 April 2018; the Care and Support (Charging) and (Financial Assessment) (Wales) (Miscellaneous Amendments) Regulations 2019 that came into force on 8 April 2019 and; the Care and Support (Charging) (Wales) and Land Registration Rules (Miscellaneous Amendments) Regulations 2020 that came into force on 6 April 2020.

The regulations subject to this Explanatory Memorandum are required to introduce an update to the Charging Regulations to reflect an uplifted sum of money that applies to people in receipt of residential social care and support.

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

There are no specific matters of special interest.

3. Legislative background

The powers enabling the making of regulations in relation to setting a contribution or reimbursement for direct payments are contained in Part 4 (sections 50, 52 and 53(3)) of the Act. Powers enabling charging for care and support, and support to a carer, are contained in Part 5 (section 61) of the Act.

These amending regulations are subject to the negative procedure. They will come into force on 12 April 2021.

4. Purpose and intended effect of the legislation

The overall purpose of the amending regulations is to effect a change to the existing regulations as a result of a certain policy decision. These existing regulations govern local authorities' determination of a charge for providing or arranging care and support, or support to a carer, where they use their discretion to charge. They also govern authorities' determination of a contribution or reimbursement for a person receiving direct payments to secure their own care and support, or a carer securing their own support, where authorities use their discretion to set these.

The change the amending regulations make is to:

The Care and Support (Charging) (Wales) Regulations 2015

Regulation 2(a) to 2(d) of the amending regulations amend the Charging Regulations as follows:

- uplift from £32.00 a week to £33.00 a week - the level of the minimum income amount applied in charging for residential care, or in setting a contribution or reimbursement for direct payments to secure residential care, by amending regulations 13 and 28 of the Charging Regulations. The minimum income amount is the sum of money a person in residential care, and who is supported financially by their local authority, is able to retain from their weekly income to spend on personal items as they choose. The sum is reviewed annually in the light of the weekly uplifts applied to UK state pensions and welfare benefits.

5. Consultation

Consultation on amendments to the Care and Support (Charging) (Wales) Regulations 2015 is not required. A five week consultation on the principle of the changes being made by the amending regulations to the Charging Regulations was originally held between 21 December 2016 and 25 January 2017. This being the case, consultation on an annual basis is not needed. In total 24 responses were received from a range of stakeholders covering individuals, representative groups, local authorities and professional organisations. Overall respondents were supportive of the policy behind these changes, seeing them as rebalancing the impact of charging upon those who are required to pay for their care and support. They did, however, raise a number of questions, such as the level of the eventual increase planned for the maximum weekly charge, which is not subject to change in this instance, and how the changes would be communicated to care recipients. These have been addressed in the implementation of the amendments made since that time.

PART 2 – REGULATORY IMPACT ASSESSMENT

Introduction

The change being introduced by the amending regulations is considered in this Regulatory Impact Assessment. Introducing this change will ensure the Charging Regulations operate in accordance with the policy intention.

Options and Benefits

This Regulatory Impact Assessment considers two options in relation to making these change:

- Option 1 – “do nothing” and not make the amending regulations;
- Option 2 – “make the amending regulations” to introduce changes to the Charging Regulations in relation to charging for care and support. This is the preferred option.

Minimum Income Amount (MIA)

Where a person is in residential care, and in receipt of financial support from their local authority towards the cost of their care, they are required to contribute towards this cost from the majority of their weekly income. However, under the Charging Regulations a person must be able to retain an amount of their income to spend on personal items as they wish. This is known as the MIA. The level of the MIA is reviewed annually to take account of annual uplifts to UK state pensions and welfare benefit payments, which form the basis of care home residents’ weekly income. Taking these uplifts into account, Ministers propose to increase the MIA from 12 April 2021 from its current level of £32.00 per week to £33.00 a week. This will allow residents to retain a slightly higher amount of their income to spend as they wish on personal items.

Option 1 – do nothing

This option maintains the level of the MIA at £32.00 per week. As a result all of the increase in a resident’s weekly income from April 2021 as a result of uplifted state pension and welfare benefit payments would go to their local authority in charge income to pay towards their care.

- **Costs**

There are no new cost implications for local government from this option. Instead authorities would receive up to an estimated £2.8 million per annum in increased contributions from the 16,144 care home residents over state pension age as recorded in data published by Welsh Government in October 2019 (no data collected in 2020). This would be due to the increased income residents would have resulting from the uplifts in the amount (£3.35pw) of the basic state pensions alone. Residents in this position would not retain any of the uplift applied.

- **Benefits**

Care home residents supported by their local authority would be unable to retain any of the increase applied to their state pension nor would those seeing uplifts applied to any welfare benefit they receive, see a benefit. Instead these funds would increase residents’ weekly contributions to local authorities for the cost of their care, so as to benefit the income stream authorities receive from supported care home residents.

Option 2 – make the amending regulations

This option would make the amending regulations so as to increase the MIA from its current level of £32.00 to £33.00 per week. This would allow local authority supported residents to retain a proportion of the uplift to their state pensions and welfare benefits to spend on personal items as they wish.

- **Costs**

This option results in local authorities receiving a smaller increase in charge income, than if the regulations were not made, of around an estimated £2.0 million per annum through contributions from the 16,144 residents over state pension age alone. This would be due to the increased income residents would have resulting from the uplifts in state pensions and welfare benefits. Residents would retain a proportion (around £800,000 collectively) of these uplifts to spend on personal items as they wish.

- **Benefits**

This option shares the increased income which local authority supported residents would have from April 2021 as a result of uplifts to their state pensions and welfare benefits. Residents in this position would be able to retain a £1.00pw of these uplifts to spend on personal items, while authorities would receive the balance in increased contributions from residents towards the cost of their resident care.

Conclusion

In view of the financial benefit seen by care home residents, while enabling local authorities to receive an increase in revenue to use towards the provision and quality of the care and support they provide or commission, “Option 2 - make the amending regulations” is recommended. As a result local authorities are set to gain an increase in residential care charge income of some £2.0 million pa from care home residents in receipt of the basic rate state pension alone. It also ensures care home residents in receipt of such pensions are able to retain, collectively, in excess of £800,000 pa to spend as they wish.

Competition Assessment

Competition Filter Test	
Question	Answer: yes/no
Q1: In the market(s) affected by the new regulation, does any firm have more than 10% market share?	No
Q2: In the market(s) affected by the new regulation, does any firm have more than 20% market share?	No
Q3: In the market(s) affected by the new regulations do the largest three firms together have at least 50% market share?	No
Q4: Would the costs of the regulation affect some firms substantially more than others?	No

Q5: Is the regulation likely to affect the market structure, changing the number or size of businesses/organisations?	No
Q6: Would the regulation lead to higher set-up costs for new or potential suppliers that existing suppliers do not have to meet?	No
Q7: Would the regulation lead to higher ongoing costs for new or potential suppliers that existing suppliers do not have to meet?	No
Q8: Is the sector characterised by rapid technological change?	No
Q9: Would the regulation restrict the ability of suppliers to choose the price, quality, range or location of their products?	No

Post Implementation Review

The Act contains provisions to allow Welsh Ministers to monitor functions of it carried out by local authorities and other bodies. The Welsh Ministers may require these bodies to report on their duties in implementing these amending regulations.

The Welsh Government continue to monitor the impact of the amending regulations on areas such as the Welsh language, the UN Convention on the Rights of the Child, Older People and Equality.

Agenda Item 4.5

SL(5)787 – The Business Tenancies (Extension of Protection from Forfeiture etc.) (Wales) (Coronavirus) Regulations 2021

Background and Purpose

The Business Tenancies (Extension of Protection from Forfeiture etc.) (Wales) (Coronavirus) Regulations 2021 ("the Regulations") were made in exercise of the powers conferred on the Welsh Ministers by section 82(12) of the Coronavirus Act 2020.

Section 82 of the Coronavirus Act 2020 ensures that re-entry or forfeiture for non-payment of rent may not be enforced in relation to relevant business tenancies during the "relevant period". Section 82(12) of the Act defines the "relevant period" as beginning on 26 March 2020, and ending on 30 June 2020, or such later date as may be specified in regulations made by the relevant national authority. The power to specify a later date may be exercised on more than one occasion so as to further extend the "relevant period". The Welsh Ministers are the relevant national authority in relation to Wales.

Regulation 2 of these Regulations extends the "relevant period" until 30 June 2021, and regulation 3 revokes the Business Tenancies (Extension of Protection from Forfeiture etc.) (Wales) (Coronavirus) (No. 3) Regulations 2020.

Procedure

Negative.

The Regulations were made by the Welsh Ministers before they were laid before the Senedd.

The Senedd can annul the Regulations within 40 days (excluding any days when the Senedd is: (i) dissolved, or (ii) in recess for more than four days) of the date they were laid before the Senedd.

Technical Scrutiny

No points are identified for reporting under Standing Order 21.2 in respect of this instrument.

Merits Scrutiny

The following point is identified for reporting under Standing Order 21.3 in respect of this instrument.

1. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Senedd

Section 6 of the Explanatory Memorandum, headed "Consultation", states:



"An engagement exercise with key stakeholders to better understand the impact that Business Tenancies (Extension of Protection from Forfeiture etc.) (Wales) (Coronavirus) (No.3) Regulations 2020 has had on both commercial tenants and landlords in Wales was undertaken, concluding in February 2021."

A short summary of the key points is set out in the Explanatory Memorandum, but no link is provided to the full consultation and the responses thereto. If available, access to this information would be helpful to gain a full appreciation of the impact of the relevant legislation to date, as well as providing further clarity on the proportionality of extending the "relevant period" by the Regulations (for example, in respect of any impact on ECHR Article 1 Protocol 1 rights on landlords).

Welsh Government response

Merit Scrutiny point:

Owing to the nature of these Regulations, rapid engagement activity has been sought with relevant stakeholders to develop an understanding of the reactions to the moratorium on forfeiture in relation to business tenancies. For the purpose of considerations around The Business Tenancies (Extension of Protection from Forfeiture etc.) (Wales) (Coronavirus) Regulations 2021, stakeholders were contacted on Monday 8th February and asked to respond with any comments on the Business Tenancies (Extension of Protection from Forfeiture etc.) (Wales) (Coronavirus) (No. 3) Regulations 2020 by Monday 22nd February. It was made clear to stakeholders that the Welsh Government was considering whether a further extension of the moratorium was necessary, and would welcome views from both commercial tenants and landlords on the impact the Regulations are having in practice.

In order to develop a better understanding of the impact, this engagement took place with business representative organisations, trade unions, property organisations and our social partners. The timing of this engagement was designed to be sufficient to allow stakeholders to reflect on the impact of the Regulations and form a response to the Welsh Government, while protecting compliance with the Senedd's timelines for laying Regulations of this nature. This process of informal engagement with relevant stakeholders has been in place for several of the previous extensions to the 'relevant period'.

Legal Advisers

Legislation, Justice and Constitution Committee

15 March 2021



W E L S H S T A T U T O R Y
I N S T R U M E N T S

2021 No. 253 (W. 66)

**LANDLORD AND TENANT,
WALES**

**The Business Tenancies (Extension
of Protection from Forfeiture etc.)
(Wales) (Coronavirus) Regulations
2021**

EXPLANATORY NOTE

(This note is not part of the Regulations)

Section 82 of the Coronavirus Act 2020 ensures that re-entry or forfeiture for non-payment of rent may not be enforced in relation to relevant business tenancies during the “relevant period”. Section 82(12) of the Act defines the “relevant period” as beginning on 26 March 2020, and ending on 30 June 2020, or such later date as may be specified in regulations made by the relevant national authority.

The Welsh Ministers are the relevant national authority in relation to Wales.

The Business Tenancies (Extension of Protection from Forfeiture etc.) (Wales) (Coronavirus) Regulations 2020 (S.I. 2020/606 (W. 140)) extended the “relevant period” until 30 September 2020.

The Business Tenancies (Extension of Protection from Forfeiture etc.) (Wales) (Coronavirus) (No. 2) Regulations 2020 (S.I. 2020/960 (W. 214)) further extended the “relevant period” until 31 December 2020.

The Business Tenancies (Extension of Protection from Forfeiture etc.) (Wales) (Coronavirus) (No. 3) Regulations 2020 (S.I. 2020/1456 (W. 314)) further extended the “relevant period” until 31 March 2021.

As a result of these Regulations, the moratorium provided by section 82 of the Act is further extended until 30 June 2021.

Regulation 2 of these Regulations extends the “relevant period” until 30 June 2021.

Regulation 3 of these Regulations revokes the Business Tenancies (Extension of Protection from Forfeiture etc.) (Wales) (Coronavirus) (No. 3) Regulations 2020.

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, a regulatory impact assessment has been prepared as to the likely costs and benefits of complying with these Regulations. A copy can be obtained from the Welsh Government, Cathays Park, Cardiff, CF10 3NQ and on the Welsh Government's website at www.gov.wales.

W E L S H S T A T U T O R Y
I N S T R U M E N T S

2021 No. 253 (W. 66)

**LANDLORD AND TENANT,
WALES**

**The Business Tenancies (Extension
of Protection from Forfeiture etc.)
(Wales) (Coronavirus) Regulations
2021**

Made 5 March 2021

Laid before Senedd Cymru 9 March 2021

Coming into force 31 March 2021

The Welsh Ministers make the following Regulations in exercise of the power conferred on them by section 82(12) of the Coronavirus Act 2020⁽¹⁾.

Title and commencement

1.—(1) The title of these Regulations is the Business Tenancies (Extension of Protection from Forfeiture etc.) (Wales) (Coronavirus) Regulations 2021.

(2) These Regulations come into force on 31 March 2021.

Extension of relevant period providing protection from forfeiture etc.

2. For the purposes of section 82 (business tenancies in England and Wales: protection from forfeiture etc.) of the Coronavirus Act 2020, the “relevant period”, as defined in subsection (12) of that section ends, in relation to Wales, with 30 June 2021.

(1) 2020 c. 7.

Revocation

3. The Business Tenancies (Extension of Protection from Forfeiture etc.) (Wales) (Coronavirus) (No. 3) Regulations 2020⁽²⁾ are revoked.

Ken Skates

Minister for Economy, Transport and North Wales,
one of the Welsh Ministers

5 March 2021

⁽²⁾ S.I. 2020/1456 (W. 314).

Explanatory Memorandum to the Business Tenancies (Extension of Protection from Forfeiture etc.) (Wales) (Coronavirus) Regulations 2021

This Explanatory Memorandum has been prepared by the Economy, Skills & Natural Resources Group 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 Business Tenancies (Extension of Protection from Forfeiture etc.) (Wales) (Coronavirus) Regulations 2021. I am satisfied that the benefits justify the likely costs.

Ken Skates MS

Minister for Economy, Transport & North Wales

9 March 2021

PART 1

1. Description

These Regulations make provision to extend the duration of the moratorium provided by section 82 of the Coronavirus Act (2020) (“the Act”), during which a right of re-entry or forfeiture, under a relevant business tenancy, for non-payment of rent may not be enforced, by action or otherwise.

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

The Welsh Ministers has the executive competence to make these Regulations pursuant to section 82 of the Coronavirus Act 2020 (“the Act”). Section 82(12) of the Act defines the “relevant period” as “ending with 30 June 2020 or such later date as may be specified by the relevant national authority in regulations made by statutory instrument (and that power may be exercised on more than one occasion so as to further extend the period)”. Section 82(12) of the Act further confirms that “relevant national authority” means in relation to Wales, the Welsh Ministers.

3. Legislative background

Section 82 of the Act makes provision that a right of re-entry or forfeiture, under a relevant business tenancy, for non-payment of rent may not be enforced, by action or otherwise, during the “relevant period”. Section 82(12) of the Act defines the “relevant period” as beginning with the day after the day the Act was passed, and ending with 30th June 2020, or such later date as may be specified by the relevant national authority in regulations. The power to specify a later date may be exercised on more than one occasion so as to further extend the “relevant period”.

The Welsh Ministers are the “relevant national authority” in relation to Wales, and are therefore able to make regulations, to extend the “relevant period” for protections beyond 30th June 2020, thereby maintaining the protection provided by section 82 of the Act to such later date specified in regulations.

Regulations currently in force, The Business Tenancies (Extension of Protection from Forfeiture etc.) (Wales) (Coronavirus) (No.3) Regulations 2020 extend the “relevant period” until 31 March 2021.

These Regulations follow the Senedd’s negative resolution procedure.

4. Purpose and intended effect of the legislation

The purpose of the Regulations is to specify that the “relevant period”, as defined by section 82(12) of the Act, is to end, in relation to Wales, with 30th June 2021.

The effect of the Regulations is to extend the “relevant period” in which a right of re-entry or forfeiture, under a relevant business tenancy, for non-payment of rent may not be enforced, by action or otherwise for a further 3 months to 30th June 2021.

PART 2 – REGULATORY IMPACT ASSESSMENT

5. Options

Four options have been considered:

Option 1: Do nothing - Allow the provision protecting commercial tenants from eviction due to non-payment of rent to lapse on 31st March 2021.

Option 2: Make Regulations to extend the protection for a further 1 month to 30th April 2021.

Option 3: Make Regulations to extend the protection for a further 3 months to 30th June 2021. This is the preferred option.

Option 4: Make Regulations to extend the protection for a further 6 months to 30th September 2021.

Costs and benefits

There are potential financial implications associated with all options. With options 2, 3 and 4 there may be increasing pressure for Welsh Ministers to provide additional financial support to commercial landlords during this period to counteract the protection provided to tenants. Extending the protection is intended to support the economic recovery by trying to ensure businesses are able to continue trading.

However, the assessment is supplemented by data from a voluntary fortnightly [Business Impact of Coronavirus \(COVID-19\) Survey \(BICS\)](#). It is carried out by the Office for National Statistics (ONS), which captures the views of businesses on the impact of the coronavirus (COVID-19) on turnover, workforce prices, trade and business resilience.

The annex contains some further information on the survey and the findings should be viewed in the context of this information. It should be noted that whilst the data is relatively timely, the situation with COVID-19 is very fast moving so the key messages from the survey may become outdated very quickly. Furthermore, the survey is not forward looking so future business conditions and impacts are not covered. The survey is voluntary and may only reflect the characteristics of those that responded; the results are experimental.

Option 1: Do nothing - Allow the provision protecting commercial tenants from forfeiture proceedings due to non-payment of rent to lapse on 31st March 2021.

Without making, amending and extending the Regulations, the protection will lapse and as a result there is an increased risk that commercial tenants could be evicted from their premises for non-payment of rent. As the principle aim of the original legislation was to protect commercial tenants and jobs, removal of the current protection would put those commercial tenants, some of which may have

been supported financially by both the Welsh and UK Governments, back at risk as the economy recovers.

A consequence of this option is that commercial landlords will be free to take action for non-payment of rent. This will lead either to payment of some or all of rent owed by commercial tenants, or forfeiture proceedings. However, due to the uncertainty of the current economic climate, landlords would need to carefully consider whether they would benefit financially as tenants may in any event not be able to make the necessary payments. It might be difficult to find a replacement tenant, or to sell the property, as demand for commercial space in some sectors (e.g. leisure, retail and hospitality) is likely to have reduced, at least in the short term.

The results from Wave 24 of the ONS BICS survey covers the period of **25 January to 7 February 2021**. It shows that, of businesses who have not permanently stopped trading, 67% of businesses in Wales are using or intend to use the Coronavirus Job Retention Scheme, compared to 67% of businesses in Scotland and 62% in Northern Ireland as well as in England.

Welsh businesses have made use of a wide range of government schemes during the crisis. These include:

- Business grants funded by UK and devolved governments;
- Government backed accredited loans or finance agreements; and
- The Kickstart Job Scheme for young people as well as the CJRS.

Of businesses who have not permanently stopped trading, 63% of those operating in Wales had not received any government-backed loans or finance agreements, this compares to 65% in England, 61% in Northern Ireland and 66% in Scotland. Also, of business who have not permanently stopped trading and have applied for a government grant in Wales, 11% did not receive it. This compares to 7% in Northern Ireland, 16% in Scotland and 11% in England.

The conclusion is that Option 1 would not achieve the policy objective of supporting business and protecting commercial tenants from forfeiture during the Coronavirus pandemic.

Option 2 – Make Regulations to extend the protection for a further 1 month to 30th April 2021.

While extending the provisions for a short period of time – namely a month – would limit the burden on landlords, this option is not likely to be sufficient to signal to the Welsh economy that there is a significant framework of support in place to allow businesses to adapt.

Furthermore, an extension of this period of time will drastically reduce the scope for the Welsh Government to develop a more sustainable set of proposals.

Option 3: Make Regulations to extend the protection for a further 3 months to 30th June 2021.

Coronavirus has reduced economic activity, leading to a drop in income for many businesses. The ONS BICS survey shows:

- 47% of businesses in Wales reported a decrease in turnover outside of normal range. This compares to 45% in Scotland, 45% in England and 39% in Northern Ireland.
- Across all businesses currently trading in Wales, 10% declared that profits have decreased by more than 50%, 12% said profits had decreased between 20-50% and 20% said profits had decreased by up to 20%
- Of the UK countries, Wales had the third highest proportion of businesses with more than six months of cash reserves at 36%. This compares to 40% in Scotland, 36% in England and 34% in Northern Ireland.
- 44% of businesses in Wales had less than 6 months cash reserves, above the overall UK figure of 43%. Around 4% of Welsh businesses reported they had no cash reserves.

Insolvency:

In Wales, of businesses not permanently stopped trading:

- 1% had a severe risk of insolvency
- 14% had a moderate risk of insolvency
- 52% had a low risk of insolvency
- 24% had no risk of insolvency

Business confidence:

In Wales, of businesses currently trading:

- 59% reported high confidence that they would survive the next three months;
- 31% reported medium confidence that they would survive the next three months;
- 4% reported low confidence that they would survive the next three months.

Site closures:

In Wales, of businesses currently trading:

- 4% intended to permanently close some business sites;
- 81% did not intend to permanently close any business sites

Capital expenditure¹

Welsh businesses appear to have also had their capital expenditure affected by the coronavirus (COVID-19) pandemic.

In wave 23 of the BICS (11 January to 24 January 2021), of all businesses continuing to trade in Wales, 11% reported that capital expenditure had stopped, while 29% reported that capital expenditure had been lower than normal.

This option will allow the Welsh Government to continue to protect commercial tenants during a continuing time of uncertainty, but at the same time does not excessively remove the rights and remedies which enable landlords to pursue non-payment of rent.

The commercial property sector and market plays an important role in the economy and in delivering and providing business critical infrastructure in the form of commercial premises from which businesses can operate and grow. It is therefore important to recognise the needs of both landlord and tenant businesses.

This protection does not remove the requirement to pay rent, but suspends a landlord's right to take forfeiture action for non-payment of rent. Tenants will still be liable for any arrears, and will have to pay any rent owed once the protection is lifted or face actions such as forfeiture. The landlord's actions will not prejudice them from exercising a right to forfeit in the future, once the moratorium is over, unless the landlord and tenant have agreed otherwise by way of a rent deferment agreement or such similar agreement in relation to the payment of rent.

In recommending Option 3, the Welsh Government recognises the position of landlords, as investors in and providers of critical business infrastructure. The provisions of Option 3 will continue to put landlords at something of a disadvantage in negotiating rent deferment arrangements to ease tenants' current predicaments whilst seeking to protect their assets.

Option 4: Make Regulations to extend the protection for a further 6 months to 30th September 2021.

Option 4 would allow more time for Welsh businesses to recover and bolster their ability to meet rent payments. The Welsh Government has recently outlined a cautious and considered approach to easing restrictions on the economy. While this represents cause for optimism, it is recognised that such an ability to pay rent would be limited until businesses are permitted to operate and many may continue to experience cash flow challenges. In this respect, Option 4 would allow for a period of breathing space to businesses.

This protection does not remove the requirement to pay rent, but suspends a landlord's right to take forfeiture action for non-payment of rent. Tenants will still

¹ The figures relating to footfall are from BICS Wave 23 (covering the period between 25 January to 7 February) as Wave 24 does not contain these figures.

be liable for any arrears, and will have to pay any rent owed once the protection is lifted or face actions such as forfeiture. The landlord's actions will not prejudice them from exercising a right to forfeit in the future, once the moratorium is over, unless the landlord and tenant have agreed otherwise by way of a rent deferment agreement or such similar agreement in relation to the payment of rent.

However, as these Regulations are viewed as an emergency response to the Coronavirus pandemic, this option may put landlords and investors under substantial pressure. In addition to increasing challenges on landlords and investors, this is likely to signal a lack of confidence in economic recovery efforts.

6. Consultation

An engagement exercise with key stakeholders to better understand the impact that Business Tenancies (Extension of Protection from Forfeiture etc.) (Wales) (Coronavirus) (No.3) Regulations 2020 has had on both commercial tenants and landlords in Wales was undertaken, concluding in February 2021.

We received a number of representations from stakeholders and in summary the key points made were:

- Since the previous extension, there has been significant restrictions imposed on businesses through alert level 4. Permitting the provisions to lapse at this stage would place commercial tenants at a profound risk.
- Many businesses are concerned about their viability and outlook.
- There are some opportunistic companies which may be taking advantage of the moratorium, despite an ability to pay.
- The UK Government's Debt Respite Scheme will give someone with problem debt the right to legal protections from their creditors; offering supplementary breathing space once the provisions are permitted to lapse.
- There are positive examples of constructive dialogue between tenants and landlords.
- The provisions were intended to be an emergency measure.
- There are differential impacts on different sectors.
- The actions of the UK Government and other Devolved Administrations in respect of these provisions should constitute an important factor in considerations.

The concerns raised by stakeholders will be central to the development of policy positions and will inform further discussions with the UK Government on this issue.

7. Competition Assessment

On completion of the Competition Filter test it was determined that there are no effects on competition.

8. Post implementation review

The effect of these Regulations is time limited and the position will be reviewed prior to the proposed extension end date of 30th June 2021.

9. Annex

Measuring the data

The Business Impact of Coronavirus (COVID-19) Survey (BICS) is voluntary and may only reflect the characteristics of those that responded; the results are experimental.

Table 1. Sample and response rates for Waves 22, 23 and 24 of BICS

Wave	28 January 2021 Publication Wave 22	11 February 2021 Publication Wave 23	25 February 2021 Publication Wave 24
Sample	38,831	39,418	39,278
Response	10,325	10,008	10,351
Rate	26.6%	25.4%	26.4%

Source: Office for National Statistics – [Business Impact of Coronavirus \(COVID-19\) Survey](#)

Wave 23

The results are based on responses from the voluntary, fortnightly BICS, which captures businesses' views on financial performance, workforce, prices, trade, and business resilience. The Wave 23 survey was live for the period 25 January to 7 February 2021. For questions regarding the last two weeks, businesses were asked for their experience for the reference period 11 to 24 January 2021.

Weighted estimates for the BICS have now been developed for all variables that are collected at a UK level. A detailed description of the weighting methodology and its differences to unweighted estimates is available in Business Impact of Coronavirus (COVID-19) Survey (BICS): preliminary weighted results.

ONS currently provide unweighted estimates with a country and regional split for selected variables in the accompanying dataset. These should be treated with caution as only those that have responded to the survey are represented, and as such these are not fully representative of the UK as a whole. When unweighted, each business is assigned the same weight regardless of turnover, size or industry, and businesses that have not responded to the survey or that are not sampled are not taken into account.

On 1 February 2021, experimental weighted regional estimates up to Wave 21 (28 December 2020 to 10 January 2021) were published in [Understanding the business impacts of local and national restrictions: February 2021](#), as part of the Economic Review.

Wave 24

The results are based on responses from the voluntary, fortnightly BICS, which captures businesses' views on financial performance, workforce, prices, trade, and business resilience. The Wave 24 survey was live for the period 8 to 21 February 2021. For questions regarding the last two weeks, businesses were asked for their experience for the reference period 25 January to 7 February 2021.

Based on user feedback, this survey has changed its name to the “Business Insights and Conditions Survey” (BICS) from Wave 24 (this wave) onwards. The purpose remains the same, to collect real-time information on important issues such as the coronavirus (COVID-19) pandemic and the end of the EU transition period.

Weighted estimates for the BICS have now been developed for all variables that are collected at a UK level. A detailed description of the weighting methodology and its differences to unweighted estimates is available in Business Impact of Coronavirus (COVID-19) Survey (BICS): preliminary weighted results.

ONS currently provide unweighted estimates with a country and regional split for selected variables. These should be treated with caution as only those that have responded to the survey are represented, and as such these are not fully representative of the UK as a whole. When unweighted, each business is assigned the same weight regardless of turnover, size or industry, and businesses that have not responded to the survey or that are not sampled are not taken into account.

Agenda Item 4.6

SL(5)791 – The Health Protection (Coronavirus, International Travel and Operator Liability) (Miscellaneous Amendments) (Wales) Regulations 2021

Background and Purpose

These Regulations amend the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020 (“the International Travel Regulations”), the Health Protection (Coronavirus, International Travel, Pre-Departure Testing and Operator Liability) (Wales) (Amendment) Regulations 2021 (“the Operator Liability Regulations”) and the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 3) Regulations 2021 (“the No. 3 Regulations”).

They seek to address a number of inconsistencies that have been identified between the international travel regulatory regimes for England and for Wales. In summary, the Regulations:

- Make provision for a reasonable excuse defence in relation to the requirements to provide passenger information and the offence for providing false or misleading information in relation to those requirements;
- Amend the required content of the notification of a negative test result set out in paragraph 2 of Schedule 1A to the International Travel Regulations, and make consequential amendments to the Operator Liability Regulations in consequence of this;
- Replace the definition and widening the scope of the exemption for aircraft crew at paragraph 10 of Schedule 2 to the International Travel Regulations, to include crew that are otherwise required to travel to the United Kingdom for work purposes;
- Correcting various cross-references and to provide a constable with the power to request evidence from a person that they have booked and paid for day 2 and day 8 tests to be taken after their arrival in Wales;
- Providing immigration officers with the power to issue fixed penalty notices for breaches of the prohibition on entry for travellers from a ‘red list’ country;
- A technical amendment to regulation 2 of the No. 3 Regulations to correct an incorrect reference.

In addition, these Regulations amend the list of sporting events in the International Travel Regulations which are subject to certain exceptions to isolation requirements, to cover upcoming events expected to take place over the next four months and remove those that have already taken place.



Procedure

Negative.

These Regulations were made by the Welsh Ministers before they were laid before the Senedd. The Senedd can annul the Regulations within 40 days (excluding any days when the Senedd is: (i) dissolved, or (ii) in recess for more than four days) of the date they were laid before the Senedd.

Technical Scrutiny

No points are identified for reporting under Standing Order 21.2 in respect of this instrument.

Merits Scrutiny

The following four points are identified for reporting under Standing Order 21.3 in respect of this instrument.

1. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Senedd

We note the breach of the 21-day rule (i.e. the rule that 21 days should pass between the date a “made negative” instrument is laid before the Senedd and the date the instrument comes into force), and the explanation for the breach provided by Vaughan Gething MS, Minister for Health and Social Services, in a letter to the Llywydd dated 12 March 2021.

In particular, we note what the letter says regarding the fact that “*a number of inconsistencies*” have been identified between the international travel regulatory regimes for England and for Wales and that these Regulations seek to address those difference to ensure continuing alignment. The letter explains that:

“Not adhering to the 21 day convention allows these Regulations to come into force at the earliest opportunity and continue the four nation approach to international travel; in view of the changing evidence on risk in relation to this disease this is considered necessary and justifiable in this case.”

2. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Senedd

We note the Welsh Government’s justification for any potential interference with human rights. In particular, we note the following paragraph in the Explanatory Memorandum:

“The amendments contained in these Regulations do not change the engagement under the International Travel Regulations of individual rights under the Human Rights Act 1998 and the European Convention of [sic] Human Rights; the Government considerations that they are justified for the purpose of preventing the spreading of



infectious diseases and/or the interference is permitted on the basis that it is in pursuit of a legitimate aim, namely protecting public health, and are proportionate."

3. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues or public policy likely to be of interest to the Senedd

We note that there has been no formal consultation on these Regulations. In particular, we note the following paragraph in the Explanatory Memorandum:

"Given the serious and imminent threat arising from coronavirus and the need for an urgent public health response, there has been no public consultation in relation to these Regulations."

4. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues or public policy likely to be of interest to the Senedd

The Explanatory Memorandum explains that a regulatory impact assessment has not been carried out in relation to these Regulations due to the need to put them in place urgently to deal with a serious and imminent threat to public health.

Welsh Government response

A Welsh Government response is not required.

Legal Advisers

Legislation, Justice and Constitution Committee

16 March 2021



W E L S H S T A T U T O R Y
I N S T R U M E N T S

2021 No. 305 (W. 78)

PUBLIC HEALTH, WALES

**The Health Protection
(Coronavirus, International Travel
and Operator Liability)
(Miscellaneous Amendments)
(Wales) Regulations 2021**

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020 (S.I. 2020/574 (W. 132)) (the “International Travel Regulations”), the Health Protection (Coronavirus, International Travel, Pre-Departure Testing and Operator Liability) (Wales) (Amendment) Regulations 2021 (S.I. 2021/48 (W. 11)) (“the Operator Liability Regulations”) and the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 3) Regulations 2021 (S.I. 2021/154 (W. 38)) (“the No. 3 Regulations”).

The International Travel Regulations impose requirements on persons entering Wales after having been abroad. They include a requirement for persons arriving in Wales to isolate for a period determined in accordance with those Regulations.

The requirements imposed by the International Travel Regulations are subject to exceptions, and certain categories of person are exempt from having to comply.

Part 2 of these Regulations makes amendments to Part 4 of the International Travel Regulations, which makes provision regarding enforcement and offences which may be committed under those Regulations. Regulation 2 amends regulation 14 of the International Travel Regulations to make provision for a reasonable excuse defence in relation to the offences under those Regulations for failure to provide passenger information and providing false or misleading information in relation to the requirements to provide, or notify changes to, passenger information.

Part 3 of these Regulations amends Schedule 1A to the International Travel Regulations. Schedule 1A to those Regulations provides further details as to what constitutes a valid test and notification for the purposes of regulation 6A of those Regulations, which sets out the requirement to possess notification of a negative test before arriving in Wales. Regulation 3 amends the required content of the notification of a negative test result set out in paragraph 2 of Schedule 1A.

Part 4 of these Regulations amends Part 2 of Schedule 2 to the International Travel Regulations. Schedule 2 to those Regulations exempts certain categories of worker from having to isolate, or in certain circumstances, provide passenger information. Regulation 4 widens the scope of the exemption for aircraft crew at paragraph 10 of Schedule 2 to the International Travel Regulations to include crew that are otherwise required to travel to the United Kingdom for work purposes.

Part 5 of these Regulations amends Schedule 4 to the International Travel Regulations. Regulation 5 makes removals and additions to Schedule 4 to update the list of specified sporting events.

Part 6 of these Regulations makes miscellaneous amendments to various cross-references in the International Travel Regulations and to provide a constable with the power to request evidence from a person that they have booked and paid for day 2 and day 8 tests to be taken after their arrival in Wales. It also makes provision providing an immigration officer with the power to issue a fixed penalty notice to any adult the officer reasonably believes has committed an offence under regulation 12E of the International Travel Regulations.

Part 7 of these Regulations makes technical amendments to the Welsh language text of paragraph 5 of Schedule 5 to the International Travel Regulations.

Part 8 of these Regulations makes a technical amendment to regulation 2 of the No. 3 Regulations.

Part 9 of these Regulations amends the Operator Liability Regulations in consequence of the amendment made to the International Travel Regulations by Part 3 of these Regulations.

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, a regulatory impact assessment has not been prepared as to the likely costs and benefits of complying with these Regulations.

W E L S H S T A T U T O R Y
I N S T R U M E N T S

2021 No. 305 (W. 78)

PUBLIC HEALTH, WALES

**The Health Protection
(Coronavirus, International Travel
and Operator Liability)
(Miscellaneous Amendments)
(Wales) Regulations 2021**

Made at 12.02 p.m. on 12 March 2021

*Laid before Senedd
Cymru at 6.00 p.m. on 12 March 2021*

*Coming into force at 4.00 a.m. on 13 March
2021*

The Welsh Ministers, in exercise of the powers conferred on them by sections 45B, 45F(2) and 45P(2) of the Public Health (Control of Disease) Act 1984(1), make the following Regulations.

PART 1

General

Title, coming into force and interpretation

1.—(1) The title of these Regulations is the Health Protection (Coronavirus, International Travel and Operator Liability) (Miscellaneous Amendments) (Wales) Regulations 2021.

(2) These Regulations come into force at 4.00 a.m. on 13 March 2021.

(3) In these Regulations—

(1) 1984 c. 22. Part 2A was inserted by section 129 of the Health and Social Care Act 2008 (c. 14). The function of making regulations under Part 2A is conferred on “the appropriate Minister”. Under section 45T(6) of the 1984 Act the appropriate Minister as respects Wales, is the Welsh Ministers.

- (a) the “International Travel Regulations” means the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020(1);
- (b) the “Operator Liability Regulations” means the Health Protection (Coronavirus, International Travel, Pre-Departure Testing and Operator Liability) (Wales) (Amendment) Regulations 2021(2);
- (c) the “No. 3 Regulations” means the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 3) Regulations 2021(3).

PART 2

Amendments to Part 4 of the International Travel Regulations

Amendments to regulation 14 of the International Travel Regulations (offences)

2.—(1) Regulation 14 of the International Travel Regulations (offences) is amended as follows.

(2) In paragraph (1B), after “regulation” insert “4(1) or (4), 5(2),”.

(3) After paragraph (2) insert—

“(2A) But a person does not commit an offence under regulation 4 or 5 if they have a reasonable excuse for providing false or misleading information to the Secretary of State.”

-
- (1) S.I. 2020/574 (W. 132), amended by S.I. 2020/595 (W. 136), S.I. 2020/714 (W. 160), S.I. 2020/726 (W. 163), S.I. 2020/804 (W. 177), S.I. 2020/817 (W. 179), S.I. 2020/840 (W. 185), S.I. 2020/868 (W. 190), S.I. 2020/886 (W. 196), S.I. 2020/917 (W. 205), S.I. 2020/942, S.I. 2020/944 (W. 210), S.I. 2020/962 (W. 216), S.I. 2020/981 (W. 220), S.I. 2020/1015 (W. 226), S.I. 2020/1042 (W. 231), S.I. 2020/1080 (W. 243), S.I. 2020/1098 (W. 249), S.I. 2020/1133 (W. 258), S.I. 2020/1165 (W. 263), S.I. 2020/1191 (W. 269), S.I. 2020/1223 (W. 277), S.I. 2020/1232 (W. 278), S.I. 2020/1237 (W. 279), S.I. 2020/1288 (W. 286), S.I. 2020/1329 (W. 295), S.I. 2020/1362 (W. 301), S.I. 2020/1477 (W. 316), S.I. 2020/1521 (W. 325), S.I. 2020/1602 (W. 332), S.I. 2020/1645 (W. 345), S.I. 2021/20 (W. 7), S.I. 2021/24 (W. 8), S.I. 2021/46 (W. 10), S.I. 2021/48 (W. 11), S.I. 2021/50 (W. 12), S.I. 2021/66 (W. 15), S.I. 2021/72 (W. 18), S.I. 2021/95 (W. 26) and S.I. 2021/154 (W. 38).
 - (2) S.I. 2021/48 (W. 11), amended by S.I. 2021/72 (W. 18) and S.I. 2021/171 (W. 39).
 - (3) S.I. 2021/154 (W. 38).

PART 3

Amendments to Schedule 1A to the International Travel Regulations

Amendments to paragraph 2 of Schedule 1A to the International Travel Regulations (testing before arrival in Wales)

3.—(1) Schedule 1A to the International Travel Regulations (testing before arrival in Wales) is amended as follows.

(2) In paragraph 2—

- (a) in sub-paragraph (b), after “birth” insert “or age”;
- (b) for sub-paragraph (e) substitute—
 - “(e) a statement—
 - (i) that the test was a polymerase chain reaction test, or
 - (ii) of the name of the device that was used for the test,”;
- (c) omit sub-paragraph (f).

PART 4

Amendment to Part 2 of Schedule 2 to the International Travel Regulations

Amendment to paragraph 10 of Schedule 2 to the International Travel Regulations (exempt persons)

4. For paragraph 10 of Schedule 2 to the International Travel Regulations (exempt persons) substitute—

“**10.**—(1) A member of aircraft crew where they have travelled to the United Kingdom in the course of their work or are otherwise required to travel to the United Kingdom for work purposes.

(2) For the purposes of this paragraph—

- (a) “member of aircraft crew” means a person who—
 - (i) acts as a pilot, flight navigator, flight engineer or flight radiotelephony operator of the aircraft,
 - (ii) is carried on the flight deck and is appointed by the operator of the aircraft to give or to supervise the training, experience, practice and periodical tests required for the flight crew under article 114(2) of

- the Air Navigation Order 2016⁽¹⁾,
or
- (iii) is carried on the flight for the purpose of performing duties to be assigned by the operator or the pilot in command of the aircraft in the interests of the safety of passengers or of the aircraft;
- (b) travel for work purposes includes, in particular—
 - (i) where the member of aircraft crew resides outside the United Kingdom, travelling to the United Kingdom to work on an aircraft departing from the United Kingdom,
 - (ii) travelling to attend work-related training in the United Kingdom,
 - (iii) returning to the United Kingdom following work-related training outside the United Kingdom.”

PART 5

Amendments to Schedule 4 to the International Travel Regulations

Amendments to Schedule 4 to the International Travel Regulations (specified sporting events)

5. In Schedule 4 to the International Travel Regulations (specified sporting events)—

- (a) omit the following entries—
 - “World Snooker Tour – Shoot Out,”
 - “British Judo – British Closed Senior Invitational Competition,”
 - “Professional Darts Corporation – Ladbrokes Masters,”
 - “World Snooker Tour – German Masters,”
 - “World Snooker Tour – Players Championship,”
 - “World Snooker Tour – Welsh Open,”
 - “Betfair Ascot Chase Day horse-racing,”
 - “Bolton Indoor ITF Wheelchair Tennis events,”
 - “FIG Gymnastics World Cup,”
 - “Grand National Trial Day horse-racing,”

(1) S.I. 2016/765. There are amendments to Schedule 1 but none are relevant.

“Matchroom – Superstars of Gymnastics,”
“Matchroom – World Ping Pong Masters,”
“Professional Darts Corporation – Q School,”;

(b) at the end insert—

“British Athletics – 20km Race Walk Olympic Trial,
British Wrestling – Home Nations Invitational Tournament,
LTA Loughborough Indoor Wheelchair Tennis Tournament,
FIA World Endurance Championship Prologue and Round 1 Silverstone,
British Para Athletics Sprint Meet,
Motorsport UK – HSCC Formula 2 Championship Masters Historic Race Weekend,
Motorsport UK – British Superkart Championship and Support Series,
Motorsport UK – British Truck Racing Championship,
British Equestrian – International Dressage Events,
British Para Swimming International Meet,
Cage Warriors 121,
Badminton Horse Trials,
European Tour – Betfred British Masters,
Motorsport UK – GT World Challenge Europe Sprint Cup and Support Series,
Motorsport UK – Donington Historic Festival,
Motorsport UK – British Touring Car Championship and Support Series,
Motorsport UK – Ferrari Challenge UK and Support,
Motorsport UK – British GT Championship and Support Series / Porsche Sprint Challenge GB and Support Series,
Motorsport UK – Masters Historic F1 / Sports Cars and Support Series,
Motorsport UK – FIA Main Event 2021 and Support Series,
England Hockey Pro League,
FIM Speedway Grand Prix World Championship – Qualifying Round,
Royal Windsor Horse Show,
Bolesworth International Horse Show,

British Speedway Premiership,
Championship and National Development
Leagues,

The 2020 UEFA European Football
Championship.”

PART 6

Miscellaneous Amendments to the International Travel Regulations

Amendments to the International Travel Regulations

6.—(1) The International Travel Regulations are amended as follows.

(2) In regulation 6A(4)(d), for “paragraph 24” substitute “paragraph 14”.

(3) In regulation 6B(8)—

- (a) after the first “officer” insert “or a constable”;
- (b) after the second “officer” insert “or constable”.

(4) In regulation 6H(4)(b)(ii), in the English language text, after “before” omit “than”.

(5) In regulation 10(8)—

- (a) in the definition of “elite athlete”, for “paragraph 31(2)(a)” substitute “paragraph 21(2)(a)”;
- (b) in the definition of “elite competition”, for “paragraph 31(2)(b)” substitute “paragraph 21(2)(b)”.

(6) In regulation 16(1)(a)(i) (fixed penalty notices)—

- (a) for the “or” before “7(5)” substitute “, , and
- (b) after “7(5)” insert “or 12E”.

PART 7

Amendments to the Welsh language text of Schedule 5 to the International Travel Regulations

Amendments to Schedule 5 to the International Travel Regulations (sectoral exceptions)

7. In paragraph 5(2) of Schedule 5 to the International Travel Regulations (sectoral exceptions), in the Welsh language text—

- (a) for “(d)” substitute “(c)”;
- (b) for “(e)” substitute “(d)”.

PART 8

Amendment to the No. 3 Regulations

Amendment to regulation 2 of the No. 3 Regulations (amendment of the International Travel Regulations)

8. In regulation 2 of the No. 3 Regulations (amendment of the International Travel Regulations), for “2 to 12” substitute “2 to 20”.

PART 9

Amendment to regulation 4 of the Operator Liability Regulations

9. In regulation 4 of the Operator Liability Regulations (interpretation), in the definition of “required notification”, for paragraphs (e) and (f) substitute—

“(e) a statement—

- (i) that the test was a polymerase chain reaction test, or
- (ii) of the name of the device that was used for the test,

(f) the name of the test provider;”.

Vaughan Gething

Minister for Health and Social Services, one of the Welsh Ministers

At 12.02 p.m. on 12 March 2021

Explanatory Memorandum to the Health Protection (Coronavirus, International Travel and Operator Liability) (Miscellaneous Amendments) (Wales) Regulations 2021

This Explanatory Memorandum has been prepared by 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 Health Protection (Coronavirus, International Travel and Operator Liability) (Miscellaneous Amendments) (Wales) Regulations 2021.

Vaughan Gething
Minister for Health and Social Services

12 March 2021

1. Description

These Regulations amend:

- the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020 (“the International Travel Regulations”),
- the Health Protection (Coronavirus, International Travel, Pre-Departure Testing and Operator Liability (Wales) (Amendment) Regulations 2021 (“the Operator Liability Regulations”) and
- the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 3) Regulations 2021 (“the No. 3 Regulations”).

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

Coming into force

In accordance with section 11A(4) of the Statutory Instruments Act 1946, the Llywydd has been informed that the Regulations do not adhere to the 21 day convention. This is necessary owing to the risk posed in relation to coronavirus and in particular variant strains of the same, from passengers travelling to the UK. The changes made by these Regulation continue the four nation approach to international travel and ensure continuing alignment with England and the other nations.

European Convention on Human Rights

The amendments contained in these Regulations do not change the engagement under the International Travel Regulations of individual rights under the Human Rights Act 1998 and the European Convention of Human Rights; the Government considers that they are justified for the purpose of preventing the spreading of infectious diseases and/or the interference is permitted on the basis that it is in pursuit of a legitimate aim, namely of protecting public health, and are proportionate.

3. Legislative background

The Public Health (Control of Disease) Act 1984 (“the 1984 Act”), and regulations made under it, provide a legislative framework for health protection in England and Wales. The Regulations are made in reliance on the powers in sections 45B, 45F(2) and 45P(2) of the 1984 Act. The Explanatory Memorandum to the International Travel Regulations provides further information on these powers.

4. Purpose and intended effect of the legislation

The International Travel Regulations were made on 5 June 2020 and came into force on 8 June 2020 in response to the serious and imminent threat to public health which is posed by the incidence and spread of severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2).

The International Travel Regulations are kept under review, and on 18 January the travel corridors were suspended. The current arrangements for travel within the Common Travel Area (CTA) (UK, Ireland, Isle of Man and the Channel Islands) are unchanged so travel without isolation is still permitted.

From 15 February the UK Government introduced a managed quarantine regime for those returning from red list countries into England. 5 ports of entry in England were designated for such arrivals who are required to complete a period of managed quarantine in a hotel. There are a limited number of exemptions for categories, such as diplomats, armed forces personnel and hauliers.

From 15 February the Welsh Government introduced a ban on travellers arriving into Wales if they had been in a red list country in the previous 10 days. They must arrive at one of the designated ports of entry in England (or Scotland) and remain there in managed isolation for 10 days before travelling on to Wales. This means that such arrivals are not allowed entry in to Wales (except very limited exemptions) and to enter contrary to that provision will be a criminal offence with a Fixed Penalty Notice (FPN) of £10,000.

For arrivals from “amber list countries” sectoral exemptions applied for certain categories of workers for which no isolation is required. From 15 February these were made more restrictive and became sectoral exceptions so that isolation for 10 days is required but a person may leave isolation for a limited period for work purposes.

Since that time a number of inconsistencies have been identified between the regulatory regimes for England and for Wales and these Regulations seek to address those differences to ensure continuing alignment. In addition these Regulations amend the list of sporting events in the International Travel Regulations to cover upcoming events expected to take place over the next four months. In summary:

- Amending regulation 14 of the International Travel Regulations to make provision for a reasonable excuse defence in relation to the requirements to provide passenger information (under regulations 4 and 5) and the offence for providing false or misleading information in relation to those requirements.
- Amending the required content of the notification of a negative test result set out in paragraph 2 of Schedule 1A to the International Travel Regulations.
- Consequential amendments to the Operator Liability Regulations 2021 in consequence of the above.
- Replacing the definition and widening the scope of the exemption for aircraft crew at paragraph 10 of Schedule 2 to the International Travel Regulations, to include crew that are otherwise required to travel to the United Kingdom for work purposes.
- Correcting various cross-references and to provide a constable with the power to request evidence from a person that they have booked and paid for day 2 and day 8 tests to be taken after their arrival in Wales.

- Providing immigration officers with the power to issue fixed penalty notices for breaches of regulation 12E of the International Travel Regulations (the prohibition on entry for travellers from a 'red list' country).
- Technical amendments to the International Travel Regulations correcting various cross-references in the English language text, and to paragraph 5 of Schedule 5 in the Welsh language text, where incorrect paragraph numbers have been used.
- A technical amendment to regulation 2 of the No. 3 Regulations to correct an incorrect reference.

As noted above, the International Travel Regulations are also amended to update the list of sporting events with those events expected to take place over the next four months, and remove those that have happened.

The Welsh Ministers consider that these amendments are proportionate to what they seek to achieve, which is to respond to a serious and imminent threat to public health.

5. Consultation

Given the serious and imminent threat arising from coronavirus and the need for an urgent public health response, there has been no public consultation in relation to these Regulations.

6. Regulatory Impact Assessment (RIA)

There has been no regulatory impact assessment in relation to these Regulations due to the need to put them in place urgently to deal with a serious and imminent threat to public health.



Ein cyf/Our ref: MA/VG/1171/21

Elin Jones, MS
Llywydd
Senedd Cymru
Cardiff Bay
CF99 1SN

12 March 2021

Dear Elin,

The Health Protection (Coronavirus, International Travel and Operator Liability) (Miscellaneous Amendment) (Wales) Regulations 2021

In accordance with section 11A(4) of the Statutory Instruments Act 1946 I am notifying you that this Statutory Instrument will come into force less than 21 days after it has been laid. The Explanatory Memorandum that accompanies the Regulations is attached for your information.

This statutory instrument amends the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020, the Health Protection (Coronavirus, International Travel, Pre-Departure Testing and Operator Liability (Wales) (Amendment) Regulations 2021 and the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 3) Regulations 2021.

From 15 February the Welsh Government introduced a ban on travellers arriving into Wales if they had been in a red list country in the previous 10 days. They must arrive at one of the designated ports of entry in England (or Scotland) and remain there in managed isolation for 10 days before travelling on to Wales. In addition, for arrivals from “amber list countries” exemption from isolation was made more restrictive so that isolation for 10 days is required but a person may leave isolation for a limited period for work purposes.

Since that time a number of inconsistencies have been identified between the regulatory regimes for England and for Wales and these Regulations seek to address those differences to ensure continuing alignment. In addition these Regulations amend the list of sporting events in the International Travel Regulations to cover upcoming events expected to take place over the next four months.

Not adhering to the 21 day convention allows these Regulations to come into force at the earliest opportunity and continue the four nation approach to international travel; in

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
0300 0604400

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1SN

Gohebiaeth.Vaughan.Gething@llyw.cymru
Correspondence.Vaughan.Gething@gov.wales

Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

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We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

view of the changing evidence on risk in relation to this disease this is considered necessary and justifiable in this case.

Due to the immediacy of the Regulations they have not been subject to consultation.

I am copying this letter to the Minister for Finance and Trefnydd, Mick Antoniw MS, Chair of the Legislation, Justice and Constitution Committee, Siwan Davies, Director of Senedd Business, Sian Wilkins, Head of Chamber and Committee Services and Julian Luke, Head of Policy and Legislation Committee Service.

Yours sincerely,

A handwritten signature in black ink that reads "Vaughan Gething". The signature is written in a cursive, flowing style.

Vaughan Gething AS/MS

Y Gweinidog Iechyd a Gwasanaethau Cymdeithasol
Minister for Health and Social Services



WRITTEN STATEMENT

BY

THE WELSH GOVERNMENT

TITLE Amendments to the Health Protection (Coronavirus, International Travel) and (Operator Liability)(Wales) Regulations 2020

DATE 12 March 2021

BY Vaughan Gething MS, Minister for Health and Social Services

Members will be aware that the Welsh Government made provision in the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020 to ensure that travellers entering Wales from overseas countries and territories must isolate for 10 days and provide passenger information, to prevent the further spread of coronavirus. These restrictions came into force on 8 June 2020.

The International Travel Regulations are kept under review, and on 18 January the travel corridors were suspended. The current arrangements for travel within the Common Travel Area (CTA) (UK, Ireland, Isle of Man and the Channel Islands) are unchanged so travel without isolation is still permitted.

From 15 February the UK Government introduced a managed quarantine regime for those returning from red list countries into England. 5 ports of entry in England were designated for such arrivals who are required to complete a period of managed quarantine in a hotel. There are a limited number of exemptions for categories, such as diplomats, armed forces personnel and hauliers.

From 15 February the Welsh Government introduced a ban on travellers arriving into Wales if they had been in a red list country in the previous 10 days. They must arrive at one of the designated ports of entry in England (or Scotland) and remain there in managed isolation for 10 days before travelling on to Wales. This means that such arrivals are not allowed entry in to Wales (except very limited exemptions) and to enter contrary to that provision will be a criminal offence with a Fixed Penalty Notice (FPN) of £10,000.

For arrivals from “amber list countries” sectoral exemptions applied for certain categories of workers for which no isolation is required. From 15 February these were made more restrictive and became sectoral exceptions so that isolation for 10 days is required but a person may leave isolation for a limited period for work purposes.

Since that time a number of inconsistencies have been identified between the regulatory regimes for England and for Wales and these Regulations seek to address those differences to ensure continuing alignment. In addition these Regulations amend the list of sporting events in the International Travel Regulations to cover upcoming events expected to take place over the next four months.

The regulations come into force from 04:00 hours Saturday 13 March.

Agenda Item 4.7

SL(5)793 – The Official Controls (Plant Health and Genetically Modified Organisms) (Wales) (Amendment) Regulations 2021

Background and Purpose

The Official Controls (Plant Health and Genetically Modified Organisms) (Wales) (Amendment) Regulations 2021 (the “Regulations”) are made by the Welsh Ministers in exercise of the powers conferred by Articles 22(2) and 144(6) of Regulation (EU) 2017/625 (“the Official Controls Regulation”).

Regulation (EU) 2016/2031 regarding pests of plants and the Official Controls Regulation amended as retained EU law (“the EU Regulations”) establish protective measures against pests of plants, and provide for the conduct of official controls and other official activities to ensure the proper application of rules on plant health and plant protection products (amongst other things). The Official Controls (Plant Health and Genetically Modified Organisms) (Wales) Regulations 2020 and the equivalent Regulations that apply to England gave effect to the EU Regulations and provide for a corresponding enforcement regime.

The EU regulations and additional tertiary legislation made under them have been incorporated into domestic law in accordance with the European Union (Withdrawal) Act 2018, and amended in relation to Great Britain (“GB”) to deal with a range of deficiencies in the legislation arising from the withdrawal of the UK from the European Union.

The Regulations are connected to Part 2 of the Official Controls and Phytosanitary Conditions (Amendment) Regulations 2021, elements of which apply to Wales. Those Regulations made provision to supplement the Official Controls Regulation. Specifically, they supplemented and modified the transitional derogations and modifications set out in Article 168 of, and Annex 6 to, the Official Controls Regulation, by providing for official controls that are carried out on certain goods listed in the Schedule to those Regulations to be carried out at the place of destination (“PoD”).

The purpose of these Regulations is to protect biosecurity and support trade between GB and relevant third countries by introducing measures for high-risk plant goods. They extend the enforcement provisions contained in the Official Controls (Plant Health and Genetically Modified Organisms) (Wales) Regulations 2020 to include inspections undertaken at PoDs, enabling official controls and other official activities relating to plant health rules to be enforced.

The Regulations facilitate the EU Exit phased plant health import control regime to support businesses after the end of the Transition Period, whilst also protecting GB biosecurity. They make amendments to allow high-risk plants and plant products to undergo plant health inspections away from the border at inland PoDs, because Border Control Posts are not expected to be operationally ready to cope with the increase in trade volumes until later this



year. This will be a temporary contingency measure until the Border Control Posts are operationally ready to inspect EU regulated goods.

Procedure

Negative.

The Regulations were made by the Welsh Ministers before they were laid before the Senedd.

The Senedd can annul the Regulations within 40 days (excluding any days when the Senedd is: (i) dissolved, or (ii) in recess for more than four days) of the date they were laid before the Senedd.

Technical Scrutiny

No points are identified for reporting under Standing Order 21.2 in respect of this instrument.

Merits Scrutiny

The following point is identified for reporting under Standing Order 21.3 in respect of this instrument.

1. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Senedd

The last paragraph of the Explanatory Note ("EN") states that a Regulatory Impact Assessment ("RIA") was not carried out in respect of the Regulations. However, section 6 of the Explanatory Memorandum ("EM") is headed "Regulatory Impact Assessment (RIA)" and contains consideration of two options. Whilst there is no link to a wider RIA, it is assumed that section 6 of the EM constitutes a RIA in respect of the Regulations. As such, a person or organisation affected by the Regulations will be led to believe when reading the EN that no RIA has been conducted, and this potentially deprives them of the benefit of the additional information therein in planning for and complying with the changes implemented by the Regulations.

Welsh Government response

Merit Scrutiny point:

The point is accepted. Welsh Government officials made all efforts to consider costs and to include their consideration in the Explanatory Memorandum. The anomaly arose as officials did not consider those efforts to constitute a full RIA. As the Explanatory Note is not part of the Regulations, the Welsh Government will not seek to amend it.

Legal Advisers

Legislation, Justice and Constitution Committee

17 March 2021





Senedd Cymru

Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad

—

Welsh Parliament

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Legislation, Justice and Constitution Committee

W E L S H S T A T U T O R Y
I N S T R U M E N T S

2021 No. 302 (W. 76)

PLANT HEALTH, WALES

**The Official Controls (Plant Health
and Genetically Modified
Organisms) (Wales) (Amendment)
Regulations 2021**

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are connected to Part 2 of the Official Controls and Phytosanitary Conditions (Amendment) Regulations 2021 (S.I. 2021/136), elements of which apply to Wales. Those Regulations made provision to supplement Regulation (EU) 2017/625 of the European Parliament and of the Council on official controls and other official activities (“the Official Controls Regulation”). Specifically, they supplemented and modified the transitional derogations and modifications set out in Article 168 of, and Annex 6 to, the Official Controls Regulation, by providing for official controls that are carried out on certain goods listed in the Schedule to those Regulations to be carried out at the place of destination.

These Regulations make connected amendments to provisions relating to offences in the Official Controls (Plant Health and Genetically Modified Organisms) (Wales) Regulations 2020 (S.I. 2020/206) (W. 48) to include inspections at the place of destination within the existing enforcement framework.

The Welsh Ministers’ Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, it was not considered necessary to carry out a regulatory impact assessment as to the likely costs and benefits of complying with these Regulations.

W E L S H S T A T U T O R Y
I N S T R U M E N T S

2021 No. 302 (W. 76)

PLANT HEALTH, WALES

**The Official Controls (Plant Health
and Genetically Modified
Organisms) (Wales) (Amendment)
Regulations 2021**

Made 12 March 2021

Laid before Senedd Cymru 15 March 2021

Coming into force 8 April 2021

The Welsh Ministers, in exercise of the powers conferred by Articles 22(2) and 144(6) of Regulation (EU) 2017/625 of the European Parliament and of the Council on official controls and other official activities performed to ensure the application of food and feed law, rules on animal health and welfare, plant health and plant protection products⁽¹⁾ (“the Official Controls Regulation”), make the following Regulations.

The Welsh Ministers have consulted in accordance with Article 144(7) of the Official Controls Regulation before making these Regulations.

PART 1

Title, commencement and application

Title, commencement and application

1.—(1) The title of these Regulations is the Official Controls (Plant Health and Genetically Modified Organisms) (Wales) (Amendment) Regulations 2021 and they come into force on 8 April 2021.

⁽¹⁾ EUR 2017/625, amended by S.I. 2020/1481; there are other amending instruments but none are relevant. See Article 3(2A) for the definition of “the appropriate authority”.

(2) These Regulations apply in relation to Wales.

PART 2

Places of destination

Interpretation

2. In this Part—

- (a) “the Official Controls Regulation” means Regulation (EU) 2017/625 of the European Parliament and of the Council on official controls and other official activities performed to ensure the application of food and feed law, rules on animal health and welfare, plant health and plant protection products;
- (b) “relevant third country” has the meaning given by Annex 6 to the Official Controls Regulation;
- (c) “specified goods” means plants, plant products and other objects specified in the Schedule to the Official Controls and Phytosanitary Conditions (Amendment) Regulations 2021⁽¹⁾;
- (d) “the transitional staging period” has the meaning given by Annex 6 to the Official Controls Regulation.

Offences

3.—(1) The Official Controls (Plant Health and Genetically Modified Organisms) (Wales) Regulations 2020⁽²⁾ have effect in relation to specified goods entering Great Britain from a relevant third country during the transitional staging period, subject to the following modifications.

(2) In regulation 2(1), at the appropriate place, insert—

““place of destination” (“*cyrchfan*”) in relation to any specified goods, means the first place where the goods are delivered for unloading in Great Britain, and for this purpose “specified goods” (“*nwyddau penodedig*”) means plants, plant products and other objects specified in the Schedule to the Official Controls and Phytosanitary Conditions (Amendment) Regulations 2021;”.

(3) In Schedule 3, in Part 2—

⁽¹⁾ S.I. 2021/136.
⁽²⁾ S.I. 2020/206 (W. 48), amended by S.I. 2020/1134 (W. 259), S.I. 2020/1303 (W. 288) and S.I. 2020/1628 (W. 342)

- (a) in the entry relating to Article 47(5), in the second column, at the end insert “or place of destination or, where required, any other place specified in Article 44(3)”;
- (b) in the entry relating to Article 50(1), in the second column, at the end insert “or place of destination or, where required, any other place specified in Article 44(3)”;
- (c) after the entry relating to Article 56(4)—
 - (i) in the first column, insert “Article 56A(1)”;
 - (ii) in the second column, insert—

“During the transitional staging period, requires the operators of relevant goods from a relevant third country, to give prior notification to the relevant competent authority before the expected time of arrival of the goods at a point of entry in Great Britain.”

(4) This regulation does not apply in relation to any part of the transitional staging period falling before 8 April 2021.

Lesley Griffiths

Minister for Environment, Energy and Rural Affairs,
one of the Welsh Ministers
12 March 2021

(1) Article 56A was inserted into Regulation (EU) 2017/625 by Annex 6. Annex 6 to Regulation (EU) 2017/625 was inserted by regulation 29(4) of S.I. 2020/1481 for the purpose of the application of and derogations from Regulation (EU) 2017/625, and modifications to its application, in relation to territories subject to special transitional import arrangements.

Explanatory Memorandum to the Official Controls (Plant Health and Genetically Modified Organisms) (Wales) (Amendment) Regulations 2021

This Explanatory Memorandum has been prepared by the Rural Development & Legislation Division within the Department for Environment, Skills and Natural Resources of the Welsh Government and is laid before the Senedd 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 Official Controls (Plant Health and Genetically Modified Organisms) (Wales) (Amendment) Regulations 2021. I am satisfied the benefits justify the likely costs.

Lesley Griffiths MS

Minister for Environment, Energy and Rural Affairs

15 March 2021

Part 1

1. Description

The Official Controls (Plant Health and Genetically Modified Organisms) (Wales) (Amendment) Regulations 2021 (the “instrument”) will make amendments to the Official Controls (Plant Health and Genetically Modified Organisms) (Wales) Regulations 2020 which apply in relation to Wales.

This instrument will come into force on 8 April 2021.

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

The instrument is being made by the Welsh Ministers in exercise of the powers conferred by Articles 22(2) and 144(6) of Regulation (EU) 2017/625 of the European Parliament and of the Council on official controls and other official activities performed to ensure the application of food and feed law, rules on animal health and welfare, plant health and plant protection products (“the Official Controls Regulation”). Please see Article 3(2A) for the definition of “the appropriate authority”.

This instrument is subject to the negative procedure.

3. Legislative background

Regulation (EU) 2016/2031 regarding pests of plants and the Official Controls Regulation amended as retained EU law (“the EU Regulations”) establish protective measures against pests of plants, and provide for the conduct of official controls and other official activities to ensure the proper application of rules on plant health and plant protection products (amongst other things). The Official Controls (Plant Health and Genetically Modified Organisms) (Wales) Regulations 2020 and the equivalent Regulations that apply to England gave effect to the EU Regulations and provide for a corresponding enforcement regime.

The EU regulations and additional tertiary legislation made under them have been incorporated into domestic law in accordance with the European Union (Withdrawal) Act 2018, and amended in relation to Great Britain (“GB”) to deal with a range of deficiencies in the legislation arising from the withdrawal of the UK from the European Union.

This instrument is connected to Part 2 of the Official Controls and Phytosanitary Conditions (Amendment) Regulations 2021, elements of which apply to Wales. Those Regulations made provision to supplement the Official Controls Regulation. Specifically, they supplemented and modified the transitional derogations and modifications set out in Article

168 of, and Annex 6 to, the Official Controls Regulation, by providing for official controls that are carried out on certain goods listed in the Schedule to those Regulations to be carried out at the place of destination (“PoD”).

4. Purpose and intended effect of the legislation

The purpose of this instrument is to protect biosecurity and support trade between GB and relevant third countries by introducing measures for high-risk plant goods. This instrument extends the enforcement provisions contained in the Official Controls (Plant Health and Genetically Modified Organisms) (Wales) Regulations 2020 to include inspections undertaken at PoDs, enabling official controls and other official activities relating to plant health rules to be enforced.

What the instrument does

This instrument facilitates the EU Exit phased plant health import control regime to support businesses after the end of the Transition Period, whilst also protecting GB biosecurity. It makes amendments to allow high-risk plants and plant products to undergo plant health inspections away from the border at inland PoDs, because Border Control Posts are not expected to be operationally ready to cope with the increase in trade volumes until later this year. This will be a temporary contingency measure until the Border Control Posts are operationally ready to inspect EU regulated goods.

5. Consultation

The powers used to make this instrument engage a consultation requirement in Article 144 of the Official Controls Regulation. Early informal engagement conducted by the UK Government with GB stakeholders, to test the feasibility of the new process against business practices covering a range of import issues, indicated that stakeholders would be open to having checks done at PoDs for flexibility sake. In addition, the UK Government engaged with GB-wide stakeholders and trade from summer 2020 to January 2021, including feasibility testing sessions as the PoD scheme was being developed.

The Welsh Government did not seek to duplicate this consultation which we fed into or unnecessarily burden stakeholders, but we did conduct a consultation (regarding the proposal to amend the Official Controls (Plant Health and Genetically Modified Organisms) (Wales) Regulations 2020 to enable inspections to be undertaken at PoDs on high risk plants and plant products). This ensured Welsh specific stakeholders were given an opportunity to raise any Wales specific issues. The stakeholders consulted included the Horticultural Trades Association, Grow Wales/Tyfu Cymru, the

Fresh Produce Consortium and NFU. One response was received (from Grow Wales /Tyfu Cymru) and it was supportive of the proposal.

6. Regulatory Impact Assessment (RIA)

Two options have been considered in this assessment:

- Option 1 - Do Nothing
- Option 2 - Amend the Official Controls (Plant Health and Genetically Modified Organisms) (Wales) Regulations 2020 as described above.

Costs and benefits

Option 1 – Do Nothing

This is the baseline option and as such there are no additional costs or benefits associated with this option.

Option 2 - Amend the Official Controls (Plant Health and Genetically Modified Organisms) (Wales) Regulations 2020 as described above.

The regulations are expected to have very minor financial implications. There are 74 plant health import/export businesses in Wales which could potentially be affected by these regulations. It has been estimated that it will cost each PoD £80 to purchase the additional kit required for the inspection. There is a further cost to businesses of approximately £3 per inspection which reflects the value of time spent during the inspection. The PoD scheme is voluntary in that businesses will be able to continue to use the Border Control Posts if they prefer, however, guidance will encourage them to use the PoD scheme where possible, as there is a risk that the existing BCPs and controls points will not have the capacity to facilitate these checks at the border.

The costs to the organisations responsible for undertaking the plant health inspections are expected to be similarly small. Defra have estimated that the cost to the Animal Plant and Health Agency (APHA – for England and Wales), Forestry Commission for the forestry sector, and SASA in Scotland is under £100,000 for the six months the PoD scheme is expected to be operational. Given the relative size of the market in Wales, it is estimated the cost here will be less than £10,000.

As noted above, Border Control Posts are not expected to be operationally ready to handle the increase in trade volumes (following the end of the transition period) until later this year. The Regulations are

intended to ensure that businesses which are involved in the import of plants and plant products can continue to operate efficiently, whilst maintaining an effective plant health inspection regime and protecting biosecurity in Wales and across GB.

This is the preferred option.

Competition Assessment

The Regulations are not expected to impact on levels of competition in Wales or the competitiveness of Welsh businesses.

Agenda Item 4.8

SL(5)789 – The Additional Learning Needs (Wales) Regulations 2021

Background and Purpose

The Additional Learning Needs (Wales) Regulations 2021 (“the Regulations”) are to be made in exercise of the powers conferred by sections 15(2), 21(10), 32(1)(b), 36(3), 37(1)(a) and (b), 45, 46, 60(4), 65(5), 67, 82, 83, 97 and 98(2) of the Additional Learning Needs and Education Tribunal (Wales) Act 2018 (“the 2018 Act”).

The 2018 Act establishes the system in Wales for meeting the additional learning needs of children and young people, and these Regulations supplement the system provided for in that Act. It should be noted that the Regulations are one of a suite of regulations and a substantial code of practice issued concurrently, and a single Explanatory Memorandum seeks to cover all of these connected instruments.

Part 1 of the Regulations includes provision on the interpretation of terms used throughout the Regulations. There are also specific interpretation provisions in other regulations, where the words and expressions used are used only for the purposes of regulations dealing with a particular matter (for example, regulation 34 in Part 4). Regulation 3 makes provision about notifying someone or giving someone a document under these Regulations.

Part 2 of the Regulations deals with a range of matters related to individual development plans and supplements the provisions of Chapter 1 of Part 2 of the 2018 Act. In particular, regulations 6 to 10 make provision about local authority decisions under sections 14 and 31 of the 2018 Act about the necessity of maintaining individual development plans for young people who are not at a maintained school in Wales or an institution in the further education sector in Wales. There are also provisions related to a transfer of responsibility for an individual development plan from one body to another. Regulations 20 to 25 apply, with modifications, duties in the 2018 Act in relation to children and young people who are detained in hospital under Part 3 of the Mental Health Act 1983.

Part 3 of the Regulations makes provision about supplementary functions in Chapter 3 of Part 2 of the 2018 Act and functions in sections 68 and 69 of that Act. It includes provisions relating to additional learning needs co-ordinators. Section 60 of the 2018 Act requires governing bodies of maintained schools (except special schools) and further education institutions in Wales to designate a person (or persons) as the additional learning needs co-ordinator to be responsible for co-ordinating additional learning provision for pupils or students with additional learning needs. Regulations 27 and 28 set out the qualifications or experience that additional learning needs co-ordinators must have, and regulations 29 and 30 confer functions on additional learning needs co-ordinators relating to the additional learning provision for pupils or students with additional learning needs. These Regulations do not affect the governing body’s ability to confer further responsibilities upon the additional learning needs co-ordinator. These provisions replace provisions of the Additional Learning Needs Co-ordinator (Wales) Regulations 2020, which are revoked by regulation 1.



Part 4 of the Regulations makes provision about parents and young people lacking capacity. It deals with young people, and parents of children, who lack mental capacity to take the decisions or actions required. For the purposes of the 2018 Act, a person lacks capacity when they lack capacity within the meaning of the Mental Capacity Act 2005, that is, when they lack mental, not legal capacity. The Regulations provide that where a child's parent lacks capacity all references to the child's parent are to be read as references to a representative of the parent. The Regulations also provide that where a young person lacks capacity, the references to the young person are to be read as references to the young person's representative, or to the young person's parent.

Part 4 makes it clear that the provisions concerning mental capacity have effect in spite of section 27(1)(g) of the Mental Capacity Act 2005.

Procedure

Draft Affirmative.

The Welsh Ministers have laid a draft of the Regulations before the Senedd. The Welsh Ministers cannot make the Regulations unless the Senedd approves the draft Regulations.

Technical Scrutiny

No points are identified for reporting under Standing Order 21.2 in respect of this instrument.

Merits Scrutiny

The following point is identified for reporting under Standing Order 21.3 in respect of this instrument.

1. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Senedd

The Explanatory Memorandum ("EM") to the Regulations is a composite document that seeks to cover the suite of regulations, and associated code of practice, which were issued concurrently. It is noted that the EM deals in considerable detail with relevant consultation outcomes, a justice impact assessment and detailed regulatory impact assessment. However, bearing in mind the subject matter of the Regulations, namely the provision for additional learning needs, including for detained children and young persons, and those with impaired capacity, it is unclear whether detailed equality and/or human rights impact assessments were carried out also. This is further highlighted by the fact that one of the suite of regulations includes the Equality Act (Capacity of parents and persons over compulsory school age) (Wales) Regulations 2021. If relevant impact assessments have been carried out in this regard, it would be helpful to include reference to them and their findings in the EM to further assess the proportionality of the Regulations.



Welsh Government response

Merit Scrutiny point:

The Welsh Government has undertaken an Equality Impact Assessment as part of the Integrated Impact Assessment (IIA) for the package of subordinate legislation laid before the Senedd on 2 March, that includes the Additional Learning Needs (Wales) Regulations 2021 (the version laid on 2 March was replaced by the version laid on 12 March) and the Equality Act 2010 (Capacity of parents and persons over compulsory school age) (Wales) Regulations 2021. The summary of the IIA is available at <https://gov.wales/additional-learning-needs-code-and-regulations-integrated-impact-assessment-html>.

Legal Advisers

Legislation, Justice and Constitution Committee

12 March 2021



Draft Regulations laid before Senedd Cymru under section 98(3) of the Additional Learning Needs and Education Tribunal (Wales) Act 2018, for approval by resolution of Senedd Cymru.

DRAFT WELSH STATUTORY
INSTRUMENTS

2021 No. (W.)

EDUCATION, WALES

**The Additional Learning Needs
(Wales) Regulations 2021**

EXPLANATORY NOTE

(This note is not part of the Regulations)

The Additional Learning Needs and Education Tribunal (Wales) Act 2018 (“the 2018 Act”) establishes the system in Wales for meeting the additional learning needs of children and young people. These Regulations supplement the system provided for in the 2018 Act.

Part 1 of these Regulations includes provision on the interpretation of terms used throughout the Regulations. There are also specific interpretation provisions in other regulations, where the words and expressions used are used only for the purposes of regulations dealing with a particular matter (for example, regulation 34 in Part 4). Regulation 3 makes provision about notifying someone or giving someone a document under these Regulations.

Part 2 of these Regulations deals with a range of matters related to individual development plans and supplements the provisions of Chapter 1 of Part 2 of the 2018 Act. In particular, regulations 6 to 10 make provision about local authority decisions under sections 14 and 31 of the 2018 Act about the necessity of maintaining individual development plans for young people who are not at a maintained school in Wales or an institution in the further education sector in Wales. There are also provisions related to a transfer of responsibility for an individual development plan from one body to another. Regulations 20 to 25 apply, with modifications, duties in the 2018 Act in relation to children and young people who are detained in hospital under Part 3 of the Mental Health Act 1983.

Part 3 of these Regulations makes provision about supplementary functions in Chapter 3 of Part 2 of the 2018 Act and functions in sections 68 and 69 of that Act. It includes provisions relating to additional learning needs co-ordinators. Section 60 of the 2018 Act requires governing bodies of maintained schools (except special schools) and further education institutions in Wales to designate a person (or persons) as the additional learning needs co-ordinator to be responsible for co-ordinating additional learning provision for pupils or students with additional learning needs. Regulations 27 and 28 set out the qualifications or experience that additional learning needs co-ordinators must have and regulations 29 and 30 confer functions on additional learning needs co-ordinators relating to the additional learning provision for pupils or students with additional learning needs. These Regulations do not affect the governing body's ability to confer further responsibilities upon the additional learning needs co-ordinator. These provisions replace provisions of the Additional Learning Needs Co-ordinator (Wales) Regulations 2020, which are revoked by regulation 1.

Part 4 of these Regulations makes provision about parents and young people lacking capacity. It deals with young people, and parents of children, who lack mental capacity to take the decisions or actions required. For the purposes of the 2018 Act, a person lacks capacity when they lack capacity within the meaning of the Mental Capacity Act 2005, that is, when they lack mental, not legal capacity. The Regulations provide that where a child's parent lacks capacity all references to the child's parent are to be read as references to a representative of the parent. The Regulations also provide that where a young person lacks capacity, the references to the young person are to be read as references to the young person's representative, or to the young person's parent.

Part 4 makes it clear that the provisions concerning mental capacity have effect in spite of section 27(1)(g) of the Mental Capacity Act 2005.

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, a regulatory impact assessment has been prepared as to the likely costs and benefits of complying with these Regulations. A copy can be obtained from the Welsh Government at Cathays Park, Cardiff CF10 3NQ and on the Welsh Government website at www.gov.wales.

Draft Regulations laid before Senedd Cymru under section 98(3) of the Additional Learning Needs and Education Tribunal (Wales) Act 2018, for approval by resolution of Senedd Cymru.

DRAFT WELSH STATUTORY
INSTRUMENTS

2021 No. (W.)

EDUCATION, WALES

**The Additional Learning Needs
(Wales) Regulations 2021**

Made

Coming into force

1 September 2021

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SCHEDULE 1 — REASONABLE NEEDS FOR EDUCATION OR TRAINING

SCHEDULE 2 — APPLICATION WITH MODIFICATIONS OF THE 2018 ACT IN RELATION TO PERSONS DETAINED IN HOSPITAL UNDER PART 3 OF THE 1983 ACT

The Welsh Ministers make the following Regulations in exercise of the powers conferred by sections 15(2), 21(10), 32(1)(b), 36(3), 37(1)(a) and (b), 45, 46, 60(4), 65(5), 67, 82, 83, 97 and 98(2) of the Additional

Learning Needs and Education Tribunal (Wales) Act 2018⁽¹⁾.

In accordance with section 98(3) of that Act, a draft of these Regulations was laid before, and approved by a resolution of, Senedd Cymru⁽²⁾.

PART 1

GENERAL

Title, commencement and revocation

1.—(1) The title of these Regulations is the Additional Learning Needs (Wales) Regulations 2021.

(2) They come into force on 1 September 2021.

(3) The Additional Learning Needs Co-ordinator (Wales) Regulations 2020⁽³⁾ are revoked.

General interpretation

2.—(1) In these Regulations, “the 2018 Act” means the Additional Learning Needs and Education Tribunal (Wales) Act 2018.

(2) A reference in these Regulations to a person being subject to a detention order (however expressed) has the meaning given to that expression by section 562(1A)(a), (2) and (3) of the Education Act 1996⁽⁴⁾.

(3) Words and expressions used in these Regulations have the same meaning as they have in the 2018 Act except so far as a contrary intention appears.

(4) Where these Regulations provide for a period within which, or before the end of which, something is required to be done and the last day of that period is not a working day, the period is extended to include the following working day.

Giving notice etc. under these Regulations

3.—(1) Paragraph (2) applies where a provision of these Regulations requires or authorises (in whatever terms) a governing body, local authority or the Welsh Ministers to—

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(1)	2018 anaw 2. See section 99(1) for the definitions of “prescribed” and “regulations”.
(2)	The references in section 98(3) to the National Assembly for Wales now have effect as references to Senedd Cymru by virtue of section 150A(2) of the Government of Wales Act 2006 (c. 32).
(3)	S.I. 2020/1351 (W. 299).
(4)	1996 c. 56. These subsections have been amended by the Criminal Justice and Immigration Act 2008 (c. 4), Schedule 4, Part 1, paragraph 47, the Apprenticeships, Skills, Children and Learning Act 2009 (c. 22), section 49 and S.I. 2016/413 (W. 131), regulations 153 and 157.

- (a) notify a person of something, or
- (b) give a document to a person (including a notice or a copy of a document).

(2) Section 88 of the 2018 Act (giving notice etc. under this Part) applies to the provision as if—

- (a) it were a provision of Part 2 of the 2018 Act,
- (b) references in that section to a governing body or local authority were to a governing body, local authority or the Welsh Ministers, and
- (c) the reference in section 88(4) to section 7 of the Interpretation Act 1978⁽¹⁾ (references to service by post) were to section 13 of the Legislation (Wales) Act 2019⁽²⁾ (service of documents by post or electronically).

Giving notice etc. under Part 2 of the 2018 Act: amendment of section 88

4. At the end of section 88 of the 2018 Act insert—

“(6) A notification or document given to a person by sending it electronically in accordance with this section is to be treated for the purposes of this Part as having been given, unless the contrary is proved, on the day on which the electronic communication was sent.”

PART 2

INDIVIDUAL DEVELOPMENT PLANS

Categories of looked after child prescribed under section 15 of the 2018 Act

5. A child is not to be treated as looked after for the purposes of the 2018 Act if by or under section 83 of the Social Services and Well-being (Wales) Act 2014⁽³⁾ (looked after and accommodated children) a personal education plan (within the meaning given by section 83(2A) of that Act) is not required to be included as part of the child’s care and support plan under that section.

(1) 1978 c. 30.
 (2) 2019 anaw 4. Section 13 is amended by the Senedd and Elections (Wales) Act 2020 (anaw 1), Schedule 1, paragraph 5(1), (3)(b) and (4)(a). There are other amendments to section 13 which are not relevant.
 (3) 2014 anaw 4. Section 83(2A) was inserted by, and section 83 more generally amended by, section 16 of the 2018 Act.

Interpretation of regulations 6 to 9 and Schedule 1

6.—(1) In this regulation, regulations 7 to 9 and Schedule 1—

“further education or training” (“*addysg bellach neu hyfforddiant*”) means education or training suitable to the requirements of persons who are above compulsory school age and organised leisure time occupation connected with such education or training, but it does not include any education or training received by a young person whilst subject to a detention order (see regulation 2(2) for when a person is subject to a detention order);

“outcomes” (“*deilliannau*”) means outcomes related to preparing for work, progressing to other education, including higher education, or training opportunities or developing independent living skills or other useful skills or qualities for adulthood;

“programme of study” (“*rhaglen astudio*”) means one or more courses of further education or training, whether or not leading to a qualification and in the case of more than one course, whether or not the courses are taken concurrently or in succession (but if in succession they must be part of an overall programme of study).

(2) In determining the duration of a programme of study for the purposes of regulation 9 and Schedule 1—

- (a) a programme of study is treated as beginning with the day on which the young person commences, or is expected to commence, the programme of study and ending with the day on which the person is expected to complete, it, and
- (b) if the duration of the programme, or part of it, lasts for at least 38 weeks in any one year period, the programme, or that part of it, is treated as taking place over one year.

(3) In determining the duration of other further education or training undertaken by a young person for the purposes of regulation 9 and Schedule 1—

- (a) the further education or training is treated as having begun with the first day of the month during which the young person commenced it and ending with the last day of the month during which—

- (i) the young person completed or otherwise ceased to receive the further education or training, or
- (ii) the young person is expected to complete or otherwise cease receiving the further education or training;
- (b) if the duration of the further education or training, or part of it, lasts for at least 38 weeks in any one year period, it, or that part of it, is treated as taking place over one year.

Potential programme of study

7.—(1) This regulation applies to a local authority's decision under section 14(1)(c)(ii) or 31(6)(b) of the 2018 Act on whether an individual development plan is necessary for a young person who is neither a registered pupil at a maintained school in Wales nor enrolled as a student at an institution in the further education sector in Wales.

(2) The local authority must—

- (a) identify the young person's desired outcomes, if any, and
- (b) consider what programmes of study may be available that would be suitable for enabling the young person to meet those desired outcomes.

(3) The local authority, when considering the matter in paragraph (2)(b)—

- (a) must first consider programmes of study at mainstream maintained schools or institutions in the further education sector;
- (b) may only consider programmes of study at institutions other than those mentioned in paragraph (7) where it appears likely that the young person's reasonable needs for additional learning provision to undertake a suitable programme of study cannot be met unless the local authority were to secure for the young person—
 - (i) a place at an institution other than one mentioned in paragraph (7), or
 - (ii) board and lodging.

(4) When determining whether a programme of study provided by an institution other than one mentioned in paragraph (7) is suitable for a young person, the local authority must consider in accordance with paragraphs 1 and 2 of Schedule 1, whether there is a realistic prospect that the young person would meet the person's desired outcomes by undertaking, or continuing to undertake (with any proposed modifications), the programme of study.

(5) Where the young person is already undertaking a programme of study, paragraph (2) does not require the local authority to consider other programmes of study if it is satisfied that the programme that the young person is undertaking remains suitable, or with modifications would be suitable, for enabling the young person to meet the person's desired outcomes.

(6) The local authority need not comply with paragraph (2) or any part of it, if the local authority is satisfied that complying with it, or that part of it, would not affect its decision under section 14(1)(c)(ii) or 31(6)(b) of the 2018 Act.

(7) Regulation 8 applies where the young person is, or is to be, a registered pupil or enrolled student at any of the following institutions to undertake, or continue to undertake, a programme of study to meet the young person's desired outcomes—

- (a) a maintained school in Wales or England;
- (b) an institution in the further education sector in Wales or England;
- (c) an Academy.

(8) Regulation 9 applies to all other cases.

Necessity of a plan: programmes of study at maintained schools and further education institutions in Wales and certain institutions in England

8.—(1) It is necessary for the local authority to prepare and maintain, or continue to maintain, an individual development plan for the young person if the local authority, in preparing or maintaining the plan for the young person, would be or is under the duty in section 14(6) of the 2018 Act to describe provision of a kind listed in section 14(7) of that Act.

(2) It is also necessary for a local authority to continue to maintain an individual development plan for the young person if the young person is to register as a pupil at a maintained school in Wales or enrol as a student at an institution in the further education sector in Wales to undertake a programme of study.

(3) For cases not falling within paragraph (1) or (2), the local authority must consider—

- (a) in the case of a young person who is to register as a pupil at a maintained school in Wales or enrol as a student at an institution in the further education sector in Wales, whether it is reasonable for the governing body of the school or institution to secure the additional learning provision;
- (b) in the case of a young person who is, or is to be, a registered pupil or enrolled student at a maintained school in England, Academy or institution in the further education sector in

England, whether the governing body of the school or institution or, in the case of an Academy, the proprietor would secure the additional learning provision.

(4) In considering a matter referred to in paragraph (3), the local authority must consult the governing body or proprietor.

(5) It is necessary for the local authority to prepare and maintain, or to continue to maintain, an individual development plan for the young person if—

- (a) in the case referred to in paragraph (3)(a), the local authority considers that it is not reasonable for the governing body of the school or institution to secure the additional learning provision;
- (b) in the case referred to in paragraph (3)(b), the local authority is not satisfied that the governing body or proprietor would secure the additional learning provision.

(6) Otherwise it is not necessary for the local authority to prepare and maintain, or to continue to maintain, an individual development plan for the young person.

(7) References in this regulation to additional learning provision are to the additional learning provision which is called for by the young person's additional learning needs in order to undertake, or continue to undertake, the programme of study.

Other cases: reasonable needs for education or training and necessity of an individual development plan

9.—(1) The young person has reasonable needs for education or training where the duration of the suitable programme of study that it is proposed the young person undertake, or continue to undertake, together with any other further education or training undertaken by the young person is not more than 2 years.

(2) The local authority may determine that the young person has reasonable needs for education or training if any of the circumstances described in paragraphs 3(1), 4(1), 5(1) and 6(1) of Schedule 1 apply.

(3) For the purposes of determining whether the young person has reasonable needs for education or training under paragraph (2), paragraphs 3(2), 4(2), 5(2) and 6(2) of Schedule 1 set out the respective factors which the local authority must take into account for each of the circumstances that apply.

(4) For the purposes of section 31(6)(b) of the 2018 Act, a young person has reasonable needs for education or training where the young person is undertaking a suitable programme of study in accordance with a determination under paragraph (2).

(5) Where the young person has, or a local authority determines that the young person has, reasonable needs for education or training under this regulation—

- (a) for the purposes of section 14(1)(c)(ii) of the 2018 Act, it is necessary for the local authority to prepare and maintain an individual development plan for the young person if the local authority, were it to be preparing an individual development plan for the young person, would be under the duty in section 14(6) of that Act to specify in the plan provision of the kind listed in section 14(7)(a) of that Act;
- (b) for the purposes of section 31(6)(b) of that Act, it is necessary for the local authority to continue to maintain the young person's individual development plan if the local authority is under the duty in section 14(6) of that Act to specify in the plan provision of the kind listed in section 14(7)(a) of that Act.

(6) Otherwise it is not necessary for the local authority to prepare and maintain, or continue to maintain, an individual development plan for the young person.

Notification of decision under section 14(1)(c)(ii) of the 2018 Act that plan not necessary

10.—(1) This regulation applies where a local authority decides under section 14(1)(c)(ii) of the 2018 Act that it is not necessary to prepare and maintain an individual development plan for a young person.

(2) The local authority must notify the young person of—

- (a) the decision, and
- (b) the reasons for the decision.

(3) The local authority must make the decision and give the notification mentioned in paragraph (2), promptly and in any event before the end of the period of 12 weeks beginning with the day after the day on which the young person consented to the decision under section 13(1) of the 2018 Act being made.

(4) The local authority need not comply with the requirement to make the decision and give the notification before the end of the 12 week period if it is impractical to do so due to circumstances beyond its control.

(5) When giving the notification referred to in paragraph (2), the local authority must also give the young person—

- (a) contact details for the local authority;
- (b) information about how to access the local authority's arrangements under section 9 of the 2018 Act for providing people with

information and advice about additional learning needs and the system for which provision is made by Part 2 of that Act;

- (c) details of the local authority's arrangements for the avoidance and resolution of disagreements under section 68 of the 2018 Act;
- (d) details of the local authority's arrangements for the provision of independent advocacy services under section 69 of the 2018 Act;
- (e) information about the right to appeal to the Education Tribunal under section 70 of the 2018 Act against the decision.

Time limits for section 20 referrals and requesting reconsideration of decision to cease to maintain plans

Time limit for NHS body responding to section 20 referral

11.—(1) An NHS body under a duty to inform under section 21(1) or (2) of the 2018 Act (individual development plans: Local Health Boards and NHS trusts) must comply with that duty promptly and in any event within the period prescribed by paragraph (2).

(2) The prescribed period—

- (a) begins with the day on which the NHS body receives the referral under section 20 of the 2018 Act, and
- (b) ends at the end of 6 weeks beginning with the day after the day mentioned in sub-paragraph (a).

(3) The NHS body need not comply with the duty to inform under section 21(1) or (2) within the period prescribed by paragraph (2) if it is impractical to do so due to circumstances beyond its control.

Time limit for requesting reconsideration of decision to cease to maintain plan

12.—(1) The period prescribed for the purposes of section 32(1)(b) of the 2018 Act (reconsideration by local authorities of decisions of governing bodies under section 31)—

- (a) begins with the day on which the governing body gives the notifications under section 31(8) and (9) of that Act, and
- (b) ends at the end of 4 weeks beginning with the day after the day mentioned in sub-paragraph (a).

(2) Where the notifications under section 31(8) and (9) are given on different days (whether because given

to different persons on different days or given under each subsection on different days), the reference in paragraph (1)(a) to the day on which the governing body gives the notifications is a reference to the later of those days.

Transfer of responsibility for individual development plans

Local authority request to transfer plan to governing body of further education institution

13.—(1) A request by a local authority under section 36(2) of the 2018 Act that a governing body of an institution in the further education sector becomes responsible for maintaining an individual development plan for a young person who is enrolled as a student at the institution must be—

- (a) made in writing, and
- (b) accompanied by a copy of the plan, unless the governing body already has a copy of it.

(2) The period prescribed for the purposes of section 36(3) of the 2018 Act (period after which local authority may refer matter to the Welsh Ministers)—

- (a) begins with the day on which the governing body receives the request under section 36(2), and
- (b) ends at the end of the period of 20 term time days beginning with the day after the day mentioned in sub-paragraph (a).

(3) Where a governing body agrees to a local authority's request under section 36(2), it—

- (a) must inform the local authority in writing of its agreement, and
- (b) becomes responsible for the plan under section 12(4) of the 2018 Act—
 - (i) on the day agreed between the governing body and the authority for responsibility to transfer;
 - (ii) otherwise on the day on which the authority receives the governing body's agreement in writing to the request.

(4) In paragraph (2), “term time day” in relation to an institution in the further education sector means a day on which the institution is due to meet for the purpose of teaching students provided that day is within a time period in which the institution delivers the majority of its full-time courses.

Local authority referral to the Welsh Ministers to determine whether governing body of further education institution should maintain plan

14.—(1) This regulation applies in relation to a referral under section 36 of the 2018 Act by a local authority to the Welsh Ministers for a determination as to whether a governing body of an institution in the further education sector should maintain an individual development plan for a young person who is enrolled as a student at the institution.

(2) The referral must be—

- (a) made within the period of 4 weeks beginning with the day after the end of the period prescribed by regulation 13(2),
- (b) made in writing,
- (c) accompanied by a copy of the sections of the individual development plan containing the description of the young person's additional learning needs and the description of the additional learning provision, and
- (d) accompanied by a copy of any other information in the individual development plan which the local authority considers is necessary to determine the matter.

(3) The Welsh Ministers must notify the young person and the governing body of the referral and invite representations.

(4) The Welsh Ministers must notify the young person, the local authority and the governing body of—

- (a) their determination under section 36(4) of the 2018 Act, and
- (b) the reasons for the determination.

(5) If the Welsh Ministers determine that the governing body should maintain the plan, the governing body's duty to maintain it under section 12(4) of the 2018 Act takes effect—

- (a) on the day which may be specified in the notification under paragraph (4);
- (b) otherwise on the day on which that notification is received by the governing body.

Giving copies of individual development plans in transfer situations

15.—(1) Paragraph (2) applies in each of the following circumstances—

- (a) a governing body or a local authority ("the new body") becomes responsible under Part 2 of the 2018 Act for maintaining or keeping an individual development plan which was

previously maintained or kept under that Part by another governing body or local authority (“the old body”);

- (b) a local authority (“the new body”) would become responsible under Part 2 of the 2018 Act for maintaining or keeping an individual development plan which was previously maintained or kept under that Part by a governing body or another local authority (“the old body”) but for the new body’s lack of knowledge of circumstances which give rise to it being responsible for the plan (see sections 30(5) and 42(5) of the 2018 Act and regulation 22(3));
- (c) a governing body of a maintained school (“the new body”) becomes responsible for maintaining an individual development plan by virtue of a local authority (“the old body”) directing the governing body under section 14(2)(b)(i) or (4) of the 2018 Act.

(2) The old body must give a copy of the plan to the new body unless the new body already has a copy of it.

(3) But where the old body is not aware of the circumstances giving rise to the transfer of responsibility for the plan, the duty in paragraph (2) does not apply until the old body is aware of those circumstances.

Review periods where child has become looked after or child or young person has ceased to be looked after

16.—(1) Paragraph (2) applies in each of the following circumstances—

- (a) a local authority becomes responsible, by virtue of section 35(10) of the 2018 Act, for maintaining an individual development plan for a child who has become looked after by the local authority (“the transfer”);
- (b) a local authority becomes responsible, by virtue of section 35(12) and (13) of the 2018 Act, for maintaining an individual development plan for a child or young person who has ceased to be a looked after child (“the transfer”).

(2) For the purposes of determining the review period within which the local authority must, under section 24(1) (for a case within paragraph (1)(a)) or 23(1) (for a case within paragraph (1)(b)) of the 2018 Act, first review the plan following the transfer, sections 23 and 24 of that Act apply (despite section 23(12) for a case within paragraph (1)(a)) as they did immediately before the transfer.

Securing other provision where transfer of responsibility for plan

17.—(1) Paragraphs (2) and (3) apply where—

- (a) following a transfer of responsibility for maintaining an individual development plan under section 35 of the 2018 Act, a local authority is under a duty to secure a place at a particular school or other institution described in the plan in accordance with section 14(6) or 19(4) of that Act, and
- (b) in light of the circumstances which have given rise to the transfer, it is no longer practicable for the child or young person to attend the school or other institution.

(2) The local authority's duty to secure the place at the school or other institution does not apply until such time as it is possible to revise the plan except where the authority arranges board and lodging under paragraph (3).

(3) The local authority may arrange board and lodging to enable the child or young person to continue to attend the school or other institution until such time as it is possible to revise the individual development plan.

Detained persons

Necessity of individual development plan for detained person upon release

18.—(1) This regulation applies for the purpose of a home authority's decision under section 40(2)(b) of the 2018 Act.

(2) It is necessary to prepare an individual development plan for a detained person except where—

- (a) it is likely that the detained person will have attained the age of 25 before being released from detention, or
- (b) in the case of a detained young person, it is unlikely that the person will have reasonable needs for education or training when released.

(3) For the purposes of paragraph (2)(b), a young person has reasonable needs for education or training in each of the following circumstances—

- (a) the young person is registered as a pupil or enrolled as a student at a maintained school, an institution in the further education sector or an Academy (whether the maintained school or institution in the further education sector is in Wales or England);

- (b) the young person has reasonable needs for education or training under regulation 9(1);
- (c) a local authority has determined under regulation 9(2) that the young person has reasonable needs for education or training.

(4) Where the home authority decides that it will not be necessary for an individual development plan to be maintained for the detained person when that person is released from detention, the home authority must make that decision and give the notification of it under section 40(4) of the 2018 Act promptly and in any event before the end of the period of 12 weeks beginning with the day after the day on which—

- (a) in the case of a child, it was brought to the attention of, or otherwise appeared to, the home authority that the child may have additional learning needs;
- (b) in the case of a young person, the young person consented to the decision being made on whether the young person has additional learning needs.

(5) The home authority need not comply with the requirement to make that decision and give the notification before the end of the 12 week period if it is impractical to do so due to circumstances beyond its control.

(6) When notifying a detained person and if the detained person is a child, the child's parent, under section 40(4) of the 2018 Act that an individual development plan will not be necessary, the home authority must also give—

- (a) contact details for the home authority;
- (b) information about how to access the home authority's arrangements under section 9 of the 2018 Act for providing people with information and advice about additional learning needs and the system for which provision is made by Part 2 of that Act;
- (c) details of the home authority's arrangements for the avoidance and resolution of disagreements under section 68 of the 2018 Act;
- (d) details of the home authority's arrangements for the provision of independent advocacy services under section 69 of the 2018 Act;
- (e) information about the right to appeal to the Education Tribunal under section 72 of the 2018 Act against the decision.

Amendments to section 44 of the 2018 Act

19.—(1) Section 44 of the 2018 Act (certain provisions of Part 2 not to apply to children and young persons in detention) is amended as follows—

- (a) in subsection (1), after paragraph (c) insert—
“(d) an NHS body.”;
- (b) in subsection (2), after paragraph (d) insert—
“(da) section 20(5)(a) and (c) (NHS body’s duty to secure a treatment or service and to take all reasonable steps to secure it in Welsh);”.

Detention under Part 3 of Mental Health Act 1983; application of 2018 Act

Interpretation of regulations 20 to 25 and Schedule 2

20.—(1) For the purposes of this regulation, regulations 21 to 25 and Schedule 2—

“the 1983 Act” (“*Deddf 1983*”) means the Mental Health Act 1983(1);

“beginning of the detention in hospital” (“*dechrau’r cyfnod o gadw’n gaeth mewn ysbyty*”) in relation to a child or young person detained in hospital under Part 3 of the 1983 Act means—

- (a) the beginning of the period of detention in hospital under that Part, or
- (b) where that period is immediately preceded by detention in a place of safety in accordance with court directions under that Part, the beginning of the period of detention in the place of safety;

“relevant local authority” (“*awdurdod lleol perthnasol*”) in relation to a child or young person detained in hospital under Part 3 of the 1983 Act has the meaning given in regulation 21.

(2) Regulation 2(2) deals with the meaning of references to a person being subject to a detention order.

(3) For the purposes of the definition of “beginning of the detention in hospital” in paragraph (1), it is immaterial whether or not the period of detention is pursuant to a single order.

Relevant local authority

21.—(1) Where the child or young person was a detained person immediately before the beginning of the child or young person’s detention in hospital under Part 3 of the 1983 Act, “the relevant local authority” means the child or young person’s home authority.

(1) 1983 c. 20. The Crime (Sentences) Act 1997 (c. 43), section 46 inserted sections 45A and 45B into Part 3. There are other amendments to Part 3 which are not relevant.

(2) Where the child or young person was not a detained person immediately before the beginning of the child or young person's detention in hospital under Part 3 of the 1983 Act—

- (a) if the child or young person was looked after immediately before the beginning of that detention or has been looked after at any time since then, the “relevant local authority” means the local authority in Wales or England that looks after, or that most recently looked after, the child or young person;
- (b) otherwise the “relevant local authority” means the local authority in whose area the child or young person is ordinarily resident.

(3) But a local authority in England is not a relevant local authority.

(4) For the purpose of paragraph (1), the definitions of “home authority” and “the beginning of the detention” (see section 39 of the 2018 Act applying meanings given in section 562J of the Education Act 1996⁽¹⁾ subject, in the case of “home authority” to any regulations under section 39(2)) apply as if the detention in hospital under Part 3 of the 1983 Act continues to be detention in relevant youth accommodation.

(5) For the purpose of paragraph (2), a child or young person is looked after by a local authority if the child or young person is looked after by a local authority for the purposes of Part 6 of the Social Services and Well-being (Wales) Act 2014⁽²⁾ or by a local authority in England for the purposes of the Children Act 1989⁽³⁾.

(6) In determining for the purpose of paragraph (2) where a child or young person is ordinarily resident, any period when the person is subject to a detention order is to be disregarded.

Child or young person with individual development plan prior to detention in hospital

22.—(1) This regulation applies where—

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- (1) 1996 c. 56. Section 562J was inserted by the Apprenticeships, Skills, Children and Learning Act 2009 (c. 22), section 50. Relevant amendments to it are made by S.I. 2010/1158, Schedule 2, Part 1, paragraph 16(1), (2) and (4).
 - (2) 2014 anaw 4. Section 74 provides for the interpretation of references in that Act to a child who is looked after by a local authority.
 - (3) 1989 c. 41. Sections 22(1) and 105(4) provide for the interpretation of references to a child who is looked after. Section 22(1) has been amended by the Local Government Act 2000 (c. 22), Schedule 5, paragraph 19, the Children (Leaving Care) Act 2000 (c. 35), section 2(1) and (2) and S.I. 2016/413, regulations 55 and 69(a). Section 105(4) was substituted by S.I. 2016/413, regulations 55 and 106(b).

- (a) a child or young person is subject to a detention order,
- (b) the child or young person is detained in hospital under Part 3 of the 1983 Act, and
- (c) immediately before the beginning of the detention in hospital, an individual development plan was being maintained or kept for the child or young person under Part 2 of the 2018 Act.

(2) The relevant local authority for the child or young person must maintain the individual development plan; and the plan is to be treated as being maintained under section 14 of the 2018 Act for the purposes of Part 2 of that Act, with any provision described in the plan in accordance with section 19(4) or 40(7) of the 2018 Act being treated as described in accordance with section 14(6).

(3) But the duty to maintain the plan in paragraph (2) does not apply in relation to a plan that was being maintained or kept by a governing body or a local authority other than the relevant local authority unless the fact that the plan was being maintained or kept is brought to the attention of the relevant local authority.

(4) The 2018 Act and other provisions under Part 2 of that Act (including these Regulations) apply with the modifications provided for in Schedule 2 in relation to the child or young person while that child or young person is subject to a detention order and detained in hospital under Part 3 of the 1983 Act.

(5) Where, immediately before the beginning of the detention in hospital, the plan was being kept under Part 2 of the 2018 Act, the relevant local authority must—

- (a) inform the child or young person that it has become responsible for maintaining the plan,
- (b) if the plan is for a child, inform the child's parent, and
- (c) review the plan,

(for where the plan was being maintained by another body immediately before the beginning of the detention in hospital, see sections 22(2) and 23 of the 2018 Act as applied by this regulation).

(6) The relevant local authority must complete the review of the plan promptly and in any event within the period of 7 weeks starting with the day after the day on which the child or young person is detained in hospital.

(7) The relevant local authority need not complete the review within that 7 week period if it is impractical to do so due to circumstances beyond the authority's control.

(8) For the purposes of paragraph (6) a review is completed when the relevant local authority gives, under Part 2 of the 2018 Act, any of the following—

- (a) a copy of the revised individual development plan;
- (b) notification of a decision that the plan should not be revised;
- (c) notification of a decision that the child or young person no longer has additional learning needs;
- (d) if the person is a young person, notification of a decision that it is no longer necessary to maintain the plan to meet the young person's reasonable needs for education or training.

Child or young person without individual development plan prior to detention in hospital

23.—(1) This regulation applies where—

- (a) a child is subject to a detention order,
- (b) the child is detained in hospital under Part 3 of the 1983 Act, and
- (c) immediately before the beginning of the detention in hospital, an individual development plan was neither being maintained nor being kept for the child under Part 2 of the 2018 Act.

(2) This regulation also applies where—

- (a) on or after 1 September 2022—
 - (i) a young person is subject to a detention order,
 - (ii) the young person is detained in hospital under Part 3 of the 1983 Act, and
- (b) immediately before the beginning of the detention in hospital, an individual development plan was neither being maintained nor being kept for the young person under Part 2 of the 2018 Act.

(3) The 2018 Act and other provisions under Part 2 of that Act (including these Regulations) apply with the modifications provided for in Schedule 2 in relation to the child or young person while that child or young person is subject to a detention order and detained in hospital under Part 3 of the 1983 Act (in particular, see section 13).

Release of child or young person detained in hospital

24.—(1) This regulation applies where—

- (a) a child or young person subject to a detention order and detained in hospital under Part 3 of the 1983 Act, is released from detention,

- (b) immediately before release, a relevant local authority was maintaining an individual development plan under section 14 of the 2018 Act for the child or young person,
- (c) on the release date, a local authority is responsible for the child or young person, and
- (d) immediately on release, the person released is not a child who is looked after by a local authority (for where a child is looked after by a local authority immediately on release, see section 35(9) and (10) of the 2018 Act).

(2) The local authority mentioned in paragraph (1)(c) must maintain the individual development plan; and the plan is to be treated as maintained under section 14 of the 2018 Act for the purposes of Part 2 of that Act.

Child or young person transfers from hospital detention to detention in relevant youth accommodation

25.—(1) This regulation applies where a child or young person subject to a detention order transfers from detention in hospital under Part 3 of the 1983 Act to detention in relevant youth accommodation in Wales or England (for where such a child or young person transfers to detention in accommodation other than relevant youth accommodation in Wales or England, see section 562 of the Education Act 1996⁽¹⁾ and section 44 of the 2018 Act).

(2) In the application of the definition of “beginning of the detention” (in section 562J of the Education Act 1996) for the purposes of section 42 of the 2018 Act, the continuous period referred to does not include the period of detention in hospital under Part 3 of the 1983 Act nor any period before it.

PART 3

SUPPLEMENTARY FUNCTIONS

Additional learning needs co-ordinator

Interpretation of regulations 26 to 30

26. In this regulation and regulations 27 to 30—

(1) 1996 c. 56. Section 562 has been amended by the Criminal Justice and Immigration Act 2008 (c. 4), Schedule 4, Part 1, paragraph 47, the Apprenticeships, Skills, Children and Learning Act 2009 (c. 22), section 49, S.I. 2010/1158, Schedule 2, Part 1, paragraph 7(1) to (3) and S.I. 2016/413, regulations 153 and 157.

“the 2014 Act” (“*Deddf 2014*”) means the Education (Wales) Act 2014⁽¹⁾;

“further education learning support worker” (“*gweithiwr cymorth dysgu mewn addysg bellach*”) means a person who is registered with the Education Workforce Council in the category of further education learning support worker as described in table 1 of Schedule 2 to the 2014 Act;

“further education teacher” (“*athro neu athrawes addysg bellach*”) means a person who is registered with the Education Workforce Council in the category of further education teacher as described in table 1 of Schedule 2 to the 2014 Act;

“relevant services” (“*gwasanaethau perthnasol*”) means—

- (a) advice or assistance in relation to additional learning provision,
- (b) the management of additional learning provision,
- (c) the assessment of additional learning needs,
- (d) advice or assistance in relation to additional learning needs, and
- (e) the management of pupils or students (as the case may be) with additional learning needs;

“school learning support worker” (“*gweithiwr cymorth dysgu mewn ysgol*”) means a person who is registered with the Education Workforce Council in the category of school learning support worker as described in table 1 of Schedule 2 to the 2014 Act;

“school teacher” (“*athro neu athrawes ysgol*”) means a person who is registered with the Education Workforce Council in the category of school teacher as described in table 1 of Schedule 2 to the 2014 Act and does not include a person registered on a provisional basis under section 9(5) of that Act;

“special educational needs co-ordinator” (“*cydlynnydd anghenion addysgol arbennig*”) means a person having responsibility for co-ordinating the provision for pupils identified as having special educational needs under Part 4 of the Education Act 1996⁽²⁾.

Prescribed qualification or experience of an additional learning needs co-ordinator at a school

27. The governing body of a school may designate a person as an additional learning needs co-ordinator

(1) 2014 anaw 5.

(2) 1996 c. 56.

under section 60(2) of the 2018 Act only if that person—

- (a) is a school teacher, or
- (b) was a special educational needs co-ordinator within the school immediately prior to 4 January 2021⁽¹⁾.

Prescribed qualification of an additional learning needs co-ordinator at an institution in the further education sector

28. The governing body of an institution in the further education sector may designate a person as an additional learning needs co-ordinator under section 60(2) of the 2018 Act only if that person is a further education teacher.

Additional learning needs co-ordinator functions at a school

29. The tasks an additional learning needs co-ordinator at a school is responsible for carrying out, or ensuring are carried out, are—

- (a) identifying a pupil's additional learning needs and co-ordinating the making of additional learning provision that meets a pupil's additional learning needs,
- (b) securing relevant services that will support a pupil's additional learning provision as required,
- (c) keeping records of decisions about additional learning needs and individual development plans,
- (d) promoting a pupil with additional learning needs' inclusion in the school and access to the school's curriculum, facilities and extra-curricular activities,
- (e) monitoring the effectiveness of any additional learning provision made,
- (f) advising school teachers at the school about differentiated teaching methods appropriate for individual pupils with additional learning needs,
- (g) supervising and training school learning support workers who work with pupils with additional learning needs, and
- (h) contributing to in-service training for school teachers at the school to assist the additional

⁽¹⁾ The Additional Learning Needs Co-ordinator (Wales) Regulations 2020 (S.I. 2020/1351 (W. 299)) came into force on 4 January 2021.

learning needs co-ordinator in carrying out the tasks referred to in paragraphs (a) to (e).

Additional learning needs co-ordinator functions at an institution in the further education sector

30. The tasks an additional learning needs co-ordinator at an institution in the further education sector is responsible for carrying out, or ensuring are carried out, are—

- (a) identifying a student's additional learning needs and co-ordinating the making of additional learning provision that meets a student's additional learning needs,
- (b) securing relevant services that will support a student's additional learning provision as required,
- (c) keeping records of decisions about additional learning needs and individual development plans,
- (d) promoting a student with additional learning needs' inclusion in the institution in the further education sector and access to the institution in the further education sector's curriculum, facilities and extra-curricular activities,
- (e) monitoring the effectiveness of any additional learning provision made,
- (f) advising teachers at the institution in the further education sector about differentiated teaching methods appropriate for individual students with additional learning needs,
- (g) supervising and training further education learning support workers who work with students with additional learning needs, and
- (h) contributing to training for further education teachers at the institution in the further education sector to assist the additional learning needs co-ordinator in carrying out the tasks referred to in paragraphs (a) to (e).

Time limit for complying with section 65 request

Time limit for complying with local authority request for information or other help

31.—(1) A person under a duty to comply with a local authority's request under section 65 of the 2018 Act (duties to provide information and other help) must comply with the request promptly and in any event within the period prescribed by paragraph (2).

(2) The prescribed period—

- (a) begins with the day on which the person receives the request, and
 - (b) ends at the end of 6 weeks beginning with the day after the day mentioned in subparagraph (a).
- (3) The person need not comply with the request within the period prescribed by paragraph (2) if—
- (a) it is impractical to do so due to circumstances beyond the person’s control, or
 - (b) the request does not relate to the exercise of a function in respect of a particular child or young person.

Goods and services

Provision of goods or services in relation to additional learning provision

32.—(1) A local authority may supply goods or services to—

- (a) a person exercising functions under Part 2 of the 2018 Act, or
- (b) a person making additional learning provision in connection with the exercise of functions under that Part,

provided that the supply of those goods or services is for the purpose of the exercise of those functions or the making of that additional learning provision, as the case may be.

(2) The terms and conditions on which a local authority supplies goods or services under paragraph (1) may include terms and conditions as to payment and may be different for different persons or on different occasions.

(3) But the local authority must secure that any terms and conditions as to payment would not, taking one financial year with another, result in payments to the authority in excess of the reasonable cost to it of supplying the goods or services in respect of which the payments are made.

Arrangements for the avoidance and resolution of disputes and independent advocacy services for detained persons

Amendment to section 68 of the 2018 Act

33. In section 68(8) of the 2018 Act (arrangements for the avoidance and resolution of disagreements), after “area” insert “and detained persons for whom it is the home authority”.

PART 4

PARENTS AND YOUNG PEOPLE LACKING CAPACITY

Interpretation of this Part

34. In this Part—

“the relevant time” (“*yr adeg berthnasol*”) has the same meaning as in section 83(3) of the 2018 Act;

“representative” (“*cynrychiolydd*”) means—

- (a) a deputy appointed by the Court of Protection under section 16(2)(b) of the Mental Capacity Act 2005⁽¹⁾ to make decisions on the parent’s or young person’s behalf in relation to matters within Part 2 of the 2018 Act;
- (b) the donee of a lasting power of attorney (within the meaning of section 9 of the Mental Capacity Act 2005) appointed by the parent of a child or by a young person to make decisions on the parent or young person’s behalf in relation to matters within Part 2 of the 2018 Act;
- (c) an attorney in whom an enduring power of attorney (within the meaning of Schedule 4 to the Mental Capacity Act 2005⁽²⁾) created by the parent or young person is vested, where the power of attorney is registered in accordance with paragraphs 4 and 13 of that Schedule or an application for registration of the power of attorney has been made;
- (d) the young person’s parent, where the young person does not have a representative listed in paragraph (a), (b) or (c).

When a child’s parent lacks capacity

35.—(1) When a child’s parent lacks capacity at the relevant time, references in the provisions of the 2018 Act listed below to a child’s parent are to be read as references to a representative of that parent—

- (a) section 11(4);
- (b) section 13(3);
- (c) section 18(3);
- (d) section 20(3)(a) and (b);
- (e) section 22(1)(b) and (2)(b);
- (f) section 23(8), (10) and (11);

⁽¹⁾ 2005 c. 9.

⁽²⁾ Relevant amendments to Schedule 4 are made by S.I. 2012/2404, Schedule 2, paragraph 53(1) and (6).

- (g) section 24(7), (9) and (10);
- (h) section 26(1)(b);
- (i) section 27(1)(b) and (4);
- (j) section 28(2)(b), (4), (5) and (7);
- (k) section 31(7)(b), (8) and (9);
- (l) section 32(1)(a) and (b) and (3);
- (m) section 64(3) and (4).

(2) When a child's parent lacks capacity at the relevant time, references to parents of children, and parents of pupils in section 9(3)(b) and (4)(a) of the 2018 Act respectively are to be read as including both the parents and a representative of the parents.

(3) When a child's parent lacks capacity at the relevant time, the reference in regulation 22(5)(b) to the child's parent is to be read as a reference to a representative of that parent.

When a parent of a child who is a detained person lacks capacity

36. When a parent of a detained person who is a child lacks capacity at the relevant time—

- (a) references in sections 40(4) and (5)(b) and 42(6) of the 2018 Act to the parent of a detained person who is a child are to be read as references to a representative of that parent;
- (b) the reference in regulation 18(6) to the child's parent is to be read as a reference to a representative of that parent.

When a young person lacks capacity

37.—(1) When a young person lacks capacity at the relevant time, references to a young person in the provisions of the 2018 Act listed below are to be read as references to the representative of the young person—

- (a) section 11(3)(c) in the second place it occurs;
- (b) section 11(4) in the second place it occurs;
- (c) section 12(2)(b) in the second place it occurs;
- (d) section 13(2)(d) in the second place it occurs;
- (e) section 13(3) in the second place it occurs;
- (f) section 14(3) in the second place it occurs;
- (g) section 20(3)(a) and (b);
- (h) section 22(1)(a) and (2)(a);
- (i) section 23(8) in the second place it occurs;
- (j) section 23(10) and (11)(a);

- (k) section 26(1)(b) in the first place it occurs;
- (l) section 27(1)(b) in the first place it occurs;
- (m) section 27(4);
- (n) section 28(2)(a), (4), (5) and (7);
- (o) section 31(7)(a), (8) and (9);
- (p) section 32(1)(a);
- (q) section 32(1)(b) in the first place it occurs;
- (r) section 32(3).

(2) When a young person lacks capacity at the relevant time, the references to young people in section 9(3)(a) and to students in section 9(5) of the 2018 Act respectively are to be read as including both the young person and the representative of the young person.

(3) When a young person lacks capacity at the relevant time, references to a young person in the regulations below are to be read as references to the representative of the young person—

- (a) regulation 10(2), (3) and (5);
- (b) regulation 14(3) and (4);
- (c) regulation 22(5)(a).

When a detained person who is a young person lacks capacity

38. When a detained person who is a young person lacks capacity at the relevant time, the references in the provisions below are to be read as references to a representative of that young person—

- (a) the reference to the detained person in the third place it occurs in section 40(4) of the 2018 Act;
- (b) the reference to a detained person in the first place it occurs in section 40(5)(b) of the 2018 Act;
- (c) the references in sections 41(2)(a) and 42(4) of the 2018 Act to a detained person who is a young person;
- (d) the reference to a detained person in the first place it occurs in section 42(6) of the 2018 Act;
- (e) the reference to a young person in the second place it occurs in regulation 18(4)(b);
- (f) the reference to a detained person in the first place it occurs in regulation 18(6).

Arrangements for avoidance and resolution of disagreements under section 68 of the 2018 Act

39. When a child's parent or a young person lacks capacity at the relevant time, arrangements made by a local authority under section 68 of the 2018 Act must

provide for a representative to engage in the arrangements on behalf of that child's parent or that young person.

Independent advocacy services under section 69 of the 2018 Act

40. When a young person for whom a local authority is responsible lacks capacity at the relevant time, that local authority must refer that young person's representative to an independent advocacy service if the representative requests an independent advocacy service.

Representation in appeals

41. When a child's parent, or a parent of a detained person who is a child, lacks capacity at the relevant time, or a young person, or detained person who is a young person, lacks capacity at the relevant time, their representative may appeal to the Education Tribunal for Wales on their behalf and sections 70 and 72 of the 2018 Act are to be interpreted accordingly.

Mental Capacity Act 2005

42. Regulations 35, 36, 37 and 39 have effect despite section 27(1)(g) of the Mental Capacity Act 2005⁽¹⁾.

Name

Minister for Education, one of the Welsh Ministers

Date

(1) Section 27(1)(g) does not permit decisions on discharging parental responsibilities in matters not relating to a child's property to be made on a person's behalf.

SCHEDULE 1

Regulations 6, 7 and 9

REASONABLE NEEDS FOR EDUCATION OR TRAINING

Suitable programme of study

1.—(1) The factors that the local authority must take into account when determining whether there is a realistic prospect that undertaking a proposed programme of study or continuing to undertake a programme of study (with any proposed modifications to it) would enable the young person to meet the person's desired outcomes are—

- (a) the young person's ability to undertake the programme of study;
- (b) the suitability of the programme of study to meet the young person's desired outcomes;
- (c) any other factors the local authority reasonably considers to be relevant.

(2) When considering the factors mentioned in subparagraph (1), the local authority must take into account relevant information relating to those factors, including any provided by—

- (a) those involved in providing education or training to the young person, or those who have recently done so;
- (b) health or social care professionals, including any involved with the young person;
- (c) the proprietor of the educational institution at which a proposed programme of study may be undertaken;
- (d) persons who provide, or who are employed by bodies that provide, services pursuant to arrangements made or directions given under section 10 of the Employment and Training Act 1973⁽¹⁾ (provision of careers services).

(1) 1973 c. 50. Section 10 was substituted by the Trade Union Reform and Employment Rights Act 1993 (c. 19), section 45 and amended by S.I. 2010/1158, Schedule 2, Part 2, paragraph 28(1) and (2). The Secretary of State's functions under section 10, so far as exercisable in relation to Wales, were transferred to the National Assembly for Wales by S.I. 1999/672, article 2 and Schedule 1 and then to the Welsh Ministers by paragraph 30 of Schedule 11 to the Government of Wales Act 2006 (c. 32).

Additional factors where young person on programme of study

2. Where the young person is already undertaking the programme of study, the local authority may not conclude that there is no longer a realistic prospect that continuing to undertake the programme of study as intended at the outset would enable the young person to meet the person's desired outcomes unless it has taken into account the following factors—

- (a) that young people progress at different rates and a young person's progress towards meeting the desired outcomes may not be apparent until later in the programme of study;
- (b) the young person's expectation of having the opportunity to complete the programme of study as intended at the outset;
- (c) whether the young person's capability to learn has been affected by a significant change in the young person's personal circumstances or needs.

Programme of study intended to last for more than 2 years

3.—(1) The duration of the suitable programme of study that it is proposed the young person undertake (including where it is an additional programme of study under paragraph 5(1)) is intended at the outset to take place over a period of more than 2 years.

(2) The factors, where relevant, that the local authority must take into account are—

- (a) where the programme is designed to allow the young person to access a course of further education or training which is undertaken by young people who do not have additional learning needs—
 - (i) the usual length of the course for young people who do not have additional learning needs, and
 - (ii) whether the young person requires additional time in comparison to the majority of other young people who do not have additional learning needs, to complete the course;
- (b) where the programme of study is specially designed to provide additional learning provision for the young person, whether there are any exceptional reasons relating to the young person's capability to learn such that the person's desired outcomes cannot realistically be met within the period of 2 years.

Extension to a programme of study

4.—(1) The young person has been unable to complete a programme of study (including where it is an additional programme of study under paragraph 5(1)) within the programme's duration as intended at the outset and it is proposed to extend the programme to enable the young person to meet the person's desired outcomes at the start of the programme ("original outcomes") or ones that are substantially similar to the original outcomes ("adjusted outcomes").

(2) The factors, where relevant, that the local authority must take into account are—

- (a) whether the circumstances giving rise to the proposed extension are unavoidable;
- (b) whether the proposed extension is necessary to enable the young person to complete the programme of study and meet the original or adjusted outcomes;
- (c) whether the proposed extension is for a purpose that should have been addressed during the original duration of the programme of study and where that is the case, the reasons why it was not addressed;
- (d) whether the proposed extension is proportionate to the original outcomes which are not yet met or the adjusted outcomes and whether an alternative length of extension is required in the circumstances;
- (e) where the programme of study has previously been extended—
 - (i) whether the proposed extension arises from the same facts as the previous one, and
 - (ii) whether there are exceptional reasons why the young person was unable to achieve the outcomes during the previous extension.

Additional programme of study

5.—(1) The programme of study that it is proposed the young person undertake is additional to further education or training which the young person has already undertaken.

(2) The factors, where relevant, that the local authority must take into account are—

- (a) that the young person is unable to benefit in a meaningful way from the previous further education or training due to—
 - (i) the previous further education or training falling so far below the expected standard that the provider of it cannot reasonably

- be said to have delivered the education or training necessary to meet the young person's desired outcomes in undertaking it,
- (ii) a significant change in the personal circumstances or needs of the young person, or
 - (iii) any other exceptional circumstances;
- (b) where the previous further education or training was undertaken by the young person at a maintained school or institution in the further education sector, that an essential and substantial element of the further education or training necessary to meet the young person's desired outcomes could not have been delivered as part of that previous further education or training;
 - (c) where the duration of the previous education or training was less than 2 years, the total duration of that previous education or training and that of the proposed programme of study and whether the extent to which that total duration exceeds 2 years is reasonable in all the circumstances;
 - (d) whether there are any other exceptional circumstances to suggest that the young person has not received effective access to further education or training.

Other exceptional circumstances

6.—(1) The circumstances are substantially similar to one or more of the circumstances set out in paragraph 3(1), 4(1) or 5(1).

(2) The factors, where relevant, that the local authority must take into account are the factors set out in paragraph 3(2), 4(2) or 5(2) corresponding to whichever of the circumstances in paragraph 3(1), 4(1) or 5(1) are substantially similar.

SCHEDULE 2

Regulations 20, 22 and 23

APPLICATION WITH MODIFICATIONS OF THE 2018 ACT IN RELATION TO PERSONS DETAINED IN HOSPITAL UNDER PART 3 OF THE 1983 ACT

1.—(1) The powers and duties conferred or imposed on a local authority by Part 2 of the 2018 Act, by these Regulations or otherwise under that Part, to the extent that they would not apply in relation to a child or young person within sub-paragraph (3) because of section 562 of the Education Act 1996 or section 44(1) of the 2018 Act, apply to the child or young person with the modifications provided for in sub-paragraph (4).

(2) Other provisions of the 2018 Act, these Regulations and any other provisions under Part 2 of that Act, in so far as they apply for the purposes of those powers and duties or otherwise relate to the child or young person, apply in relation to the child or young person with the modifications provided for in sub-paragraph (4).

(3) A child or young person is within this sub-paragraph if the child or young person is—

- (a) subject to a detention order, and
- (b) detained in a hospital under Part 3 of the 1983 Act.

(4) The modifications are—

- (a) references, however expressed, to a local authority being responsible (or becoming or ceasing to be responsible) for a child or young person are to be interpreted as references to a local authority that is (or becomes or ceases to be) the relevant local authority for the child or young person and accordingly section 99(4) is not to apply to those references;
- (b) omit section 13(2)(e);
- (c) in section 14, omit subsections (2)(b) and (4);
- (d) in section 15(1)—
 - (i) at the end of paragraph (a), omit “and”;
 - (ii) at the end of paragraph (b) insert “and”;
 - (iii) after paragraph (b) insert—

“(c) is not—

 - (i) subject to a detention order (within the meaning given by section

562(1A)(a), (2) and (3) of the Education Act 1996), and

(ii) detained in a hospital under Part 3 of the Mental Health Act 1983.”;

- (e) omit section 36;
- (f) if the hospital is relevant youth accommodation, the duties imposed on a home authority by sections 40 and 42 do not apply;
- (g) in section 84(1)(a), at the end insert “or regulation 22(5) of the Additional Learning Needs (Wales) Regulations 2021”;
- (h) in section 85(5)(a), after “42(6)” insert “and regulation 22(5) of the Additional Learning Needs (Wales) Regulations 2021”;
- (i) in regulation 16(1)(b), after “2018 Act” insert “or regulation 22(2)”.

Explanatory Memorandum to:

1. The Additional Learning Needs Code for Wales;
2. The following Regulations;
 - The Additional Learning Needs (Wales) Regulations 2021;
 - The Education Tribunal for Wales Regulations 2021;
 - The Education (Pupil Referral Units) (Management Committees etc.) (Wales) (Amendment) Regulations 2021;
 - Independent Schools (Provision of Information) (Wales) (Amendment) Regulations 2021;
 - The Equality Act 2010 (Capacity of parents and persons over compulsory school age) (Wales) Regulations 2021.

This Explanatory Memorandum has been prepared by the Additional Learning Needs Transformation Team 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:

1. The Additional Learning Needs Code for Wales;
2. The Additional Learning Needs (Wales) Regulations 2021;
3. The Education Tribunal for Wales Regulations 2021;
4. The Education (Pupil Referral Units) (Management Committees etc.) (Wales) (Amendment) Regulations 2021;
5. Independent Schools (Provision of Information) (Wales) (Amendment) Regulations 2021;
6. The Equality Act 2010 (Capacity of parents and persons over compulsory school age) (Wales) Regulations 2021.

I am satisfied that the benefits justify the likely costs.

Kirsty Williams MS, Minister for Education
12 March 2021

PART 1 – EXPLANATORY MEMORANDUM

1. Description

- 1.1. Part 2 of the Additional Learning Needs and Education Tribunal (Wales) Act 2018 ('the Act') establishes the statutory system in Wales for meeting the additional learning needs of children and young people ('the ALN system'). The Additional Learning Needs (Wales) Regulations 2021 make provision about a range of matters related to the operation of the ALN system, for example prescribing time periods within which certain duties are to be performed to operate effectively and setting out the functions of an Additional Learning Needs Co-ordinator ('ALNCo'). The Additional Learning Needs Code for Wales ('the Code') also imposes requirements on the governing bodies of maintained schools in Wales, governing bodies of institutions in the further education sector ('FEIs') in Wales, local authorities and NHS bodies related to the operation of the ALN system and the exercise of functions under it. The Code also gives guidance to the public authorities that have functions under the ALN system, about the exercise of those functions under Part 2 of the Act.
- 1.2. Part 3 of the Act continues the Special Educational Needs Tribunal for Wales and renames it the Education Tribunal for Wales ('the Tribunal'). In addition to the Tribunal's jurisdiction set out in Part 2 of the Act, it has jurisdiction in relation to disability discrimination in schools (for provision about this, see section 116 of the Equality Act 2010 and Schedule 17 to that Act). The Education Tribunal for Wales Regulations 2021 make provision about the constitution of the Tribunal and set out the procedure to be followed in proceedings before the Tribunal.
- 1.3. The Education (Pupil Referral Units) (Management Committees etc.) (Wales) (Amendment) Regulations 2021 amend the Education (Pupil Referral Units) (Management Committees etc.) (Wales) Regulations 2014 ('the 2014 Regulations') to provide that a local authority must delegate the specified functions to a management committee of a pupil referral unit ('PRU'). The specified functions are the functions of the governing body under the Act which, in accordance with paragraph 1 of Schedule 1 to the Education Act 1996, are functions of the local authority in relation to a PRU.
- 1.4. The Independent Schools (Provision of Information) (Wales) (Amendment) Regulations 2021 amend the Independent Schools (Provision of Information) (Wales) Regulations 2003 in order to require an application to enter an independent school in the register of independent schools in Wales to include information about the types of additional learning provision made by the school for pupils with additional learning needs (if any).

- 1.5. The Equality Act (Capacity of parents and persons over compulsory school age) (Wales) Regulations 2021 modify certain provisions of the Equality Act 2010 in certain circumstances. The modifications ensure that the representative of child's parent who lacks capacity, or the representative of a young person who lacks capacity, can bring a claim on behalf of that individual under Schedule 17 to the Equality Act 2010.

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

- 2.1. The ALN Code, the regulations and the other regulations have been laid on 2 March 2021 as a single package. This is to show the interplay of the provisions in the respective instruments.
- 2.2. The Additional Learning Needs (Wales) Regulations 2021 laid on 2 March are replaced by these Regulations as discrepancies were identified between the English and Welsh text which have now been corrected.
- 2.3. The sections of the Act containing the duties to designate people to the statutory roles (sections 60 to 62) came into force on 4 January. The Additional Learning Needs Co-ordinator (Wales) Regulations 2020 (S.I. 2020/1351) ("the ALNCo Regulations") also came into force on that date. Those Regulations set out the qualifications and experience required for a person to be designated as an ALNCo and the ALNCo's functions. Those Regulations will be revoked by the Additional Learning Needs (Wales) Regulations 2021, as the provisions in the former are re-enacted within the latter (see regulations 26 to 30).
- 2.4. The Additional Learning Needs (Wales) Regulations 2021 make three amendments to the Act.
 - 2.4.1. Regulation 4 amends section 88 of the Act about rules on giving notice and documents. The amendment is to provide that a notification or document given electronically is treated as having been given, unless the contrary is proved, on the day on which it is sent. This reflects the rule in section 14 of the Legislation (Wales) Act 2019, which does not apply to the Act.
 - 2.4.2. Regulation 19 amends section 44 of the Act to provide that an NHS body's duties under section 20(5)(a) and (c) of the Act about securing a relevant treatment or service which is additional learning provision for a detained person cease to apply from the beginning of the detained person's detention. In this situation, the home authority for the detained person already has a duty under section 42 of the Act to arrange appropriate additional learning provision and that duty is apt to deal with the detention situation. The NHS body may not practically be able to secure a relevant treatment or service for a detained person (particularly as it might not be

responsible for the provision of health services to the detained person during the detention period) or the relevant treatment or service may no longer be appropriate.

- 2.4.3. Regulation 33 amends section 68 of the Act to provide that for the purposes of a local authority's duties to make arrangements for the avoidance and resolution of disagreements and independent advocacy services, a local authority is also responsible for detained persons for whom it is the home authority. It is appropriate for the home authority's arrangements to apply in relation to detained persons, as it is the authority exercising functions in relation to them and it avoids any difficulties in ascertaining which local authority would otherwise be responsible (given that the test for responsibility is based upon a person being in the area of a local authority, which is difficult to determine in a detention situation).
- 2.5. As explained elsewhere in the Explanatory Memorandum, the Code imposes requirements. Chapter 1 of the Code explains how those requirements are identified in the Code.
- 2.6. It is intended to implement the ALN system on a phased basis from 1 September 2021 (see paragraph 3.7 below), which is why the regulations do not revoke law relating to special educational needs.

3. Legislative background

- 3.1. Part 2 of the Act establishes the ALN system. At its heart, the system involves governing bodies of maintained schools and FEIs and local authorities having responsibility for deciding whether children or young people have additional learning needs and if they do, preparing and maintaining an individual development plan ('IDP') for them. An IDP sets out the needs that the child or young person has and the additional learning provision called for by those needs. There are duties to secure the additional learning provision and particular other things, set out in an IDP. The ALN system provides that children, their parents and young people have the right to appeal to the Tribunal about certain matters related to the identification of their needs and the provision to meet them.
- 3.2. The ALN system is to replace the system under Part 4 of the Education Act 1996 for identifying, assessing and making provision for children with special educational needs ('SEN'). Implementing the ALN system will take three years, from September 2021.
- 3.3. The Additional Learning Needs and Education Tribunal (Wales) Act 2018 (Commencement No 1) Order 2020 (S.I. 2020/1182) commenced various powers in the Act, provisions for the purposes of exercising powers within them and related provisions. It also commenced sections 60 to 62 which contain duties to designate people to the statutory roles and provisions related to the list of independent special post-16 institutions in Wales or England, which the Welsh Ministers must establish. The Additional Learning Needs (List of Independent Special Post-16 Institutions) (Wales) Regulations 2020 (S.I. 2020/1367) make provision about that list and applications to be included in it.
- 3.4. The Welsh Ministers are required by section 4 of the Act to issue a code on additional learning needs. The code may impose requirements about certain matters (set out at section 4(5) of the Act) and is required to include the particular requirements described in section 4(6) of the Act. It may also make provision setting out what is required to discharge the duties in sections 7(1) and 8(1) of the Act about local authorities and NHS bodies having regard to United Nations Conventions.
- 3.5. The Code may include guidance about the exercise of functions under the Act and any other matter connected with identifying and meeting additional learning needs (section 4(2) of the Act). It must include guidance about the exercise of a maintained school or FEI's governing body's function to take all reasonable steps to secure that the additional learning provision called for by a pupil or student's additional learning needs is made whilst an individual development plan is being prepared for the pupil or student (section 47(3) of the Act).

- 3.6. The Act also confers various regulation making powers on the Welsh Ministers which supplement the functions in the Act.
- 3.7. All of the sets of regulations provide that they come into force on 1 September 2021. If approved by the Senedd, for the Code to come into force, a commencement order must be made (section 5(4) of the Act). The intention is that the Code also comes into force on 1 September 2021. The Welsh Ministers intend to exercise their commencement powers (under section 100 of the Act) to provide for functions under the Act to come into force on a phased basis from 1 September 2021.
- 3.8. The Code is to be issued under the powers in section 4 of the Act (as well as containing provision made under sections 7(4) and 8(4) of the Act and the guidance required by section 47(3) of the Act). The procedure for making it is set out in section 5 of the Act, which requires that there has been consultation on a draft of it with particular persons (see below for details of the consultation) and that it cannot be issued unless a draft of it (which may be a modified draft following that consultation) has been laid before and approved by resolution of the Senedd.
- 3.9. The Additional Learning Needs (Wales) Regulations 2021 are to be made under sections 15(2), 21(10), 32(1)(b), 36(3), 37(1)(a) and (b), 45, 46, 60(4), 65(5), 67, 82, 83, 97 and 98(2) of the Act. These Regulations are subject to the approval of the Senedd by way of the draft affirmative procedure (as required by section 98(3) of the Act).
- 3.10. The Education Tribunal for Wales Regulations 2021 are to be made under sections 70(4), 74, 75, 76(3), 77, 91(6) and 92(2) of the Act and section 207(4) of, and paragraphs 6(1), (2) to (5) and (7) and 6A of Schedule 17 to, the Equality Act 2010. These Regulations are subject to the approval of the Senedd by way of the draft affirmative procedure (as required by section 98(3) of the 2018 Act and section 209(6) of the Equality Act 2010).
- 3.11. The Equality Act 2010 (Capacity of parents and persons over compulsory school age) (Wales) Regulations 2021 are to be made under section 207(4) of, and paragraph 6F of Schedule 17 to, the Equality Act 2010. These Regulations are subject to the approval of the Senedd by way of the draft affirmative procedure (as required by section 209(6) of the Equality Act 2010).
- 3.12. The Independent Schools (Provision of Information) (Wales) (Amendment) Regulations 2021 are made under sections 160(1), 168 and 210(1) and (7) of the Education Act 2002. These Regulations are subject to the negative resolution procedure (as required by section 210(4) of the Education Act 2002 and paragraph 34 of Schedule 11 to the Government of Wales Act 2006). The functions of the National Assembly for Wales under those provisions were transferred to the

Welsh Ministers by virtue of paragraph 30 of Schedule 11 to the Government of Wales Act 2006.

- 3.13. The Education (Pupil Referral Units) (Management Committees etc.) (Wales) (Amendment) Regulations 2021 are made under section 569(1), (4) and (5) of, and paragraph 15 of Schedule 1 to, the Education Act 1996. These Regulations are subject to the negative resolution procedure (as required by section 569(2) and (2C) of the Education Act 1996 and paragraph 33 of Schedule 11 to the Government of Wales Act 2006). The functions of the Secretary of State in Schedule 1 to the Education Act 1996 were transferred to the National Assembly for Wales by the National Assembly for Wales (Transfer of Functions) Order 1999 S.I. 1999/672 and then to the Welsh Ministers by virtue of paragraph 30 of Schedule 11 to the Government of Wales Act 2006.

4. Purpose and intended effect of the legislation

- 4.1. The purpose of the ALN system, including the Code and regulations under the powers in the Act, is to create a fully inclusive education system where all learners with additional learning needs are inspired, motivated and supported to reach their full potential.
- 4.2. The Code contains guidance about the exercise of functions under Part 2 of the Act and other matters connected with identifying and meeting additional learning needs. It describes and explains many of the functions in the Act and some of the provisions in regulations made under the Act. The Code itself also imposes requirements, pursuant to sections 4(5) and (6), 7 and 8 of the Act. The Code's statutory guidance includes guidance on those requirements. The guidance helps give further effect to the ALN system.
- 4.3. The purpose of many of the provisions in the Additional Learning Needs (Wales) Regulations 2021 and the requirements imposed by the Code, are intended to provide the necessary or desirable details of the ALN system to supplement the provisions in the Act, for example, setting time limits for compliance with duties under the Act, provisions affecting decisions on when an IDP is necessary and providing for a child's parent or young person's right to be exercised by a representative where that parent or young person lacks capacity. The intended effect is that the ALN system is able to operate effectively.
- 4.4. In addition, the ALN Code is intended to be the principal document used by those responsible for delivering the ALN system, especially local authorities and the staff of maintained schools and FEIs. It is, in effect, an operational handbook designed to assist those exercising functions under the Act, providing them with the details of functions involved in the ALN system and giving guidance on how to exercise them in the various circumstances in which they fall to be exercised.
- 4.5. The Code as a whole explains the operational requirements of the ALN system.
- 4.6. The Code has therefore been designed to allow those exercising functions under the Act to access the statutory guidance that applies to their individual responsibilities under the Act and to understand the process as it applies to a specific child or young person.
- 4.7. The content and format of the Code therefore focusses on an explanation of legal functions and guidance on their exercise, rather than case studies on good practice. It is intended to enable professionals (such as an Early Years ALN Lead Officer, an ALNCo in a maintained school or FEI, or a local authority officer) to understand the process as it applies to a specific child or young person, and take action so as to comply with the duties under the ALN system in a way

which is appropriate to the circumstances and gives effect to the principles underlying the ALN system.

- 4.8. The Education Tribunal for Wales Regulations 2021 make provision relating to the exercise of that Tribunal's jurisdiction under Part 2 of the Additional Learning Needs and Education Tribunal (Wales) Act 2018 which concerns additional learning needs appeals, and Chapter 1 of Part 6 of the Equality Act 2010 which concerns claims of disability discrimination in respect of school pupils. The purpose of the provisions in these Regulations is to provide for rules of procedure which allow for the Tribunal's proceedings to be conducted appropriately and effectively. The intended effect is that appeals and claims before the Tribunal are dealt with justly.
- 4.9. We have carried out a Justice Impact Assessment which has concluded the justice impact is low. We fully considered the impact of the reforms on Her Majesty's Courts and Tribunals Service with our colleagues in the Welsh Tribunals Unit during the development of the Bill – an overview of our assessment was included in the Regulatory Impact Assessment, which we published with the Bill. The provisions relating to onward appeals to the Upper Tribunal are not new as they replicate existing provisions within the Education Act 1996 and the SENTW 2012 Regulations. Consequently, there is no reason to believe that there will be any significant impact on the number of cases referred to the Upper Tribunal. Figures from 2018-2019 show that only five request for permission of the Tribunal to make an application were made, two of which were refused.
- 4.10. The proposals support the use of person centred practice (PCP). PCP encourages greater active participation by the learner and their family as well as seeking a greater understanding of decisions made. This should help learners and their families to understand the process and enable a greater feeling of ownership of those decisions made. It is expected this will reduce the level of confrontation, the number of disagreements and lower the level of animosity which prevents disagreements being resolved before they reach Tribunal.
- 4.11. We do not anticipate more appeals to the Tribunal as a result of the ALN reforms. The ALN system will be implemented in a phased approach over a 3 year period. The first year will not include the post 16 age group, which will help reduce any sudden impact on the Tribunal's service.
- 4.12. The purpose of the Education (Pupil Referral Units) (Management Committees etc.) (Wales) (Amendment) Regulations 2021 is to require a local authority to delegate to the management committee of a PRU the functions the local authority has in relation to the PRU by virtue of Schedule 1 to the Education Act 1996. The intended effect is that management committees exercise, in relation to the PRU, the functions of a governing body under the Act.

- 4.13. The purpose of the Independent Schools (Provision of Information) (Wales) (Amendment) Regulations 2021 is to amend, as required by section 160 of the Education Act 2002 (as amended by section 54(3) of the Act), the Independent Schools (Provision of Information) (Wales) Regulations 2003 so that applications to enter an independent school in the register of independent schools in Wales will include information about the types of additional learning provision made by the school for pupils with additional learning needs (if any). The intended effect is that this information will then be included in the register (see section 158 of the Education Act 2002 as amended by section 54 of the Act) and therefore the information will be available for local authorities when exercising their functions under the Act.
- 4.14. The purpose of the Equality Act 2010 (Capacity of parents and persons over compulsory school age) (Wales) Regulations 2021 is to modify references to parents and persons over compulsory school age in paragraph 3A of Schedule 17 to the Equality Act 2010. When a parent or young person lacks mental capacity (under the Mental Health Act 2005) at a time where they could take action under the Equality Act 2010, the references to them in paragraph 3A, which gives certain individuals the right to bring a claim to the Tribunal under the Equality Act 2010, are modified to read as references to their representative. The intended effect is that parents or young persons lacking capacity will, through their representative, be able to exercise the same right to bring a claim to the Tribunal under the Equality Act 2010 as those with capacity.

5. Consultation

- 5.1. A twelve week public consultation ran between 10 December 2018 and 22 March 2019 on the:
- draft ALN Code;
 - draft regulations relating to the Education Tribunal for Wales and ALN co-ordinators and the policy intention for the exercise of other regulation-making powers under the Act;
 - revisions to the Social Services and Well-being (Wales) Act 2014 Part 6 Code of Practice – Looked After and Accommodated Children.
- 5.2. The consultation included:
- the main consultation document containing 65 questions covering the above matters;
 - a version of the consultation for children and young people and an easy read version containing fifteen questions on aspects of the draft Code and proposed regulations;

- two half-day consultation events in each of the four regional education consortia areas in Wales;
 - a series of engagement sessions with children, young people and parents attended by 228 participants.
- 5.3. A summary of responses report was published on 14 June 2019 document and can be accessed at:
- <https://gov.wales/draft-additional-learning-needs-code>
- 5.4. As that report indicated, the draft ALN Code and proposed regulations cover a huge range of different topics and so the responses to the consultation were very wide ranging, containing a huge variation in opinion and very different focuses.
- 5.5. Overall, the majority of respondents responded positively. Critical responses were greatest for matters relating to:
- the definition and identification of ALN;
 - timescales within which duties must be performed;
 - the roles of the ALNCo, the Designated Educational Clinical Lead Officer ('DECLO') and Looked After Children in Education Co-ordinator;
 - arrangements for disagreement resolution, advocacy services and appeals;
 - the delegation of duties to pupil referral units;
 - individual development plan ('IDP') templates;
 - the provision of IDPs for young people not attending an education setting;
 - the ALN system as it will apply to detained persons.
- 5.6. It is worth noting that the comments received from respondents tended to come from those who were particularly opposed to certain aspects of the draft ALN Code, or who were unsure about aspects of those policies. This was also true in terms of comments on certain matters, even where the questions related to those matters in the consultation had a positive response overall. The comments also included a great number of suggested technical amendments to the ALN Code.
- 5.7. Respondents expressed concern about various terms that appear in the draft ALN Code. There were also calls for guidance on the meaning of particular terms. In considering those points further, we have been mindful of whether further elaboration would add value or whether it might risk an inadvertent narrowing or widening of the term's meaning and the constraints set by the Act.
- 5.8. In particular, some respondents questioned various aspects of the wording of the definitions of ALN and ALP. These definitions are set out in the Act and cannot be changed by the ALN Code. The wording of

the definitions of ALN and ALP used in the Act, which is repeated in the draft ALN Code, is deliberately similar to that currently used in relation to the definitions of SEN and special educational provision, with which many professionals will already be familiar.

- 5.9. Respondents also questioned other elements of the system laid down in the Act. For example, some disagreed with the principle of local authorities being responsible for preparing and maintaining IDPs for all looked after children. Others called for the creation of new requirements for which the Act makes no provision, such as making it compulsory for parties to engage in disagreement resolution before they are able to make an appeal, or requiring NHS bodies to comply with a Tribunal order. The ALN Code and regulations must align with the Act and cannot require any person to do something for which the Act provides no power.
- 5.10. Likewise, there were frequent calls to convert many of the “shoulds” included in the draft ALN Code to “musts”. The range of things about which the Act gives powers to make mandatory requirements is limited by the Act. Even where the Act does provide such a power, there is a question of whether a mandatory requirement (a “must”) or statutory guidance (a “should”) is more appropriate. An important consideration is whether there could be occasions when non-compliance would be justified and if so, whether these would be better dealt with by having specific exceptions to a mandatory requirement or by making the matter statutory guidance, which allows the person to justify a departure from it on a case-by-case basis.
- 5.11. Some respondents also expressed concern about the language style used in the draft ALN Code. As the ALN Code will impose mandatory requirements which are law, the language used must be suitably clear and precise. Similarly, the guidance in the Code needs to be suitably clear and precise so that those who must have regard to it can understand what it is they are to do unless they have a justification for not doing it. As a result, the language is quite formal in places, although on occasions where it may be difficult to follow, examples have been given to illustrate the meaning. It is also important to note that the ALN Code is primarily intended to be read and used by professionals working in the public authorities that have functions under Part 2 of the Act, as listed in Chapter 1 of the draft ALN Code. The draft ALN Code has not been written so as to be accessible to the wider public as that is not the ALN Code’s intended audience. However, local authorities are required by the Act to make arrangements to provide information and advice about the ALN system.
- 5.12. Some respondents were concerned that the draft ALN Code says little about mental capacity in relation to young people and parents. This issue has now been addressed in the revised ALN Code. Welsh Government is also working with partners in Whitehall to ensure the

Liberty Protection Safeguards Code of Practice takes account of the ALN Act and its Code and regulations.

- 5.13. Some respondents raised issues about transport provision for post-16 learners with learning difficulties or disabilities. As mentioned in the consultation document, the Welsh Government intends to consult on revisions to the Learner Travel Statutory Provision and Operational Guidance 2014. That consultation exercise is currently underway to better understand the implications of any future changes. A report on the responses to this targeted consultation will also contain recommendations for further work on revising the Measure, and is due to be published this spring. In the meantime, a non-mandatory section for transport has been included in the IDP template, provided in the Annex of the Code.
- 5.14. Some respondents suggested that the Code needs to include guidance on other relevant legislation or on matters set out elsewhere in statutory guidance. The Act is clear that the guidance the Code may contain is about the exercise of functions under Part 2 of the Act and about any other matter connected with identifying and meeting additional learning needs. Generally, therefore, it is not appropriate for the Code to provide guidance about other matters, although where appropriate, references are made to other relevant areas of law and guidance.
- 5.15. Many respondents considered that the implementation of the new ALN system would have a considerable financial impact, particularly on local authorities in Wales. The key financial implications of the Act were included in the Regulatory Impact Assessment (RIA) which accompanied the Bill. In particular, the RIA was subject to intense scrutiny by the National Assembly's Finance Committee, including a delayed vote on the financial resolution motion whilst further independent analysis was undertaken. This analysis was considered by the National Assembly before it passed the financial resolution in relation to this matter. The RIA for the Bill discussed the key provisions and associated costs with the ALN system, whereas the RIA for the Code provides further details on and considers these key provisions, reflecting more specifically on duties imposed by the Code. The Code's RIA also provides a detailed section on the amendments to the Code following the consultation in 2018/19. None of these areas were re-considered in this work, unless specific evidence was provided to counteract the original findings.
- 5.16. In recognition of the costs of moving from the current legislative framework to the new ALN system, implementation grant funding is being provided on a regional basis, co-ordinated by Regional ALN Transformation Leads, to roll-out regional, multi-agency training and professional development on the new legislative framework and its implications for all those involved in supporting learners with ALN. The training will target key practitioners with specific roles in the new

system (including the ALNCo and DECLO roles) to ensure the effective implementation of the new ALN system.

- 5.17. A number of respondents requested that the Welsh Government consider developing an electronic system to support the IDP process. Work is already underway in this area and we are currently undertaking an initial scoping exercise to establish both the feasibility and appropriateness of developing a Wales-wide online system.
- 5.18. Finally, respondents also raised concerns about the capacity of the specialist workforce, including educational psychologists, to deliver elements of the new system described in the draft ALN Code. Work is already being undertaken to improve the capacity of the specialist workforce).
- 5.19. The changes as a result of the consultation responses to the proposed revisions to the Social Services and Well-being (Wales) Act 2014 Part 6 Code of Practice – Looked After and Accommodated Children are being dealt with separately and are therefore not covered here.

Consultation on Representatives for Young People, and Parents of Children, Lacking Capacity

- 5.20. A separate consultation on proposals for representatives for young people, and parents of children, lacking mental capacity ran from 3 September to 29 October 2020.
- 5.21. The consultation documents included a draft version of Chapter 31 of the ALN Code (Representatives for young people, and parents of children, lacking mental capacity) and the draft “Young people, and parents of children, lacking capacity Regulations 2020”.
- 5.22. Following the consultation, those draft regulations were incorporated, with amendments, into the Additional Learning Needs (Wales) Regulations 2021 as Part 4.
- 5.23. The consultation found broad support for the proposals. A summary of responses was published on 22 January 2021 which can be accessed at <https://gov.wales/sites/default/files/consultations/2021-01/representatives-young-people-and-parents-of-children-lacking-capacity-summary-of-responses.pdf>

Changes to the draft Code following both consultations

- 5.24. A huge number of comments were received covering nearly every aspect of the consultation draft of the Code and proposed regulations. The Welsh Government have carefully considered what changes to make in the light of respondents’ comments. These changes, and the reasons for them, are explained in the following table. Welsh Government have also restructured the Code to improve its structure

and readability, including introducing some new chapters. Flowcharts have been removed because we found that they could be interpreted in different ways and there was a risk the flowcharts could detract from the legal text.

New Chapter	Old Chapter	What has changed
1 – Introduction	1	The introduction has been amended to reflect changes to the content of the Code (such as new chapters) and the provisions in the Additional Learning Needs (Wales) Regulations 2021. It has been streamlined to improve readability. There is also now more detailed explanations of how requirements imposed by the Code and descriptions of requirements in the Act or regulations are to be interpreted (for example, in relation to cases where a child has a case friend or a child's parent or a young person lacks capacity).
2 – The definition of ALN & ALP	7 (first part)	This chapter has been created from the first part of what was previously chapter 7 in the draft version of the Code. (The second part has created Chapter 20) Following consideration of the consultation responses; the chapter has been moved towards the beginning of the Code, with the structure and content amended to provide further guidance and greater clarity in relation to the definitions of ALN and ALP and their application in the ALN system.
3 – Principles of the Code	2	This chapter has been significantly cut back and streamlined to highlight the principles of the Code, without providing extensive examples which may have detracted from its key message.
4 – Involving and supporting children, their parents and young people	3	This chapter has been significantly redrafted to improve the structure and flow of the chapter; and to provide further guidance and greater clarity in certain areas. In particular, there is much more statutory guidance about young people's consent.
5 – Duties on local authorities & NHS bodies to have regard to UNCRC & UNCRDP	4	This chapter has only had minor amended; no significant changes were required.
6 - Advice and Information	6	This chapter has only had minor amendments, in order to reflect changes elsewhere in the Code and to improve clarity in some areas. One piece of

		statutory guidance is now a requirement and there is a little more statutory guidance.
7 – Duties on local authorities to keep additional learning provision under review	5	Chapter 7 (which was Chapter 5 in the consultation version) has been streamlined, with certain amendments made to clarify matters in some areas. Other changes have been made to bring the chapter in line with changes made elsewhere in the Code. The key aspects of this chapter have only had minor amendments, if any at all; it is mainly the supporting guidance around it which has been amended or the structure reorganised.
8 – Role of the ALN Co-ordinator	24	We have strengthened the chapter to provide further clarity on advice already provided within. Examples of this include the consideration a head of an education setting should give to the allocation of sufficient time for the ALNCo to undertake their role and the expectations around ALNCos undertaking training and development. In accordance with the ALNCo Regulations, amendments have been made to some of the duties on ALNCos set out within the chapter. These amendments include clarity on who has responsibility for undertaking certain tasks (regulations 5(h) and 6(h) of the draft ALNCo Regulations – previously regulations 5(i) and 6(i) of the previous version of the regulations consulted on in 2019) Furthermore, some ALNCo duties previously set out in the draft of this chapter have been removed, namely: the duty to prepare and review of information required to be published by the governing body pursuant to the code; and the duty to provide information to the individual (and in the case of a pupil, their parent) about their ALN, IDP and ALP being made. These have been removed from the chapter following their removal from the ALNCo Regulations.
9 – Role of the Designated Education Clinical Lead Officer	15 (second part)	This chapter was created by removing the section relating to the role of the Designated Education Clinical Lead

		Officer (DECLO) from the previous Chapter (15) on multi-agency working. This was done to allow a single chapter for each of the statutory roles within the ALN Code and system. The substance of the chapter has not been amended significantly, however it has been streamlined and there have been changes to improve clarity and for greater similarity in the structure to the other chapters on the statutory roles.
10 – Role of the Early Years ALN Lead Officer (ALNCo)	8 (second part)	The substance of this chapter has not significantly changed. There have been some structural changes, formatting changes and other small amendments to improve clarity.
11 – Duties on LA's about children under CSA (Compulsory School Age) and not at a maintained School	8	These chapters have been significantly amended. These chapters comprise the main duties in relation to the ALN system for the majority of children and young people. In the draft version of the Code, the requirements were set out across 4 chapters; however, having considered the responses to the consultation, they have been separated out into more specific circumstances and age ranges. Provisions related to the preparation of an IDP have been removed to Chapter 23, since many of them apply in most or all of the separate circumstances and can also be relevant when maintaining an IDP.
12 – Duties on maintained schools & LA's for children at a maintained school	9	
13 – Duties on LA's about children of CSA not attending a maintained school	11	
14 – Duties on LA about children they look after	New Chapter	
15 – Duties on Schools & LA's about Young People (YP) attending a maintained School	New Chapter	
16 – Duties on Further Education Institute (FEI) & LA about YP at a FEI	10	These structural changes are intended to make this part of the Code more user-friendly. The content itself has also been streamlined and amended significantly to provide greater clarity, consistency across the chapters, more details in some areas, to improve connections to other parts of the Code and to ensure that the requirements are clearer and effective. However, in the main, the essence of the requirements and guidance across these chapters remains unchanged. One of the most significant changes in terms of requirements, is in relation to

		requirements on local authorities to consult an Educational Psychologist. These requirements have been changed, so that when a local authority is required to decide whether a child or young person has ALN; the authority must consider whether to seek advice from an educational psychologist, and, where it considers such advice necessary to determine certain things, it must seek it. This change was as a result of responses to the consultation about the requirements being too burdensome and provides both a statutory footing for the Educational Psychologist role, but also reduces the potential significant burden that a blanket requirement to consult an Educational Psychologist in all circumstances could cause.
17 – Duties on LA's about YP not at a maintained school or FEI	12	This chapter has been significantly redrafted to correspond to the details in regulations 6 to 10 of, and Schedule 1 to, the Additional Learning Needs (Wales) Regulations 2021. However, the policy principles as originally set out in the previous draft chapter have not changed. The chapter sets out the considerations and requirements a local authority must undertake in determining whether an IDP is necessary to meet a young person's reasonable needs for education or training (where the young person is not at a maintained school or FEI in Wales). The principle considerations for securing a specialist post-16 placement reflect those under the existing system (whereby the Welsh Ministers secure such placements). In addition, other changes have been made along the lines of those described in respect of chapters 11 to 16.
18 – Children & young people in specific circumstances	23	This chapter has been significantly redrafted to improve the structure and flow of the Chapter; and provide more guidance on a range of different circumstances. There is also a new requirement in respect of children and young people whose parent is Service personnel.

19 – Children & young people subject to detention orders	22	There have been changes to explain more clearly how the ALN system applies in respect of children or young people subject to a detention order (including detained persons), including explaining what definitions mean in practice and mentioning other matters relevant to detention situations and giving more practical guidance. The Chapter also deals with referrals to NHS bodies under section 20 of the Act where an IDP is being prepared for a detained person, giving guidance on when this would be appropriate and imposing a related requirement where a relevant treatment or service is identified. The amendment to section 44 of the Act regarding an NHS body's duty under section 20 (about it not applying during the detention) is reflected. With regards to the timescales in this chapter, and in-keeping with similar amendments throughout the Code, there is now a specified period within which the action (e.g. to decide on ALN and prepare an IDP or to review an IDP) must be taken, subject to the usual exception. Previously, the requirement was just to take the action promptly. What was previously guidance about reviewing an IDP upon release of a detained person has become a requirement and there is supporting guidance around that requirement. There are also changes to align requirements with how similar ones elsewhere have been refined, to improve the cross-referencing (and reflect the structural changes) and changes to reflect requirements in the Additional Learning Needs (Wales) Regulations 2021, including the regulations dealing with the necessity of an IDP.
20 – Identifying ALN & deciding upon the ALP required	7 (second part)	As with Chapter 2 (Definition of ALN and ALP), this chapter has been created from the second part of what was previously Chapter 7 in the draft version of the

		Code. Following consideration of the consultation responses; the structure and content has amended to provide further guidance and greater clarity in relation to identifying ALN, deciding upon the ALP required, and gathering and using evidence to support those decisions and to align with changes elsewhere
21 – Multi Agency working	15 (first part)	This chapter has been amended to give greater clarity and more detail in certain places; but the majority of the content has not changed. The key change is that the section on the DECLO role has been removed and placed in a separate chapter (Chapter 9). In particular, statutory guidance on the Local Health Board to which a referral under section 20 should be made has been added, as has provision about where a Local Health Board ceases to be responsible for a child or young person.
22 – Meetings about ALN & ALP's	18	This chapter has been amended to give greater clarity and detail in certain places and to improve the structure; but the content and duties have not significantly changed. However, there is additional guidance about holding meetings virtually, as well as further guidance about matters that may need to be considered in order to enable better participation from children and young people.
23 – Preparing an IDP and its content	13	This chapter has been redrafted significantly. There were certain elements contained within the main duties chapters (now 11 to 17), relating to preparing or maintaining an IDP, which applied to all or most circumstances, and were repeated across each of those chapters and some elements that were only dealt with in one of those chapters but were potentially relevant in other situations. In order to streamline the main duties chapters, and to provide greater clarity and guidance when preparing an IDP or reviewing it, those elements of guidance have been moved and included here instead. The structure and wording within this chapter has also been amended to improve flow and ease of use. A section

		has also been added both here and in the standard form templates at Annexes A and B to provide for information about travel arrangements.
24 – Preparing an IDP and its content for LAC	14	This chapter has been amended in line with the changes to Chapter 23; and has been streamlined to avoid a duplication of the information contained in that Chapter. This Chapter now simply explains the difference in the process and the content of an IDP for a looked after child, but the guidance on the relevant content of each part of the IDP is set out in Chapter 23.
25 – Review and Revisions of IDP's	16	This chapter has been amended to give greater clarity and more detail in certain places. It has also been restructured and streamlined where possible but the essence of the content has not significantly changed.
26 – Local authority reconsiderations & taking over responsibility for IDP	17	This chapter has been amended to give greater clarity and more detail in certain places, including improving the connections to other parts of the Code. Structurally, the chapter has changed but the content has not significantly changed. Provisions about consulting an educational psychologist have been removed.
27 – Planning for and supporting transition	19	This chapter has been significantly redrafted. The chapter is now less prescriptive with less statutory guidance. This responds to the many conflicting comments received during the consultation which made apparent that transitions are flexible and will require an individualised approach. Details about seeking the consent of a child who becomes a young person to their IDP continuing to be maintained are now dealt with in Chapter 4.
28 – Transfer of responsibility for maintaining an IDP	20	This chapter has been amended to give greater clarity and more detail in certain places, including making connections to other parts of the Code and reflecting the detail of the Additional Learning Needs (Wales) Regulations 2021. Structurally, the chapter has changed but the content has not significantly changed.
29 – Ceasing to maintain an IDP	21	This chapter has been amended to give greater clarity and more detail in certain

		places. Structurally, the chapter has changed but the content has not significantly changed.
30 – Case friends for children who lack capacity	27	This chapter has been updated to reflect technical changes made to the regulations. It clearly explains how a child who lacks capacity, can use a case friend to act on their behalf when exercising certain rights. It also provides information on the role of a case friend, and how they are appointed and removed by the Tribunal.
31 – Representatives for parents of children & young people lacking capacity	New Chapter	Following the public consultation that ended on 29 October 2020, the chapter has been amended to include additional cross-references particularly to the Mental Capacity Act's Code of Practice. The chapter has also clarified that representatives can access independent advocacy services. The chapter also includes new footnotes referring to the impact of the Re: D case.
32 – Avoiding & resolving disagreements & Independent Advocacy	25	This chapter has been amended to give clarity and more detail where it was needed. Structurally, the chapter has not changed and the content and duties have not significantly changed.
33 – Appeals & Applications to the Education Tribunal	26	This chapter has been updated to reflect technical changes made to the regulations. To ensure that the chapter describes the appeal process and the timescales involved. It provides clarity in what can be appealed and by who. It includes information about how to make an application to the Tribunal regarding lack of capacity. It also includes a section about children bringing their own appeal to Tribunal.

PART 2 – REGULATORY IMPACT ASSESSMENT

ALN Code including post-consultation amendments

6. Options

- 6.1. This chapter outlines the options associated with establishing the Additional Learning Needs Code for Wales.
- 6.2. As part of these essential reforms, the ALN Code will replace the existing Special Educational Needs (SEN) Code of Practice for Wales. Over a phased three year implementation period starting from 1 September 2021, all statutory guidance in the SEN Code of Practice will be switched off with new provisions being introduced via the ALN Act, the ALN Code and related regulations.
- 6.3. This Regulatory Impact Assessment (RIA) has been developed to consider the regulatory implications for mandating requirements on local authorities and governing bodies in relation to duties set out in the ALN Code (and associated regulations).
- 6.4. The Welsh Government proposes to lay the ALN Code, along with related regulations, before the Senedd on 2 March with a plenary debate on 23 March. This RIA reviews the proposals on whether to bring into force the ALN Code.
- 6.5. The RIA reviews two options, described below.

Option one: do nothing

- 6.6. Under option one, the existing SEN system will continue with the SEN Code of Practice setting out the role of education providers in identifying and improving the experience of children with special needs.

Advantages

- 6.7. Option one does not involve any additional costs.
- 6.8. Additionally, part of the £20.244m funding agreed on 7 February 2017 to cover the costs of transition from one statutory system to another and deliver the wider system transformations could be spent elsewhere.

Disadvantages

- 6.9. The current system is inequitable. Children and young people with the most severe needs and who fall above the threshold for having a statement of SEN, have service provision which is protected by law.

In contrast, children and young people whose needs are less severe and who fall below the threshold for having a statement of SEN do not have protected provision or statutory rights.

- 6.10. The existing practices and processes associated with statements of SEN are inefficient and inflexible, and can result in ineffective provision for children and young people.
- 6.11. The current arrangements for reviewing and amending statutory plans are administratively cumbersome and involve schools inviting a prescribed set of professionals, regardless of whether their presence and input is necessary to the effectiveness of the review. Statutory reviews take considerable time to organise and prepare for. Amending a plan can, therefore, be a lengthy process and can result in learners experiencing delays in receiving the most appropriate support.
- 6.12. In addition, there is little flexibility when reviewing the provision for children and young people who are on the threshold for receiving statutory support. Where, for example, the outcomes of a statutory plan have been achieved for a child or young person, concern from parents about losing statutory entitlement may result in pressure for the plan and its provision to be maintained, despite this not necessarily being the most effective provision for the young person.
- 6.13. Finally, without the ALN Code, the reforms to the SEN system and the introduction of the new ALN system could not proceed.

7. Option two: replace SEN Code of Practice with ALN Code

- 7.1. Under option two, the existing SEN system including the SEN Code of Practice will be entirely replaced with the ALN system including the statutory ALN Code.
- 7.2. Option two is the preferred option.
- 7.3. A potential third option could have been to progress with the draft ALN Code as published in June 2019 before the consultation. However, this would not have been a genuine option given the legal requirements to conduct a meaningful consultation on the draft ALN Code, and the public commitment to making improvements to the Code before it is laid before the Senedd.

8. Advantages

- 8.1. The advantages of continuing with the planned reforms, including laying the revised ALN Code and introducing the legislative system the Code helps underpin, will be discussed in more detail under section 7. However, the key advantages relate to the reasons for reforming the SEN system in the first place; that the revised ALN

Code will make significant improvements to the support offered to children and young people with ALN in Wales.

9. Disadvantages

- 9.1. Likewise with the advantages, the disadvantages are discussed in detail below. However, the main point to note is the potential risks involved with introducing a new legislative system. There is a risk that costs will increase, both in terms of financial cost and pressure on resources. However, according to [Estyn Annual Report 2018-2019](#) "Schools and PRUs with clear leadership roles and excellent practice are well placed to make the transition from the current SEN system to the new ALN system."
- 9.2. There is also the risk of introducing these reforms at unprecedented times in education settings, with COVID-19 potentially impacting on the ability of local authorities and governing bodies (and other statutory bodies) to manage with implementation. However, this risk relates more to implementing the system rather than introducing the ALN Code.

10. Costs and benefits

- 10.1. The ALN Code includes statutory guidance about the exercise of functions under Part 2 of the ALN Act, which establishes the statutory system in Wales for meeting the ALN of children and young people. The Code also includes statutory guidance on other matters connected with identifying ALN and meeting the needs of children and young people with ALN, and describes relevant statutory requirements, including ones in the Act.
- 10.2. There are many hundreds of individual statutory duties throughout the Code, where the requirements (written as a "**must**" in the Code) takes its powers from subordinate legislation - either from the Code itself or from regulations - as opposed to deriving the powers directly from the ALN Act. These duties relate to the detail and processes of how the system will operate, including details on the roles and tasks set out in the ALN Act.
- 10.3. It is not the purpose of this RIA to discuss the impact of every statutory duty in the Code. Rather, this RIA discusses the duties in a thematic way, with specific references to the new duties as amended following consultation on the draft ALN Code.
- 10.4. To better understand the impact of the statutory duties made under subordinate legislation, every "**must**" in the Code was compiled, analysed and organised into categories of the likely cost of each duty in terms of their significance, rather than a financial estimate for each individual duty. All duties considered to be greater than a low cost

related to small, administrative tasks (such as sending a notification) were compiled into themes. These themes are discussed in detail below.

- 10.5. Where relevant, references to the costs as set out in the [Regulatory Impact Assessment](#) for the ALN Act (published in January 2018), are used here.

11. £20m funding package for delivering the ALN system

- 11.1. The £20.244m package of funding is being used to support implementation of the Act and delivery of the wider ALN Transformation Programme.
- 11.2. A large part of this funding will be used to develop the workforce so that all partners understand and are prepared for the changes being introduced. This includes workforce development to help build capacity and ensure practitioners have the skills to effectively operate the new system in order to meet learners' needs.
- 11.3. We are targeting workforce development at three levels; core skills development for all practitioners, advanced skills development through the establishment of the role of Additional Learning Needs Coordinators (ALNCos), which will replace the current SENCo role; and specialist skills development for local authority provided specialist support services available to education settings.
- 11.4. Five ALN Transformation Leads have also been in post since April 2018. Their role is to provide advice, support and challenge to local authorities, schools, early years settings and further education institutions, as they prepare for implementation of the reforms. This includes through readiness self-assessments and the development of local implementation plans. The ALN transformation leads will be responsible for rolling out implementation training on a multi-agency regional basis.

12. Themes identified from the statutory duties in the ALN Code

- Designating statutory roles (ALN co-ordinating officers)
 - DECLO
 - ALNCO
 - Early Years ALN Lead Officer
- Individual Development Plans (IDP)
 - Preparing an IDP
 - Securing ALP
 - Reviewing an IDP
- Independent Advocacy Services
- Costs for reviewing system

13. Costing of subordinate legislation

- 13.1. The RIA for the ALN Act concluded that the new ALN system itself should not increase in cost compared to the current SEN system.
- 13.2. Welsh Government has asked local authorities to provide evidence if they believe the new system will be more costly, but to date no such evidence has been received.
- 13.3. Based on the currently available evidence, we continue to support the position set out in the ALN Act's RIA. However, we do recognise there may be risks in implementing a new system when the level of funding available to local authorities, schools, FEIs and health boards is limited. This issue clearly goes wider than ALN, and relates to public sector finances more generally; however, these concerns continue to persist in any public discourse about the ALN reforms.
- 13.4. This RIA should assist the reader to understand the potential costs and benefits associated with the revised ALN Code, whilst giving an overview of the impact of the ALN Code in general, using the thematic method described above.
- 13.5. The costs and benefits discussed below are based on agreeing to Option 2.
- 13.6. The duty to designate Additional Learning Needs Co-ordinating Officers
- 13.7. Additional Learning Needs Co-ordinator (ALNCo)

14. Benefit

- 14.1. Option two will require all education settings including pupil referral units (PRUs) and FEIs to appoint an ALNCo. This extends current arrangements where existing non-statutory SENCo are used in most schools in Wales. Making the ALNCo a statutory role will bring a consistent approach to co-ordinating ALP for learners in Wales and help foster better working relationships across sectors.

15. Post-consultation additions

- 15.1. Following the consultation on the ALN Code, we have strengthened the ALNCo chapter to provide further clarity on advice already provided within. Examples of this include the considerations head teachers should give to the allocation of sufficient time for the ALNCo to undertake their role and the expectations around ALNCos undertaking training and development.
- 15.2. In accordance with the ALNCo Regulations 2020, amendments have been made to some of the duties on ALNCos set out within the chapter. These amendments provide clarity on who has responsibility for undertaking certain tasks (regulations 5(e) and 6(e) of the ALNCo regulations 2020) and on what aspects of record keeping the ALNCo must undertake (regulations 5(c) and 6(c) of the ALNCo regulations 2020). Furthermore, some duties previously set out in the draft of this chapter have been removed. These relate to what was the preparation and review of information required to be published by the governing body pursuant to the ALN Code, and the duty to provide information to the individual (and in the case of a pupil, their parent) about their ALN, IDP and ALP being made. These have been removed from the chapter and the ALNCo Regulations 2020 due to changes made elsewhere to the ALN Code in this regard.
- 15.3. These amendments are unlikely to make any significant impact on the cost or benefits associated with this part of the ALN Code, but may provide clearer support for those with statutory duties relating to the ALNCo role.

16. Cost

- 16.1. The cost for creating the ALNCo role were discussed in the ALN Act's RIA and the [integrated impact assessment](#) for the ALNCo regulations. Given the broad scope of the role and the way it will vary from setting to setting, it will not be possible to provide an estimated cost for the role. The most significant impact identified in this IIA was how the proposed regulations will contribute to the raising of standards in the co-ordination or ALP for children and

young people with ALN. Local authorities will do this by providing assurance that the new ALNCo role will be undertaken by qualified individuals (i.e. qualified teachers or experienced SENCOs) who are required to undertake the co-ordination of ALP in a consistent way, irrespective of education setting. This should result in an improvement in the way in which ALP is planned and delivered for children and young people.

- 16.2. No further financial costs have been identified within the ALNCo chapter of the ALN Code.
- 16.3. There is a theoretical risk that the new ALNCo requirements may be perceived as creating an additional burden on local authorities which may discourage current SENCOs from applying to become an ALNCo. However, there was broad support for making the ALNCo a professional role and we have not received any evidence to suggest this risk will transpire.

17. Designated education clinical lead officer (DECLO)

Benefit

- 17.1. Option two will ensure every local health board (LHB) will designate a DECLO to take responsibility for ensuring the day-to-day health provision for children and young people with ALN is effectively managed and co-ordinated.
- 17.2. Although much of the work the DECLO will be responsible for under the ALN system will already have been undertaken within each LHB currently, without this designated role the work involved to supervise the provision of health related special educational provision has been inconsistent and difficult to measure.
- 17.3. Appointing a DECLO within each health board will have the benefit of facilitating the delivery of effective, co-ordinated health services to improve outcomes for children and young people with ALN. The DECLO will also support the health board to discharge their responsibilities under the ALN system and facilitate the effective collaboration between health boards and their partners in the delivery of services for learners with ALN.
- 17.4. The DECLO will also ensure there is a robust structure for assuring the quality and safety of services and collect data about service quality, outcomes and performance; simplify the system for children, young people, parents and partners by providing a single point of contact for local authorities and others within health boards on ALN matters. In addition, the appointment of the DECLO should ensure ALN provision is a strategic priority for health boards.

- 17.5. One of the key benefits of introducing the DECLO role will be the improved links between health and other sectors, and the co-ordination of multi-agencies centred on the needs of the individual. The system is designed to cut the number of meetings and assessments required to receive ALP, and to ensure continuity of support for the individual as they transition, in age, key stages and educational development.

18. Post-consultation additions

- 18.1. There is a new chapter in the ALN Code on the role of the DECLO. This chapter was created by removing the section relating to the role of the DECLO from the Chapter 15 on multi-agency working. This was done to allow a single chapter for each of the statutory roles within the ALN Code and system. The substance of the chapter has not been amended significantly, but is now easier for the reader to follow.

19. Cost

- 19.1. The cost of introducing the DECLO role was discussed in the ALN Act's RIA where it was concluded there would be no new costs to local health boards.
- 19.2. This is because the role is expected to be fulfilled by an existing member of staff, and the DECLOs and other health professionals will undertake the required training within the hours allocated for them to undertake continuous professional development (CPD). Although the role itself is new, the duties the DECLO will be responsible for as set out in the Code are already being undertaken within health boards by exiting members of staff under the SEN system. The purpose of having a DECLO will be to standardise this role and improve multi-agency working by having a named individual in each health board. On average, each of the seven local health boards in Wales will have a healthcare professional undertaking DECLO responsibilities for approximately two days per week.
- 19.3. The duties in the ALN Code chapter relating to the DECLO role provides more details on the role itself, with guidance used to set out how DECLOs are expected to undertake their tasks. The introduction of the DECLO role and the estimation of the resource this will take poses a low and manageable risk to local health boards, particularly as DECLOs are not expected to be full time positions and will likely be undertaken by existing senior members of the health board.
- 19.4. With the duty to provide health related ALP for learners up to the age of 25, there could be an increase in the number of cases referred to

an NHS body requiring health related ALP. This risk, although not based on evidence the Welsh Government has seen, could potentially increase costs for LHBs in terms of the systems they introduce to support the DECLO role and their statutory functions under the ALN system. Although it is difficult to estimate how extending the age range to 25 will effect these costs, the Act's RIA did explain that young people who have the most complex needs and attend a specialist FE establishment will currently have a statutory learning and skills plan. Where a young person needs medical care whilst at a specialist FE establishment, the health board will be asked to contribute to the learning and skills plan. Under the ALN system, this practice will continue but health boards will be asked to contribute to the IDP instead. It was concluded that there will be no additional costs to health boards where a young person attends a specialist FE establishment.

20. Early years additional learning needs lead officer (Early Years ALNLO)

Benefit

- 20.1. Under option two, an Early Years ALNLO will be appointed by every local authority in Wales to have responsibility for co-ordinating the local authority's functions under the Act in relation to children under compulsory school age who are not attending maintained schools.
- 20.2. The Early Years ALNLO will play an important role in raising awareness of the ALN system and how it applies to children under compulsory school age; promoting early identification and prevention of ALN; and other strategic responsibilities. These duties will help families understand their children's ALN and the options available to support their education. The role should therefore include a social benefit by reducing the fears associated with ALN and reassuring parents that support is available in early years settings.
- 20.3. Another advantage of including this new role in the ALN Code will be to improve the co-ordination of provision for children in early years settings and ensure there is a single, named officer where issues can be directed to. This will help concerned families who under the SEN system may have struggled to engage with the relevant individuals.

21. Post-consultation additions

- 21.1. No significant changes to the content have been made since consultation.

22. Cost

- 22.1. The cost of introducing the Early Years ALNLO role was also mentioned in the ALN Act's RIA. As set out there, for illustrative purposes a salary of £49,700 is used to estimate the ongoing costs of introducing the early years ALN lead officer. The estimated ongoing cost to the 22 local authorities in Wales is, therefore, estimated to be approximately £1,093,400 a year. Since local authorities already undertake the functions associated with the early years ALN lead officer, this will not be an additional ongoing cost.
- 22.2. It is estimated local authorities will incur transition costs of £126,700 related to training early years ALN lead officers. The estimated cost of training early years ALN lead officers is based on the same cost model used to estimate the ALNCo training costs. That is, it is assumed the early years ALN lead officers will be trained to masters level at a cost of £3,600 per degree, with a total estimated cost of £79,200 to the 22 local authorities in Wales, and will take 10 days of paid study leave over the two year period at an estimated cost of £47,520.
- 22.3. There are no other duties in the Early Years ALNLO role chapter apart from the local authority's duty to designate an officer.

24. Individual Development Plans

- Preparing an IDP
- Securing ALP
- Reviewing an IDP

Context

- 24.1. Data shown in the Act's RIA has revealed the number of children and young people recorded as having SEN from 2011-12 to 2015-16 has been relatively stable at 23% of pupil population. Although the ALN system extends the age range to 25 years, the number of young people between the ages of 19-25 in education or training with ALN, who consent to having an IDP, is likely to be low. Welsh Government's latest figures show 83 post-19 specialist placements were secured in 2018/19. Using the figures available in the Act's RIA and from Stats Wales, there will be around 110,000 school age IDPs, with around 1,000 for below compulsory school age, and around 2,000 in all post 16 education and training.

25. Benefit

- 25.1. If option two is chosen, the introduction of the ALN Code will result in all children and young people with ALN being treated equally under the law, regardless of the severity of their need. All learners in early years settings, schools (including maintained nurseries, pupil referral units and special schools) and FEIs who require additional learning provision (ALP) will be entitled to a statutory, individual development plan (IDP) with rights of appeal. This will improve the equity of the system of support for learners whilst contributing a social benefit by extending the rights of children and young people and working towards improved educational outcomes.
- 25.2. Introducing statutory plans for all children and young people with ALN will enable a greater focus on early identification of need which should prevent or reduce conflict within the system. This could result in a long term reduction in the number of appeals going to Tribunal, however the number of potential appellants will necessarily grow with all children and young people with ALN having rights of appeal. Equitable statutory plans should also improve the way provision is secured and ensures it remains in place as long as it is required (up to the age of 25).
- 25.3. The duties in the ALN Code on local authorities and governing bodies to prepare an IDP, secure the ALP and review IDPs are broadly set out in the ALN Act and its impact has been documented in the ALN Act's RIA. However, the revised ALN Code sets out in detail how these arrangements must be undertaken. For example, many of the requirements imposed by the ALN Code and associated regulations related to IDPs are around the timescales to complete certain tasks. A local authority, for instance, should act "promptly" to decide whether it should take over responsibility for maintaining the IDP and give the notification within the period of 7 weeks from the request to take over responsibility for the IDP, unless it is unable to do so within that period due to circumstances beyond its control.
- 25.4. The benefit of imposing timescales to the specific duties related to this core function of the ALN system enables children, young people and their families to have a realistic expectation of when certain decisions or processes should be completed. This should help alleviate much of the current tension in the SEN system where delays and inconsistencies have caused significant anxiety in the past. It is also expected these timescales will help reduce the time it currently takes to complete certain decisions or processes, such as preparing a statutory plan of support. By using the word "promptly", the ALN Code expects duties to proceed without delay, whereas

only using a set timescale for every duty without first using the term “promptly” may lead to the maximum amount of time allowed to carry out any particular duty to become the default timescale.

26. Post-consultation additions

26.1. Chapters 11-15 of the ALN Code comprise the core duties in relation to the majority of children and young people with ALN. Additionally, chapters 16 and 17 comprise duties in respect of young people FEIs or not in a maintained school. These have been significantly redrafted in response to the consultation. They now appear in separate chapters, based on age specific circumstances to provide greater clarity on the roles of statutory bodies to support learners with ALN. The elements of guidance applicable to all these age groups now appear in a single chapter to provide greater clarity and guidance when preparing an IDP or considering the ALP it should contain. However, in the main, the essence of the key duties across these chapters remains unchanged.

27. Cost

- 27.1. As stated in the ALN Act’s RIA, local authorities will be responsible for preparing, maintaining and reviewing IDPs for all children with ALN who are looked after by them. It was estimated at the time of the Act’s RIA that local authorities will spend approximately one hour preparing the application at a cost of approximately £18 per application based on 20 applications each year (this number is not expected to change as a result of introducing the ALN system). As identified in the Act’s RIA, local authorities are not expected to incur any additional costs under option two. Currently, local authorities put together a case when applying to the Welsh Ministers for consent for a child or young person with a statement of SEN to be placed at an independent school which is not generally approved to admit learners with statements of SEN. Under option two, local authorities will continue to have to satisfy themselves the placement is appropriate.
- 27.2. Numerous calls for evidence, from the Deloitte research in 2015 to Welsh Government officers asking local authorities for data, has provided no indication to challenge the estimate in the ALN Act’s RIA, and ultimately that the new system is estimated to be cost neutral compared to the current SEN system.
- 27.3. Reviewing an IDP will be an ongoing process and although there are requirements to review IDPs (such as annual reviews), the work to inform these meetings should be done

continuously. The cost of reviewing IDPs will predominately be the time it takes for the ALNCo or other member of teaching staff to conduct the review meeting.

- 27.4. Likewise with preparing an IDP, there will be circumstances when plans start from scratch (a new learner from across the border, a new disability which calls for ALP), however in most cases, those with ALN will already have been identified and will likely have some provision already in place. Preparing an IDP will not be a significant cost to the school or local authority, although it could be seen as a moderate cost in the most complex cases. However, in cases where an FEI had a duty to prepare or maintain an IDP, this would be a new cost and could be seen as onerous to begin with. Therefore, FEIs may see an increase in their costs but the system as a whole is not expected to create an overall increase in cost.
- 27.5. In 2018/19, 11,095 young people, aged 16-24 years of age, were recorded as having learning difficulties and/or disabilities (LDD) in FEIs. Although it is not expected FEIs will need to prepare all IDPs from scratch (in time, many young people will arrive in the FEI with an IDP), as part of the implementation planning for the roll out of the new ALN system, consideration is given to ways of supporting FEIs to undertake their new duties.
- 27.6. Given that Statements of SEN are already being prepared for children and young people up to the age of 19 years, and individual education plans (IEPs) are in place for many more learners, the exact duties in the ALN Code are new, but in reality, they replace and improve the existing duties within the SEN system.
- 27.7. Increasing the number of children and young people who have statutory entitlement to provision could result in increased pressure for those responsible for securing ALP. Although the previous RIA for the ALN Act did not identify unmet need within the SEN system (and we do not believe the ALN system will create new demand), there is a risk the improved system may be challenging with regards to the resource currently used to deliver the SEN system.
- 27.8. With regards to the introduction of new timescales on many duties in the ALN Code and regulations, there is a small risk that the current level of resources dedicated to the SEN system will not be adequate to fulfil duties (with new timescales) under the ALN system. Although there is no evidence to suggest this, and the timescales introduced by the ALN system have been carefully chosen in consultation with stakeholders, there is a

potential for the new system to require greater resources to fulfil duties within the set timeframe.

28. Advocacy

Benefit

- 28.1. The ALN Code sets out duties on local authorities to establish independent advocacy services (IAS) for the children and young people for whom it is responsible.
- 28.2. IAS will provide expert advice and assistance, by way of representation or otherwise, to a child or young person, where the child or young person is:
- making, or intending to make, an appeal to the Tribunal;
 - considering whether to appeal to the Tribunal; or
 - taking part in, or intending to take part in arrangements for avoiding or resolving disagreement.
- 28.3. The service will be provided free of charge at the point of delivery.
- Although advocacy is frequently used under the SEN system, there is no requirement to provide an equivalent service under SEN Code of Practice. IAS is therefore necessary to provide a consistent approach to advocacy service that specifically deals with issues relating to ALN. IAS, along with a local authority's duty to make arrangements for avoiding and resolving disagreements is intended to significantly reduce the number of disputes that currently occur within the SEN system, and should, in the medium to long term, reduce the numbers of cases going to the Tribunal. This could potentially save time and money for those who may have pursued an appeal had these services not been available.

29. Post-consultation additions

- 29.1. The amendments made post-consultation have clarified the difference between IAS and other advocacy services. It is also now clearer that representatives for young people, and parents of children, who lack capacity, also have the right to access these services. These amendments will benefit those reading the ALN Code without increasing any costs.

30. Cost

- 30.1. The cost of running the new service will be met by local authorities, and will vary considerably from one authority to another. The Act's RIA provided an estimate cost of £5,300 to the local authority for dispute resolution services relating to appeals under the SEN system. Many of the advocacy

services currently available in Wales are provided by the third sector or volunteers, where costs are sometimes covered by contributions from Welsh Government. However, there are other professional advocacy services that will charge for their service.

- 30.2. There is a potential risk with the introduction of IAS over the cost of running the service to local authorities. This is related to its potential use, and the difficulty in estimating how much demand there will be for advocacy services. As the new ALN system beds in, there is a risk of an increase in cases requiring arrangements for avoiding and resolving disagreements or using IAS, which could be costly and time consuming, although careful planning and a successful implementation of the new system should counter such difficulties.

31. Reviews

Benefit

- 31.1. Under option two, the ALN Code will set out the details regarding the Welsh Ministers' duty to review the demand for, and supply of, ALP delivered through the medium of Welsh. The requirement is that such a review is undertaken once every 5 years from implementation.
- 31.2. The review will facilitate the ability to make informed policy decisions about ALP through the medium of Welsh and support the Welsh Government's Cymraeg 2050 strategy.

32. Cost

- 32.1. There will be a financial cost to reviewing the Welsh ALP which has not been worked out. However, the cost will be met by Welsh Government rather than statutory bodies, and is on the face of the Act. As an estimate, this work may be undertaken by a small team made up of one Senior Executive Officer (£47,000 per annum) and one Team Support (£23,830 per annum) for a total of 3 months. This assumes the Welsh Government will not require any external researches, and instead rely on their own Knowledge and Analytical Services to undertake any analysis of the data. The estimated costs associated with these two roles for 3 months is £17,707.50.

33. New musts in ALN Code (post-consultation)

33.1. The table below contains all new duties (**musts**) included in the ALN Code following the public consultation, with the exception of small, administrative tasks (such as sending notifications) which have been filtered out.

33.2. The table below is designed to help the reader understand the potential costs of these new duties.

Ref.	Text	Topic	Cost
19.81	Where a relevant local authority has to decide whether the child or young person has ALN, it must : (a) designate an officer to be responsible for coordinating the actions required to make that decision, any decision as to whether an IDP is necessary for a young person and, if an IDP is subsequently required, to be responsible for preparing it; (b) record the date on which it is brought to its attention, or otherwise appears to it that the child or young person may have ALN; (c) in the case of a young person, record the date on which they consented to the decision being made; (d) record a summary of how the possibility that the child or young person has ALN has been brought to its attention or why it otherwise appears to the authority that they may have ALN; (e) give the relevant notification referred to in paragraphs 22.64 – 22.65.	LA duty to designate a co-ordinator	Low The designation itself is a relatively straightforward administrative task.
16.14	The decision must be taken and the notification given promptly and in any event within the period of 35 term time days from the young person consenting to the decision being made	Decision and time scale	Low to Medium
16.26	The FEI must make the decision on ALN, prepare the plan and give a copy of it promptly and in any event within the period of 35 term time days from the young person consenting to the decision being made.	Decision and time scale	Low to Medium
19.65	A local authority maintaining an IDP for a previously detained person following their release must review the IDP and complete that review (including, as the case may be, giving a copy of the revised IDP or notification of another conclusion of the review) promptly and in any event, by the end of the period of 7 weeks starting with the person's release from detention. But this requirement to complete the review by the end of the 7 week period does not apply if it is impractical for the local authority to do so due to circumstances beyond its control.	IDP review	Low to Medium
19.67	In cases where the released child or young person is to attend a maintained school or FEI in Wales, the local authority may consider that it would be more appropriate for the school or FEI to maintain the IDP. Depending upon the circumstances, it might also be more appropriate for that institution to review the IDP. This might be the case where, for example, the IDP was recently prepared by the authority and the released person has low level needs or where the	IDP review	Low to Medium

	institution previously maintained the IDP and the period of detention was very short. If the IDP is transferred to a school or FEI[775 This would be following a direction by the local authority under section 14(4) of the Act in the case of a school or following an FEI agreeing to the authority's request under section 36(2) that the FEI become responsible for the IDP. Also, a transfer can only take place if the released person is a registered pupil of the school or is a young person enrolled as a student at the FEI. Without the local authority having reviewed it following release, the school or FEI must review the IDP promptly and in any event within the period of 35 term time days from the child or young person's release from detention. But the requirement to complete the review by the end of that period of 35 term time days, does not apply if it is impractical for the school or FEI to do so due to circumstances beyond its control.		
15.60	As part of the process of deciding whether a young person has ALN, a local authority must consider whether to seek advice from an educational psychologist and, where it considers that seeking such advice is likely to be worthwhile, it must do so.	Consider and seek advice	Low Consideration will not be overly burdensome, and will likely become part of the process. Since educational psychologists are already involved in the current system, this new provision is designed to standardise the process rather than creating something brand new. Seeking advice will therefore be small administrative task.
17.32	The local authority must first identify if the young person has desired outcomes and what they are.	Review	Low to medium. Local authorities should already be adopting a person centred approach to understanding the needs of the individuals and this could include in respect of identifying desired outcomes. In many cases, the LA will be aware of the individual through any previous engagement they had with them through the IDP process.

17.36	The local authority must consider what programmes of study may be available that would be suitable for enabling the young person to meet their desired outcomes.	Review	Low to medium. This will be a largely new requirement on Local authorities who until now have only had to consider post16 education for those who remain in school. This should become less burdensome over time as LAs develop their knowledge of post-16 education and training that is on offer.
17.38	Otherwise, the local authority must first consider programmes of study at mainstream maintained schools or FEIs (this could include such schools and FEIs in England). More often than not, those settings will be able to provide a suitable programme of study for a young person with ALN and the young person's reasonable needs to ALP would be met in undertaking it.	Review	Low to medium. This will be a largely new requirement on Local authorities who until now have only had to consider post16 education for those who remain in school. This should become less burdensome over time as LAs develop their knowledge of post-16 education and training that is on offer.
31.12	The local authority must ensure that the staff delivering these arrangements are impartial to the outcome of any potential disagreements.	Training	Low This may require staff training or guidance to ensure staff are reminded of their duties.
32.13	The local authority must ensure the arrangements made are accessible to children and young people and delivered in a way which meets their communication preferences and needs (see Chapter 3 on involving and supporting children, their parents and young people).	Accessible information	Low or medium Every local authority should already ensure the information they provide to the public is accessible. There may be a one-off cost for preparing these materials, but little to no ongoing costs.

32.11	The local authority must ensure that the staff delivering these arrangements have a detailed understanding of the ALN system. To do so, the local authority should ensure that staff providing the arrangements receive appropriate training and development to undertake their role effectively and training is refreshed to improve standards.	Training	Low This training may be adapted from the Welsh Government training material, keeping the cost low.
32.63	The local authority must ensure that all advocates: (a) understand the ALN system including the arrangements for avoiding and resolving disputes and Tribunal procedures; (b) are suitably trained, including in communicating with children and young people and those with communication difficulties, and continue to receive appropriate training and development to undertake their role effectively and to improve standards; (c) have relevant knowledge of the child's or young person's ALN; (d) maintain confidential records; (e) are not on the children's barred list (in the case of advocates for children) or the adults' barred list (in the case of advocates for young people who are considered to be "at risk"). If this information is not held by the advocacy providers, the local authority must ensure the advocates apply for an enhanced level disclosure and barred list check from the Disclosure and Barring Service before they can proceed.	Training	Low or medium The costs for training advocates should be relatively low. Welsh Government are investing in training for the ALN system and will provide free training material online. It may take some time to train everyone, but given the low numbers involved, the cost should low.

34. Consultation

34.1. A consultation on the draft ALN Code was held between 10 December 2018 and 22 March 2019.

34.2. The consultation sought views on the draft ALN Code and proposed regulations in order to consider comments and make improvements before it is laid before the Senedd.

34.3. The consultation was aimed at maintained schools, further education institutions, local authorities, local health boards, early years settings, third sector organisations and anyone else with an interest in additional learning needs.

35.4. 65 consultation questions were asked covering the following five themes:

1. The draft ALN Code;
2. Draft Education Tribunal for Wales regulations;
3. Draft ALN Co-ordinator regulations;
4. Looked after children; and
5. Impact of proposals.

35.5. A total of 644 people responded to the main consultation. A summary report can be found here:

<https://gov.wales/sites/default/files/consultations/2019-06/summary-of-responses-draft-additional-learning-needs-code.pdf>

35.6. The main themes raised during the consultation included;

- frequent calls to convert many of the “shoulds” included in the draft ALN Code to “musts”;
- concern about the language style used in the draft ALN Code;
- issues about transport provision for post-16 learners with learning difficulties or disabilities;
- calls for guidance on other relevant legislation or on matters set out elsewhere in statutory guidance;
- concerns that the new ALN system would have a considerable financial impact;
- requests to develop an electronic system to support the IDP process; and
- the capacity of the specialist workforce, including educational psychologists, to deliver elements of the new system described in the draft ALN Code.

35.7. A summary of the changes made to the ALN Code following the consultation can be found in the table from page 15 of the Explanatory Memorandum.

36. Competition Assessment

36.1. The provisions within the Act will not affect business, or charities and/or the voluntary sector in ways that raise issues related to competition. The competition filter has not been applied.

36.2. The provisions in the Act are not expected to have any impact on competition or place any restrictions on new or existing suppliers. The majority of the costs associated with the legislation are expected to fall on public bodies, who already meet these costs.

36.3. The legislation is not expected to have any negative impact on small and medium sized enterprises (SMEs) in Wales.

37. 10. Post implementation review

37.1. The phased rollout of the new ALN system will be monitored and evaluated by the Welsh Government during and post implementation. During implementation, the main focus of the work will be to establish the extent to which stakeholders are compliant with the provisions in the Act and to consider the initial effects and impacts of the Act using available data.

37.2. Additionally, Welsh Government has committed to undertaking a post-implementation review of the Act in 5 years' time; this will consist of a baseline study of the current system to inform a future evaluation of the impact of the Act. The baseline study was published by Arad Research in February 2019. The post-implementation review will be predominately focused on the outcomes of the Act for young people and parents.

37.3. Section 89 of the ALN Act sets out the duty on Welsh Ministers to reviews the sufficiency of additional learning provision in Welsh and to publish a report on the outcome within five years of the new system coming into force.

37.4. In the meantime, local authorities have an ongoing duty under section 63 of the Act keep under review the arrangements made by the authority and by the governing bodies of maintained schools in its area for children and young people who have additional learning needs.

37.5. To ensure the arrangements for providing health related ALP are sufficient and appropriate, the ALN Code sets out expectations on the DECLO to oversee the development of processes to collect and analyse robust data to measure its compliance with duties under the Act. It should also measure the effectiveness of arrangements for partnership working, and provide quality assurance of its activities in relation to children and young people with ALN.

37.6. This provides a counterweight to similar duties on local authorities to ensure both health related ALP and the ALN system itself are continuously reviewed, allowing for internal systems to be improved where necessary.

SL(5)775 – The Education Tribunal for Wales Regulations 2021

Background and Purpose

These Regulations set out the procedure to be followed in proceedings before the Education Tribunal for Wales. The Regulations make provision relating to the exercise of that Tribunal's jurisdiction under Part 2 of the Additional Learning Needs and Education Tribunal (Wales) Act 2018 ("the 2018 Act") which concerns additional learning needs appeals, and Chapter 1 of Part 6 of the Equality Act 2010 ("the 2010 Act") which concerns claims of disability discrimination in respect of school pupils.

Procedure

Draft Affirmative.

The Welsh Ministers have laid a draft of the Regulations before the Senedd. The Welsh Ministers cannot make the Regulations unless the Senedd approves the draft Regulations.

Technical Scrutiny

The following points are identified for reporting under Standing Order 21.2 in respect of this instrument:

1. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements.

In regulation 10(1)(b), it appears that the words "the notice of" should appear in the wording preceding the subparagraphs (rather than at the beginning of subparagraph (i)) as it applies to *both* subparagraphs, rather than just subparagraph (i).

Paragraph (1) would read as follows:

(1) An appeal to the Tribunal must—

- (a) be made in writing in accordance with these Regulations, and*
- (b) be received by the Tribunal no later than the first working day after the expiry of 8 weeks beginning with the date when **the notice of**—*
 - (i) the decision of the local authority, or FEI governing body, and*
 - (ii) the right to appeal under Part 2 of the 2018 Act against the decision,*
was given.

2. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements.



In regulation 18(8), the words “so that” have been omitted before “the respondent can be represented”. The effect of the omission is that it obscures for the reader the purpose of postponing or adjourning a hearing under that provision (i.e. for the respondent to be represented following reinstatement of their entitlement to be so represented). The omission does not occur in the Welsh version of these Regulations.

The omission has not been repeated in regulation 19(8), which is a broadly similar provision.

3. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements.

In regulation 55(1) reference is made to a written application being made to the “Education Tribunal”. It appears that this should be a reference to “the Tribunal” as that is how the Education Tribunal for Wales is referred to throughout the remainder of the Regulations. Any departure from this may cause confusion for the reader.

4. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements.

Regulation 57 refers to “the Court” but there is no definition of this term in any of the Regulations, the 2018 Act or the 2010 Act. Failure to define the term may lead to confusion as to what it being referred to in Regulation 57.

5. Standing Order 21.2(v) – that for any particular reason its form or meaning needs further explanation.

Regulation 64 is included in the Regulations under the general heading of “*Children who lack capacity and case friends*”. Regulation 64 does not appear to be related at all to this general heading, but relates instead to recommendations of the Education Tribunal to an NHS body, presumably under section 76 of the 2018 Act (although this is not clear from the Regulations). It is noted that headings in Regulations do not have legal effect but including a regulation under a non-related heading is likely to cause confusion for the reader and does not promote accessibility of the law.

Merits Scrutiny

The following point is identified for reporting under Standing Order 21.3 in respect of this instrument:

1. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Senedd.

These Regulations (which come into force on 1 September 2021) contain references to provisions in the 2018 Act that have not yet been commenced. Specifically, reference is made to sections 13, 14, 18, 19, 23, 24, 68, 70, 71, 72, 73, 79, 81, 84 and 85.

The relevant provisions of the 2018 Act will therefore need to be brought into force by 1 September 2021 pursuant to a Commencement Order made by the Welsh Ministers under



section 100(3) of the 2018 Act in order for the relevant provisions of these Regulations to operate effectively.

Paragraph 3.7 of the Explanatory Memorandum to these Regulations confirms that:

“The Welsh Ministers intend to exercise their commencement powers (under section 100 of the Act) to provide for functions under the Act to come into force on a phased basis from 1 September 2021.”

Welsh Government response

Technical Scrutiny point:

1. The appeal rights relating to ALN matters are given by the Act to children, their parents and to young people. It is the notice of the decision that triggers the timescale for bringing the appeal in regulation 10. If the alternative suggested drafting was accepted, it is considered that this would cast doubt on the position.
2. It is understood why the issue has been raised in relation to regulation 18(8). However, in relation to the English text, it is not agreed that the omission obscures the purpose of the adjournment or postponement. It is clear that the adjournment or postponement (as appropriate) must be necessary. It is clear that the respondent in the circumstances can be represented as a result of the grant of permission. So it is clear that in the circumstances there could be an adjournment or postponement for the purpose of the respondent being represented. The Welsh text does not contain the omission and can be used as an interpretative aid. However, if there is a later opportunity to re-visit the drafting and amend this for clarity, this will be considered.
3. The reference to the “Education Tribunal for Wales” in regulation 55(1) is set in parentheses and is simply a reference to the title of section 81 of the ALNET Act 2018 which is referred to in regulation 55(1). The title of s.81 is “Appeals from the Education Tribunal for Wales to the Upper Tribunal”. The reference to “Education Tribunal” later in regulation 55(1) whilst not consistent with the way that that tribunal has been referred to in the remainder of the instrument nevertheless leaves no reasonable room for doubt as to its meaning. In that context, and on the basis, it is considered that the use of this term is not inappropriate and will be readily understood.
4. Any appeals from the Upper Tribunal will be heard by the relevant appellate court, namely the Court of Appeal or the Supreme Court. The legislation dealing with this is the Tribunal, Courts and Enforcement Act 2007, which is cited in the definition of Upper Tribunal in the Regulations. The reference to “Court” acknowledges that position. The wording in regulation 57 replicates the existing drafting in regulation 60 of the Special Educational Needs Tribunal for Wales 2012 Regulations which currently deal with the tribunal procedures relating to the special educational needs system under the Education Act 1996. We have not received any



indication during the consultation process or at any other point that this provision is not readily understood.

5. We thank the Committee for identifying this point, and are seeking to remedy this matter via a correction slip, although we do not believe it affects the operation of the legislation.

Merit Scrutiny point:

The Government's position relating to commencement of the legislation relating to the ALN legislation package was explained in the EM as is noted and cited in the report. No further response in relation to the commencement is requested.

Legal Advisers

Legislation, Justice and Constitution Committee

15 March 2021



Draft Regulations laid before Senedd Cymru under section 98(3) of the Additional Learning Needs and Education Tribunal (Wales) Act 2018 and section 209(6) of the Equality Act 2010, for approval by resolution of Senedd Cymru

DRAFT WELSH STATUTORY
INSTRUMENTS

2021 No. (W.)

EDUCATION, WALES

**The Education Tribunal for Wales
Regulations 2021**

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations set out the procedure to be followed in proceedings before the Education Tribunal for Wales. These Regulations make provision relating to the exercise of that Tribunal's jurisdiction under Part 2 of the Additional Learning Needs and Education Tribunal (Wales) Act 2018 which concerns additional learning needs appeals, and Chapter 1 of Part 6 of the Equality Act 2010 which concerns claims of disability discrimination in respect of school pupils.

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, a regulatory impact assessment has been prepared as to the likely costs and benefits of complying with these Regulations. A copy can be obtained from the Welsh Government at Cathays Park, Cardiff, CF10 3NQ and on the Welsh Government website at www.gov.wales.

Draft Regulations laid before Senedd Cymru under section 98(3) of the Additional Learning Needs and Education Tribunal (Wales) Act 2018 and section 209(6) of the Equality Act 2010, for approval by resolution of Senedd Cymru

DRAFT WELSH STATUTORY
INSTRUMENTS

2021 No. (W.)

EDUCATION, WALES

**The Education Tribunal for Wales
Regulations 2021**

Made

Coming into force

1 September 2021

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74. Proof of documents and certification of decisions
75. Method of sending, submitting or serving notices and documents
76. Calculating time
77. Signature of documents

The Welsh Ministers make the following Regulations in exercise of the powers conferred on them by

sections 70(4), 74, 75, 76(3), 77, 91(6) and 92(2) of the Additional Learning Needs and Education Tribunal (Wales) Act 2018⁽¹⁾ and section 207(4) of, and paragraphs 6(1), (2) to (5) and (7) and 6A of Schedule 17 to, the Equality Act 2010⁽²⁾.

In accordance with section 98(3) of the Additional Learning Needs and Education Tribunal (Wales) Act 2018 and section 209(6) of the Equality Act 2010, a draft of these Regulations was laid before, and approved by a resolution of, Senedd Cymru⁽³⁾.

Title and commencement

1. The title of these Regulations is the Education Tribunal for Wales Regulations 2021 and they come into force on 1 September 2021.

Interpretation

2.—(1) In these Regulations—

“the 1996 Act” (“*Deddf 1996*”) means the Education Act 1996⁽⁴⁾;

“the 2010 Act” (“*Deddf 2010*”) means the Equality Act 2010;

“the 2018 Act” (“*Deddf 2018*”) means the Additional Learning Needs and Education Tribunal (Wales) Act 2018;

“appeal” (“*apêl*”) means—

(a) subject to paragraph (b), an appeal to the Tribunal under Part 2 of the 2018 Act against a decision of a local authority or FEI governing body;

(b) in regulations 55 to 57, an appeal to the Upper Tribunal against the tribunal panel's decision;

“appellant” (“*apelydd*”) means a person entitled to appeal to the Tribunal under Part 2 of the 2018 Act;

“authority” (“*awdurdod*”) means an authority other than the local authority that made the disputed decision;

“case friend” (“*cyfaill achos*”) means a person appointed by the Tribunal in accordance with

(1) 2018 anaw 2; see section 99(1) for the definitions of “prescribed” and “regulations”.

(2) 2010 c. 15; see section 212(1) for the definition of “prescribed”. Paragraph 19 of Schedule 1 to the 2018 Act amended the 2010 Act including substituting paragraph 6A of Schedule 17.

(3) The references in section 98(3) of the 2018 Act and section 209(6) of the 2010 Act to the National Assembly for Wales are now to be read as references to Senedd Cymru by virtue of section 150A(2) of the Government of Wales Act 2006 (c. 32).

(4) 1996 c. 56.

section 85 of the 2018 Act and regulations 60 to 62, to exercise the child's right of appeal or claim on behalf of the child;

“case statement” (“*datganiad achos*”) means the statement of case submitted in accordance with regulation 18 or 19;

“case statement period” (“*cyfnod datganiad achos*”) is the period specified in regulation 17;

“Chair” (“*Cadeirydd*”) means the President or a person appointed under section 91(4) of the 2018 Act to the panel of persons who may serve as the legal chair of the Tribunal;

“child” (“*plentyn*”) means a person who is the subject of the appeal or claim;

“claim” (“*hawliad*”) means a claim for disability discrimination under Chapter 1 of Part 6 of, and Schedule 17 to, the 2010 Act;

“claimant” (“*hawlydd*”) means a person entitled to make a claim to the Tribunal under Chapter 1 of Part 6 of, and Schedule 17 to, the 2010 Act;

“clerk to the tribunal panel” (“*clerc i'r panel tribiwnlys*”) means the person appointed by the Secretary of the Tribunal to act as clerk at one or more hearings;

“disputed decision” (“*penderfyniad a herir*”) means the decision or act, or the failure to decide or act, in respect of which the appeal or claim is brought;

“document” (“*dogfen*”) means anything in which information of any description is recorded;

“electronic signature” (“*llofnod electronig*”) has the meaning given to it by section 7 of the Electronic Communications Act 2000⁽¹⁾;

“e-mail address” (“*cyfeiriad e-bost*”) means a person's electronic mail address;

“evidence” (“*tystiolaeth*”) includes material of any description recorded in any form;

“FEI governing body” (“*corff llywodraethau SAB*”) is the governing body of a further education institution in Wales that made the disputed decision and has the meaning given by section 90 of the Further and Higher Education Act 1992⁽²⁾ as referred to in section 99 of the 2018 Act;

“First-tier Tribunal” (“*Tribiwnlys Haen Gyntaf*”) means the tribunal established under section 3 of the Tribunals, Courts and Enforcement Act 2007⁽³⁾, that has jurisdiction in England over appeals and claims;

(1) 2000 c. 7.

(2) 1992 c. 13.

(3) 2007 c. 15.

“hearing” (“*gwrandawriad*”) means a hearing before the President, a Chair or the tribunal panel for the purpose of enabling the President, a Chair or the tribunal panel to reach a decision on an appeal, claim, application or any question or matter at which the parties are entitled to attend and be heard and includes a hearing conducted in whole or in part by video link, telephone or other means of instantaneous two-way electronic communication;

“local authority” (“*awdurdod lleol*”) means the council of a county or county borough in Wales that made the disputed decision;

“observer” (“*sylwedydd*”) means a person who may attend a hearing for the purpose of observing the hearing but who must not participate in the hearing, or make any notes of the hearing or make any recording of the hearing by audio visual means or by any other means;

“oral representations” (“*sylwadau llafar*”) includes evidence which by reason of an impairment of speech or hearing, a person gives using sign language;

“parent” (“*rhiant*”) has the meaning given by section 576 of the 1996 Act;

“party” (“*parti*”) means—

- (a) in an appeal, the appellant, the local authority or the FEI governing body, and
- (b) in a claim, the claimant or the responsible body;

“Register” (“*Cofrestr*”) means the register required to be kept under regulation 71;

“responsible body” (“*corff cyfrifol*”) has the meaning given by section 85(9) of the 2010 Act;

“Secretary of the Tribunal” (“*Ysgrifennydd y Tribiwnlys*”) means the person who for the time being acts as the Secretary of the office of the Tribunal;

“tribunal panel” (“*panel tribiwnlys*”) means a panel of the Tribunal who may dispose of an appeal or claim or any question or matter in relation to an appeal or claim;

“Upper Tribunal” (“*Uwch Dribiwnlys*”) means the appellate tribunal established under section 3 of the Tribunals, Courts and Enforcement Act 2007;

“witness summons” (“*gwŷs tyst*”) means a document issued by the President or the tribunal panel requiring a witness to attend at a hearing of an appeal or claim to give evidence, or produce documents, in relation to an appeal or claim to the Tribunal;

“working day” (“*diwrnod gwaith*”) means any day other than—

- (a) a Saturday,
- (b) a Sunday,
- (c) any day from 25 December to 1 January inclusive,
- (d) Good Friday,
- (e) the first Monday in May,
- (f) any day in August, or
- (g) a day which is a bank holiday in England and Wales under section 1 of the Banking and Financial Dealings Act 1971⁽¹⁾;

“young person” (“*person ifanc*”) means—

- (a) in an appeal, a person who is the subject of the appeal or claim, and
- (b) in a claim, a person who is over compulsory school age and who is the subject of the claim.

(2) Words and expressions used in these Regulations and in the 2018 Act have the same meaning as in that Act, except so far as a contrary intention appears.

Application

3. These Regulations apply to an appeal or a claim entered in the Register on or after 1 September 2021.

The overriding objective

4.—(1) The overriding objective of these Regulations is to enable the President, and the tribunal panel, to deal with appeals and claims fairly and justly.

(2) Dealing with a case fairly and justly includes—

- (a) dealing with the appeal or the claim in ways which are proportionate to the importance of the case and the complexity of the issues,
- (b) avoiding, as far as the President or the tribunal panel considers appropriate, unnecessary formality in the proceedings under these Regulations,
- (c) ensuring, so far as is practicable, that the parties are on an equal footing procedurally and are able to participate fully in the proceedings, including facilitating any party to present any appeal or claim without advocating the course the party should take,
- (d) using the special expertise of the President, or the tribunal panel effectively, and
- (e) avoiding delay, so far as that is compatible with proper consideration of the issues.

(1) 1971 c. 80.

(3) The President, or the tribunal panel, must seek to give effect to the overriding objective of these Regulations when under these Regulations they—

- (a) exercise any function, or
- (b) interpret any regulation.

(4) The President or the tribunal panel must manage appeals and claims actively in accordance with the overriding objective of these Regulations.

Parties' obligation to co-operate

5.—(1) Parties must—

- (a) co-operate with each other for the purposes of progressing the appeal or the claim,
- (b) co-operate in the exchange of documents or information with each other to enable each party to prepare a case statement,
- (c) help the President, or the tribunal panel, to further the overriding objective of these Regulations, and
- (d) co-operate with the President and the tribunal panel generally.

(2) The President, or the tribunal panel, may draw such adverse inferences as they think fit from a party's failure to comply with any of the obligations specified in paragraph (1).

(3) Where the President or the tribunal panel has drawn an adverse inference under paragraph (2), they may direct the Secretary of the Tribunal to serve notice on the party in default that it is proposed to make an order to strike out—

- (a) the appeal, where the party in default is the appellant,
- (b) the claim, where the party in default is the claimant, or
- (c) the case statement and written evidence, where the party in default is the local authority, FEI governing body or the responsible body.

(4) The notice in paragraph (3) must invite representations and the President, or the tribunal panel, must consider any representations made.

(5) For the purposes of this regulation—

- (a) a notice inviting representations must inform the party in default that the party may, within a period (no later than 10 working days beginning with the date on which the notice is sent) specified in the notice, either make written representations or request an opportunity to make oral representations, and
- (b) representations are made if—

(i) in the case of written representations, they are made within the specified period, and

(ii) in the case of oral representations, the party proposing to make them has requested an opportunity to do so within the specified period.

(6) The President or the tribunal panel may, after considering any representations made by the party in default, order that the party's case is struck out.

Alternative dispute resolution

6.—(1) The President or the tribunal panel must, where appropriate, bring to the attention of the parties the availability of any alternative procedure for the resolution of the dispute.

(2) If the parties wish to use the alternative dispute resolution procedure the President or the tribunal panel may, provided that it is compatible with the overriding objective of these Regulations, stay the appeal or the claim.

Lay panel members

7.—(1) The Welsh Ministers must be satisfied that persons appointed as members of the lay panel are not eligible for appointment as a Chair.

(2) The Welsh Ministers must be satisfied that sufficient members of the panel have current knowledge and experience of children, and of young people, with—

- (a) additional learning needs,
- (b) disabilities, or
- (c) if required, both.

Establishment of tribunal panels

8.—(1) The jurisdiction of the Tribunal is to be exercised by such number of tribunal panels as the President may from time to time determine.

(2) The tribunal panels exercising the jurisdiction conferred on them in accordance with paragraph (1) are to sit at such times and in such places as the President may from time to time determine.

Membership of tribunal panel

9.—(1) A tribunal panel must be comprised of a Chair together with either one or two lay panel members.

(2) For each hearing—

- (a) the Chair must be the President or a person selected by the President from the legal chair panel, and
- (b) the other member or members must be persons selected by the President from the lay panel.

(3) Where the panel is comprised of one Chair and one lay panel member, the Chair has the casting vote in the event of a disagreement between the panel members.

Period within which proceedings must be commenced

10.—(1) An appeal to the Tribunal must—

- (a) be made in writing in accordance with these Regulations, and
- (b) be received by the Tribunal no later than the first working day after the expiry of 8 weeks beginning with the date when—
 - (i) the notice of the decision of the local authority, or FEI governing body, and
 - (ii) the right to appeal under Part 2 of the 2018 Act against the decision,
 was given.

(2) If in relation to an appeal or prospective appeal, the dispute concerned is referred for dispute resolution under section 68 of the 2018 Act before the end of the period specified in paragraph (1)(b) the period allowed by that paragraph is extended by 8 weeks.

(3) A claim to the Tribunal must—

- (a) be made in writing in accordance with these Regulations, and
- (b) be received by the Tribunal no later than the first working day after the end of the period stated in paragraph 4(1) of Schedule 17 to the 2010 Act⁽¹⁾.

(4) If in relation to a claim or prospective claim, the dispute concerned is referred for dispute resolution under paragraph 6C of Schedule 17 to the 2010 Act before the end of the period specified in paragraph (3)(b) the period allowed by that paragraph is extended in accordance with paragraph 4(2A) of Schedule 17 to the 2010 Act.

(5) Subject to regulation 14, the Tribunal may not consider—

- (a) an appeal application, unless proceedings are commenced in accordance with paragraph (1);

(1) Paragraph 4(1) of Schedule 17 to the Equality Act 2010 stipulates the period in which a claim must be made to the Tribunal.

- (b) a claim application, unless proceedings are commenced in accordance with paragraph (3).

Appeal application

11.—(1) The appeal application must state—

- (a) the name and address of the person making the appeal and, if available, the person's telephone number and e-mail address,
- (b) the name and date of birth of the child or young person,
- (c) if relevant, the relationship or connection of the person making the appeal to the child or young person,
- (d) the names and addresses of all persons who—
 - (i) have parental responsibility for the child, or
 - (ii) share parental responsibility for the child, or
 - (iii) have care of the child,or reasons why the names and addresses of such persons are not provided,
- (e) the name and address of any representative or case friend for the person making the appeal and, if available, the representative or case friend's telephone number and e-mail address,
- (f) an address and, if available, an e-mail address, where notices and documents for the person making the appeal should be sent,
- (g) the name and address of the local authority or FEI governing body which made the disputed decision,
- (h) the date on which the person making the appeal received written confirmation of the disputed decision,
- (i) the reason or reasons for making the appeal,
- (j) the result sought,
- (k) the steps, if any, already taken to resolve the dispute, and
- (l) any communication requirements and preferences of the child or young person.

(2) If the person making the appeal seeks an order—

- (a) that an individual development plan is amended, the appeal application must specify to which section or sections of the individual development plan the appeal relates, and
- (b) for a placement at a school or other institution, the appeal application must state the name and address of the school or other institution.

(3) The appeal application may be accompanied by—

- (a) a copy of the disputed decision,
- (b) where the appeal is made under section 70 or 72 of the 2018 Act, a copy of the child or young person's individual development plan, any documentation attached to or forming part of the individual development plan and, if available, a copy of the latest review under section 23 or 24 of the 2018 Act, and
- (c) the case statement in accordance with regulations 17 and 18.

(4) The appeal application must be accompanied—

- (a) by written confirmation that the person making the appeal has notified persons, if any, named in accordance with paragraph (1)(d) that the person proposes to make an appeal to the Tribunal, or written confirmation explaining why the person making the claim has not notified any such persons,
- (b) where the appeal application states the name of a school or additional learning provision at another institution in accordance with paragraph (2)(b), by written confirmation that the person making the appeal has informed the head teacher of the school, or the governing body or proprietor of the other institution, that the person proposes to request that the school or other institution is named in the individual development plan, and
- (c) where under paragraph (2)(b), the appeal application states the name of—
 - (i) a maintained school, by written confirmation that the person making the appeal has informed the local authority that maintains the school, which may or may not be the local authority that made the disputed decision, that the person proposes to request that the maintained school is named in the individual development plan;
 - (ii) an independent school, by written confirmation that the person making the appeal has informed the proprietor of the school that the person proposes to request that the independent school is named in the individual development plan;
 - (iii) an independent school, by written confirmation from the proprietor of the school that a place is available at the school for the child;
 - (iv) any other institution, by written confirmation that the person making the appeal has established whether or not

there is suitable provision available at the institution.

(5) The appeal application must be signed by the person making the appeal, or any representative or a case friend on that person's behalf.

(6) The appeal application may, in accordance with regulation 35, include a request that the appeal is heard with a claim against a responsible body.

Claim application

12.—(1) The claim application must state—

- (a) the name and address of the person making the claim and, if available, the person's telephone number and e-mail address,
- (b) the name and date of birth of the child or young person,
- (c) if relevant, the relationship or connection of the person making the claim to the child,
- (d) the names and addresses of all persons who have or share parental responsibility for the child or have care of the child, or reasons why the names and addresses of such persons are not provided,
- (e) the name and address of any representative or case friend appointed by the person making the claim and, if available, the representative's or case friend's telephone number and e-mail address,
- (f) an address and, if available, an e-mail address where notices and documents for the person making the claim should be sent,
- (g) the name and address of—
 - (i) the school or local authority which made the disputed decision, or
 - (ii) the authority for the school named under paragraph (1)(g)(i) if such a school is a maintained school,
- (h) details of the disputed decision to which the claim relates,
- (i) the date or dates on which the disputed decision took place,
- (j) the reason or reasons for making the claim,
- (k) the result sought, and
- (l) the steps, if any, already taken to resolve the dispute.

(2) The claim application must include a description of the school pupil's disability.

(3) The claim application must include a description of any communication requirements and preferences of the child or young person.

(4) Evidence of a medical or other professional diagnosis relating to the pupil's disability should, if available, accompany the claim application.

(5) The claim application must be accompanied by written confirmation that the person making the claim has notified persons, if any, named in accordance with paragraph (1)(d) that the person has made a claim to the Tribunal, or written confirmation explaining why the person making the claim has not notified any such persons.

(6) The claim application must be signed by the person making the claim or any representative or a case friend on that person's behalf.

(7) The claim application may, in accordance with regulation 35, include a request that the claim is heard with an appeal against a local authority.

Action by the Secretary of the Tribunal

13.—(1) Upon receiving the appeal application or the claim application the Secretary of the Tribunal must—

- (a) enter its particulars in the Register, and
- (b) send to the appellant or claimant—
 - (i) an acknowledgement of its receipt and a note of the case number entered in the Register,
 - (ii) a note of the address to which notices and communications for the Tribunal should be sent,
 - (iii) notification that advice about the appeals or claims procedure may be obtained from the office of the Tribunal,
 - (iv) notification that local authorities have duties to put in place arrangements for independent advocacy services for children and young people for whom they are responsible,
 - (v) a statement of the possible consequences for the appeal or claim, if a party fails to comply with regulation 5 (parties' obligation to co-operate), and
 - (vi) a notification that parties may submit written witness statements and call witnesses in accordance with regulation 43.

(2) The Secretary of the Tribunal must send to the FEI governing body, local authority or responsible body, as the case may be—

- (a) a copy of the appeal application or the claim application and any accompanying documents,

- (b) a note of the address to which notices and communications for the Tribunal should be sent,
- (c) when a case statement is an accompanying document under sub-paragraph (a), or when it is separately received, a notice stating the time for submitting the case statement of the FEI governing body, local authority or responsible body and evidence under regulation 19 and the consequences of failing to do so,
- (d) a statement of the possible consequences for the appeal or claim, if a party fails to comply with regulation 5 (parties' obligation to co-operate), and
- (e) a notification that parties may submit written witness statements and call witnesses in accordance with regulation 43.

(3) If it is necessary to determine the identity of the responsible body in relation to a claim, the President or the Secretary of the Tribunal may make such enquiries as are necessary for this purpose.

(4) Where it appears to the President or the Secretary of the Tribunal that there may be more than one responsible body in relation to a claim, the Tribunal may send the documentation specified in paragraph (2) to any or all such bodies as may be appropriate.

(5) Where the President is of the opinion that on the basis of the appeal application or the claim application, the person making the appeal or the claim is asking the Tribunal to consider a matter which is outside its powers, the Secretary of the Tribunal may give notice to the person—

- (a) stating the reasons for the opinion, and
- (b) informing the person that the appeal application or the claim application must not be entered in the Register unless, within a specified time (which must not be less than 5 working days), the person notifies the Secretary of the Tribunal that the person wishes to proceed with the appeal or claim.

(6) If the Secretary of the Tribunal has given a notice under paragraph (5), the appeal application or the claim application is to be treated as having been received for the purposes of paragraph (1) when the person making the appeal or claim notifies the Secretary of the Tribunal that the person wishes to proceed with the appeal or claim.

(7) Where the Secretary of the Tribunal is of the opinion that there is an obvious error in the appeal application or the claim application, the Secretary of the Tribunal may correct that error.

(8) Where an error has been corrected in accordance with paragraph (7), the Secretary of the Tribunal must

notify the person making the appeal or claim of the correction and state the effect of paragraph (9).

(9) Unless the person making the appeal or claim informs the Secretary of the Tribunal within 5 working days of the notification given under paragraph (8) that the person objects to the correction, the appeal application or the claim application as corrected must be treated as the appeal application or the claim application for the purposes of these Regulations.

(10) The Secretary of the Tribunal must send all documents and notices concerning the appeal or the claim to the appellant or the claimant.

(11) Paragraph (10) applies—

- (a) unless the appellant or the claimant notifies the Secretary of the Tribunal that all documents and notices concerning the appeal or the claim must be sent to their representative instead of the appellant or claimant;
- (b) unless a case friend has been appointed in accordance with section 85 of the 2018 Act and regulations 60 to 62.

(12) If paragraph (11)(a) or (b) applies, references in these Regulations (however expressed) to sending documents to, or giving notice to, the appellant or the claimant must be construed as references to sending documents to, or giving notice to, the representative or to the case friend, as the case may be.

Appeal or claim made out of time

14.—(1) The President may consider—

- (a) any appeal which is out of time if, in all the circumstances of the case, the President considers that it is fair and just to do so;
- (b) any claim which is out of time under paragraph 4(3) of Schedule 17 to the 2010 Act.

(2) The President may seek further information from the person making the appeal or claim before making a decision under paragraph (1).

Sufficiency of reasons

15.—(1) If the appeal application or the claim application does not include, or is not accompanied by, a statement of the reasons for making the appeal or the claim, including in relation to a claim the information set out in regulation 12(1)(i) and (j) and (2), which the President considers sufficient to enable the local authority or responsible body to respond to the appeal or the claim, the President must direct the appellant or the claimant to send details of the reasons to the

Secretary of the Tribunal within 10 working days of the direction.

(2) Regulation 33 (failure to comply with directions) applies to a direction under paragraph (1).

(3) Reasons sent in response to a direction made under paragraph (1) are to be treated as part of the appeal application or the claim application.

Appellant's or claimant's representatives

16.—(1) The appellant or the claimant may in the appeal application or the claim application or by giving written notice to the Secretary of the Tribunal at any later time—

- (a) appoint a representative;
- (b) appoint another representative to replace the representative previously appointed, whose appointment is cancelled by the later appointment;
- (c) state that no person is acting as the appellant's or the claimant's representative, which cancels any previous appointment.

(2) Where an appointment is made under paragraph (1), the appellant or the claimant must give the name, address and contact details of the representative.

Case statement periods

17.—(1) The case statement period for an appellant making an appeal is the relevant period of time set out in regulation 10 and includes any extension to that period of time ordered by the President under regulation 65.

(2) The case statement period for a claimant is a period of 8 weeks commencing on the date on which a notice given under regulation 13(2)(c) is taken to have been received in accordance with regulation 75(11) and includes any extension to that period ordered by the President under regulation 65.

(3) If the President makes a direction in relation to—

- (a) an appeal in accordance with regulation 15, the period specified in paragraph (1) does not start, and the Secretary of the Tribunal must not send any documents as required by regulation 13(2), until reasons are received in response to the direction;
- (b) a claim in accordance with regulation 15 or makes enquiries under regulation 13(3), the period specified in paragraph (2) does not start, and the Secretary of the Tribunal must not send any documents to the responsible body as required by regulation 13(2), until reasons are received in response to the direction or the enquiries are concluded.

(4) The case statement period for a local authority or FEI governing body in an appeal is—

- (a) 4 weeks, beginning with the date on which the notice accompanying the appellant's case statement is taken to have been received in accordance with regulation 75(11), and
- (b) includes any extension to that period ordered by the President under regulation 65.

(5) The case statement period for a responsible body is—

- (a) 4 weeks, beginning with the date on which the notice given under regulation 13(2) is taken to have been received in accordance with regulation 75(11), and
- (b) includes any extension to that period ordered by the President under regulation 65.

Appellant or claimant's case statement

18.—(1) The appellant or the claimant must submit to the Secretary of the Tribunal before the end of their case statement period, as the case may be—

- (a) a case statement, and
- (b) all other evidence to be relied on which has not already been submitted.

(2) The case statement must include—

- (a) where the appellant or the claimant is the parent of the child—
 - (i) the views of the child on the issues raised in the appeal or the claim, or
 - (ii) an explanation of why the appellant or claimant has not established the child's views;
- (b) where the appellant or the claimant is the child—
 - (i) the views of the child's parent on the issues raised in the appeal or the claim, or
 - (ii) an explanation of why the appellant or claimant has not established the parent's views.

(3) If the President gives permission, the appellant or the claimant may—

- (a) amend the appeal application or the claim application;
- (b) submit a supplementary statement of reasons in support of the appeal application or the claim application;
- (c) amend a supplementary statement of reasons in support of the appeal application or the claim application;

(d) submit a supplementary case statement;

(e) amend a supplementary case statement.

(4) The appellant or the claimant must submit to the Secretary of the Tribunal a copy of every amendment and supplementary statement for which permission was given under paragraph (3) within the time period granted.

(5) If an appeal application is amended in accordance with paragraph (3) so that the appellant makes an appeal under section 70(2)(f) and (g) of the 2018 Act the appellant must notify the head teacher of the maintained school named in the amended appeal application, stating the name and date of birth of the child.

(6) If the school referred to in paragraph (5) is not maintained by the local authority, the appellant must notify the authority that maintains the school.

(7) Where permission is given under paragraph (3), the President may, if necessary, extend the case statement period under regulation 65 or, if it has expired, grant such further period as the President considers appropriate.

(8) If, at the time permission is given under paragraph (3), the respondent local authority, FEI governing body or the responsible body has lost its entitlement to attend or be represented at the hearing in accordance with regulation 23 or 33, the giving of permission restores such entitlement and, if necessary, the hearing may be postponed or adjourned, as appropriate, the respondent can be represented.

The respondent local authority, FEI governing body or responsible body's case statement and evidence

19.—(1) The local authority, governing body of the FEI or the responsible body respondent (“the respondent”) must submit to the Secretary of the Tribunal before the end of the case statement period—

(a) a copy of the disputed decision,

(b) a copy of the child or young person's individual development plan, any documentation attached to or forming part of the plan and if available a copy of the latest review,

(c) a case statement, and

(d) all other evidence to be relied on which has not already been submitted.

(2) The respondent's case statement must be signed by a person who is authorised to sign such documents on the respondent's behalf, and must state whether or not the respondent intends to oppose the appeal or claim.

(3) If the respondent intends to oppose the appeal or the claim, its case statement must state—

- (a) the grounds on which the appeal or the claim, or any part of the appeal or the claim, is opposed,
- (b) the name and address of the respondent's representative and, if available, the representative's telephone number and email address,
- (c) the address where documents for the respondent should be sent or delivered,
- (d) a summary of the facts relating to the disputed decision,
- (e) the reason or reasons for the disputed decision, if not included in the decision, and
- (f) the steps, if any, already taken to resolve the dispute.

(4) The respondent's case statement must include—

- (a) the views of the child or young person concerning the issues raised in the appeal or the claim, or
- (b) an explanation of why it has not established the child's views.

(5) The respondent may amend its case statement, submit a supplementary case statement, or amend a supplementary case statement, if permission is given by the President.

(6) The respondent must submit to the Secretary of the Tribunal a copy of every amendment and supplementary statement for which permission was given under paragraph (5) within the time period granted.

(7) If permission is given under paragraph (5) the President may extend the case statement period under regulation 65 or, if it has expired, grant such further period as the President considers appropriate.

(8) If, at the time permission is given under paragraph (5), the appellant or the claimant has lost entitlement to attend or be represented at the hearing in accordance with regulation 33, the giving of permission restores such entitlement and, if necessary, the hearing may be postponed or adjourned, as appropriate, so that the appellant or the claimant can be represented.

Change of representative of respondent FEI governing body, local authority or responsible body

20.—(1) The respondent FEI governing body, local authority or the responsible body (“the respondent”) may at any time change its representative for the purposes of the appeal or the claim by notifying the Secretary of the Tribunal of the name and address of

its new representative and, if available, the representative's telephone number and e-mail address.

(2) References in these Regulations (however expressed) to sending documents to, or giving notice to, the governing body of the FEL, the local authority or the responsible body are to be construed as references to sending documents to, or giving notice to, the representative named in accordance with paragraph (1) or regulation 19(3)(b).

Change of local authority in an appeal

21.—(1) This regulation applies for the purposes of an appeal if, after the date on which the local authority made the disputed decision, the local authority is no longer responsible for the child or young person within the meaning of sections 13 and 14, or 18 and 19, of the 2018 Act (“the old authority”).

(2) Where paragraph (1) applies, the President may order that, for all the purposes of the appeal and on receiving evidence that this regulation applies, the name of the authority responsible for the child within the meaning of section 13 of the 2018 Act (“the new authority”) is substituted for the old authority.

(3) The old authority, the new authority and the appellant must have an opportunity to be heard before an order is made under paragraph (2).

(4) When an order is made under paragraph (2)—

- (a) the Secretary of the Tribunal must notify the old authority, the new authority and the appellant;
- (b) the old authority is no longer a party to the appeal;
- (c) the new authority becomes a party to the appeal;
- (d) these Regulations apply as if the new authority had made the disputed decision;
- (e) the Secretary of the Tribunal must send to the new authority copies of all the documents and written evidence relating to the appeal received by the Tribunal from the appellant and from the old authority;
- (f) the procedure for determining the appeal restarts and regulation 13 applies as if the documents and written evidence sent in accordance with sub-paragraph (e) were part of the appeal application referred to in regulation 13(1).

Copy documents for parties

22.—(1) Subject to paragraph (2), the Secretary of the Tribunal must—

- (a) send to the local authority, FEI governing body or the responsible body, a copy of any amendment to the appeal application or the claim application received during the case statement period;
- (b) at the end of each case statement period, send a copy of each party's case statement and written evidence to the other party;
- (c) immediately send copies of any amendments or supplementary statements, written representations, written evidence (other than written evidence of which a copy is received in accordance with regulation 47 (late written evidence)) or other documents received from a party after the end of the case statement period to the other party.

(2) If an appeal application or a claim application, a case statement, amendment, supplementary statement, written representation, written evidence or other document is submitted to the Secretary of the Tribunal after the time prescribed by these Regulations, the Secretary of the Tribunal must not send a copy of it to the other party unless the President extends the time limit under regulation 65.

(3) Where the Secretary of the Tribunal sends any copies of documents referred to in paragraph (1) to a party who has already informed the Secretary of the Tribunal in response to the enquiries made under regulation 24(a)(i) and (ii) that the party does not wish to attend or be represented at the hearing, the Secretary of the Tribunal must ask whether the party wishes to amend that response on the basis of the copies received.

Failure to submit a case statement and absence of opposition

23.—(1) The tribunal panel may determine the appeal or the claim without a hearing or by holding a hearing if—

- (a) the Secretary of the Tribunal does not receive a case statement from the local authority, FEI governing body or the responsible body within the case statement period;
- (b) the local authority, FEI governing body or the responsible body states in writing that it does not resist—
 - (i) the appeal, or
 - (ii) the claim;
- (c) the local authority, FEI governing body or the responsible body withdraws its opposition to—
 - (i) the appeal, or
 - (ii) the claim.

(2) Where the tribunal panel determines the appeal or the claim without a hearing it must do so on the basis of the appeal application or claim application and any other documentation already received or amended in accordance with regulation 18(3).

(3) If the tribunal panel decides to hold a hearing in accordance with paragraph (1), it may issue a direction precluding the local authority, FEI governing body or the responsible body from attending the hearing or being represented at the hearing.

(4) If the appeal relates to—

- (a) the contents of a child's or young person's individual development plan, no statement that the local authority or FEI governing body does not resist the appeal or that it withdraws its opposition may take effect until the local authority or FEI governing body submits to the Secretary of the Tribunal written confirmation of the amendments (if any) it agrees to make to the child's or young person's individual development plan;
- (b) a decision to cease to maintain an individual development plan, no statement that the local authority or FEI governing body does not resist the appeal or that it withdraws its opposition may take effect until the local authority or FEI governing body submits to the Secretary of the Tribunal written confirmation of its decision not to resist the appeal or to withdraw its opposition.

Tribunal enquiries

Enquiries by the Secretary of the Tribunal

24. The Secretary of the Tribunal must at any time after receiving the appeal application or the claim application—

- (a) ask each party—
 - (i) whether or not the party intends to attend the hearing;
 - (ii) whether the party wishes to be represented at the hearing in accordance with regulation 50 and if so the name of the representative;
 - (iii) whether the party intends to call witnesses and if so the names of the proposed witnesses, their occupations, and whether any of the witnesses is a medical or other expert;
 - (iv) whether the party or a witness requires assistance because of a communication impairment and if so, details of the type of communication assistance required;

- (v) whether the party or a witness to be called has any disabilities that may require reasonable adjustments to be made;
- (vi) whether the party wishes a person to attend the hearing as an observer and if so the name of such person;
- (vii) whether the party wishes any person to attend the hearing to communicate the views and wishes of the child or young person and, if so, the name and address of such person and if relevant, the person's connection to the child or young person;
- (b) inform each party—
 - (i) of the effect of regulation 40(6) and the provision of regulation 42(2), and
 - (ii) that where an answer to any of the enquiries under paragraph (a) changes after a party has responded to the enquiries, the party concerned must immediately inform the Secretary of the Tribunal in writing.

Failure to respond to enquiries made by the Secretary of the Tribunal

25.—(1) The President may order—

- (a) that the appeal application or the claim application is struck out on the grounds that the appellant's or the claimant's failure to comply with enquiries made by the Secretary of the Tribunal under regulation 24, prejudices, or delays, the fair hearing of the appeal or the claim;
- (b) that the local authority, FEI governing body or the responsible body may not take any further step in the appeal or claim and may not attend the hearing or be represented at the hearing on the grounds of a failure to comply with enquiries made by the Secretary of the Tribunal under regulation 24, prejudices, or delays, the fair hearing of the appeal or the claim.

(2) Before making an order under paragraph (1), the President must give the party against whom the President proposes to make an order a notice inviting representations and must consider any representations made.

(3) For the purposes of this regulation—

- (a) a notice inviting representations must inform the party that within a period (no less than 5 working days) specified in the notice, the party may either make written representations

or request an opportunity to make oral representations;

(b) representations are made if—

(i) in the case of written representations, they are made within the specified period, and

(ii) in the case of oral representations, the party proposing to make them has requested an opportunity to do so within the specified period.

(4) If an appeal application or a claim application is struck out under paragraph (1)(a), the proceedings to which the appeal or claim relates are considered to be concluded.

Power to strike out the appeal or claim

26.—(1) The Secretary of the Tribunal must, at any stage of the appeal or claim if the local authority, FEI governing body or the responsible body applies, or the President or the tribunal panel so directs, serve a notice on the appellant or the claimant stating that it has been proposed that the whole or part of the appeal or the claim should be struck out on one of the grounds specified in paragraph (2) or for want of prosecution.

(2) The grounds referred to in paragraph (1) are that the appeal or the claim—

(a) is made otherwise than in accordance with these Regulations;

(b) is not, or is no longer, within the jurisdiction of the Tribunal;

(c) discloses no reasonable grounds;

(d) is an abuse of the Tribunal's process.

(3) The notice under paragraph (1) must invite the appellant or the claimant to make representations.

(4) For the purposes of this regulation—

(a) a notice inviting representations must inform the appellant or the claimant that the appellant or the claimant may, within a period (no less than 5 working days) specified in the notice, either make written representations or request an opportunity to make oral representations;

(b) representations are made if—

(i) in the case of written representations, they are made within the specified period, and

(ii) in the case of oral representations, the party proposing to make them has requested an opportunity to do so within the specified period.

(5) The President or the tribunal panel may, after considering any representations made by the appellant

or the claimant, order that the whole or part of the appeal or the claim is struck out on one of the grounds specified in paragraph (2) or for want of prosecution.

(6) An order under paragraph (5) may be made without holding a hearing unless the appellant or the claimant requests the opportunity to make oral representations.

(7) If oral representations are made in accordance with paragraph (6), the President or the tribunal panel may consider the oral representations at the beginning of the hearing of the substantive appeal or claim.

(8) If the whole of an appeal application or a claim application is struck out under paragraph (5) the proceedings to which the appeal or claim relates are deemed to be concluded.

Order to amend case statement

27.—(1) The President or the tribunal panel may, if the President or the tribunal panel thinks fit at any stage of the appeal or the claim, order that a party's case statement is amended on the grounds that it discloses no reasonable grounds for bringing the appeal or the claim or it is an abuse of the Tribunal's process.

(2) Before making an order under paragraph (1), the President or the tribunal panel must give the party against whom the President or the tribunal panel proposes to make the order, a notice inviting representations and must consider any representations made.

(3) For the purposes of this regulation—

- (a) a notice inviting representations must inform the party that, within a period (no less than 5 working days) specified in the notice, the party may either make written representations or request an opportunity to make oral representations;
- (b) representations are made if—
 - (i) in the case of written representations, they are made within the period so specified, and
 - (ii) in the case of oral representations, the party proposing to make them has requested an opportunity to do so within the period so specified.

Evidence and submissions

28.—(1) The President or the tribunal panel may give directions on—

- (a) the issues which require evidence or submissions,

- (b) the nature of the evidence or submissions required,
 - (c) whether the parties are permitted or required to provide expert evidence, and if so whether the parties must jointly appoint a single expert to provide such evidence,
 - (d) the manner in which any evidence or submissions are to be provided, which may include a direction for them to be given—
 - (i) orally at a hearing, or
 - (ii) by written submissions or written witness statement, and
 - (e) the time by which any evidence or submissions are to be provided.
- (2) The President or the tribunal panel may direct in relation to an appeal—
- (a) the parent of the child to make the child available for examination or assessment by a suitably qualified professional person, or
 - (b) the person responsible for a school or educational setting to allow a suitably qualified professional person to have access to the school or educational setting for the purpose of assessing the child or the provision made, or to be made, for the child.
- (3) The President or the tribunal panel may consider a failure by a person who is a party to the appeal to comply with a requirement made under paragraph (2), in the absence of any good reason for such failure, as a failure to co-operate with the Tribunal.
- (4) The President or the tribunal panel may—
- (a) admit evidence whether or not the evidence would be admissible in a civil trial in England or Wales;
 - (b) exclude evidence that would otherwise be admissible where—
 - (i) the evidence was not provided within the time allowed by a direction,
 - (ii) the evidence was otherwise provided in a manner that did not comply with a direction, or
 - (iii) it would otherwise be unfair to admit the evidence.

Case management and directions

29.—(1) The President or the tribunal panel may, on the President's or the tribunal panel's initiative, or on the application of a party, give such directions to a party on any matter arising in connection with the appeal or claim as the President or the tribunal panel thinks fit, including staying proceedings, or such

directions as are provided in regulations 31 and 32 to enable the parties to prepare for the hearing or to assist the President or the tribunal panel to determine the issues.

(2) An application by a party for directions must be made in writing to the Secretary of the Tribunal.

(3) A party who submits an application for directions to the Secretary of the Tribunal must unless the application is accompanied by the written consent of the other party serve a copy of the application on the other party.

(4) If the other party objects to the directions sought, the President or the tribunal panel must consider the objection and, if the President or the tribunal panel consider it necessary for the determination of the application, must give the parties an opportunity to make representations.

(5) If in the opinion of the President or the tribunal panel there would not be a reasonable time before a hearing of which notice has been given under regulation 37(1) to comply with a direction for which a party applies, the President or the tribunal panel may—

- (a) if satisfied that compliance with the direction may assist the tribunal panel to determine the issues, postpone the hearing under regulation 48, or
- (b) refuse the application.

(6) A direction must—

- (a) include a statement of the possible consequences for the appeal or claim, as provided by regulation 33, of a party's failure to comply with the direction within the time allowed by the President or the tribunal panel;
- (b) unless the person to whom the direction is addressed had an opportunity to object to the direction, or gave their written consent to the application for it, contain a statement to the effect that that person may apply to the President or the tribunal panel under regulation 30 to vary or set aside the direction.

(7) Where, in accordance with regulation 35(1) the President or the tribunal panel orders—

- (a) that an appeal is heard together with a claim, the directions given under paragraph (1), may relate to the appeal only;
- (b) that a claim is heard together with an appeal, the directions given under paragraph (1), may relate to the claim only.

(8) Where paragraph (7)(a) applies, the President or the tribunal panel may consider whether it is in the interests of the efficient disposal of the appeal and the claim, and in the interests of the parties, that the

directions given with respect to the appeal are the same as, or similar to, those given in the claim.

(9) Where paragraph (7)(b) applies, the President or the tribunal panel may consider whether it is in the interests of the efficient disposal of the claim and the appeal, and in the interests of the parties, that the directions given with respect to the claim are the same as, or similar to, those given in the appeal.

(10) Where it appears to the President or the tribunal panel that there is an issue in an appeal or claim which must be determined prior to the substantive hearing of the appeal or the claim and which cannot properly be determined by the giving of directions, the President or the tribunal panel may summon the parties to appear before the President or the tribunal panel for this purpose and may give any necessary directions relating to their appearance.

Varying or setting aside directions

30.—(1) Where a party to whom a direction is addressed had no opportunity to object to the giving of the direction and did not give written consent to the application for it, that party may apply at any time to the President or the tribunal panel, by notice to the Secretary of the Tribunal, for the direction to be varied or set aside.

(2) The President or the tribunal panel must not vary the direction or set it aside without first notifying the parties and considering any representations made by them.

Particulars and supplementary statements

31. The President or the tribunal panel may give directions requiring any party to provide in, or with, that party's case statement such particulars or supplementary statements as may reasonably be required for the determination of the appeal or the claim.

Disclosure of documents and other material

32.—(1) The President or the tribunal panel may—

- (a) direct a party to submit to the President or the tribunal panel by a specified date any document or other material which the President or the tribunal panel may require and which it is in the power of that party to submit;
- (b) give a direction on—
 - (i) any issue on which disclosure of evidence is required,
 - (ii) the nature and extent of the disclosure,

- (iii) the manner in which the document or other evidence is to be provided to the Tribunal, and
- (iv) the exclusion of any document or other evidence which is irrelevant, unnecessary or improperly obtained.

(2) The President or the tribunal panel may impose a condition on the supply of a copy of any document or other material submitted in compliance with a direction given under paragraph (1) that the party receiving it must use the copy only for the purposes of the appeal or claim.

(3) The President or the tribunal panel may require a written undertaking to observe the condition referred to in paragraph (2) before supplying a copy.

(4) The President or the tribunal panel may grant to a party an order for such disclosure or inspection of documents (including the taking of copies) as might be granted under the Civil Procedure Rules 1998⁽¹⁾.

(5) An order under paragraph (4) must contain a reference—

- (a) in relation to an appeal, that under section 79 of the 2018 Act, any person who without reasonable excuse fails to comply with requirements regarding disclosure or inspection of documents is liable on summary conviction to a fine not exceeding level 3 on the standard scale, and
- (b) in relation to a claim, that under paragraph 6(8) of Schedule 17 to the 2010 Act, any person who without reasonable excuse fails to comply with requirements regarding disclosure or inspection of documents is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Failure to comply with directions

33.—(1) If a party has not complied with a direction given under these Regulations within the time specified in the direction the President or the tribunal panel may—

- (a) where the party in default is the appellant or the claimant, dismiss the appeal or the claim without a hearing;
- (b) where the party in default is the local authority, FEI governing body or the responsible body, determine the appeal or the claim without a hearing;
- (c) hold a hearing—

(1) See Part 31 – Disclosure and Inspection of Documents.

- (i) without notifying the party in default, at which the party in default is not present or represented, or
- (ii) where the parties have been notified of the hearing in accordance with regulation 37(1), and direct that neither the party in default nor any person that intends to represent that party or give evidence on that party's behalf is entitled to attend the hearing.

(2) In this regulation, “the party in default” means the party which has failed to comply with the direction.

Consolidating appeals or claims

34.—(1) If more than one appeal relates to the same child or young person, or requires a decision on substantially the same issue, the President may order that the appeals are heard together.

(2) If more than one claim relates to the same child or young person, or requires a decision on substantially the same issue, the President may order that the claims are heard together.

(3) The President may make an order varying or revoking an earlier order made under paragraph (1) or (2).

(4) Subject to paragraph (5), the President may issue an order under this regulation on the written request of either party or on the President's own initiative.

(5) An order made under this regulation must only be made if it appears, in the opinion of the President, to be fair and just to do so and before an order is made each party to every appeal or claim affected must be given an opportunity to be heard.

Consolidating claims together with appeals

35.—(1) Subject to paragraphs (2) and (3), where a claim relates to the same child or young person and either arises from the same circumstances or requires a decision on substantially the same issue as an appeal, the President may order that the claim is heard with the appeal.

(2) Nothing in paragraph (1) permits the President to make an order if a person has failed to make an appeal within the time limits specified by regulation 10 or by any extension of time to make such an appeal granted under these Regulations.

(3) The President may only make an order under paragraph (1) if, in addition to complying with the requirements of paragraph (6), the making of an order would not cause undue delay to the determination of the appeal.

(4) The President may make an order varying or revoking an earlier order made under paragraph (1).

(5) Subject to paragraph (6), the President may issue an order under this regulation on the written request of either party or on the President's own initiative.

(6) An order made under this regulation must only be made if it appears, in the opinion of the President, to be fair and just to do so, and before an order is made each party to every claim or appeal affected must be given an opportunity to be heard.

Addition and substitution of parties

36.—(1) A person may make an application to be joined as a party to the appeal or the claim.

(2) The President or the tribunal panel may make an order to join a person as a party to the appeal or the claim—

- (a) if a written application is made under paragraph (1), or
- (b) on the President's or the tribunal panel's own initiative if no written application has been made but a person consents to be joined as a party to the appeal or the claim.

(3) The President or the tribunal panel may make an order to substitute a party if—

- (a) the wrong person has been named as a party, or
- (b) the substitution has become necessary because of a change in circumstances since the start of the appeal or the claim.

(4) If an order is made under paragraph (2) or (3) the President or the tribunal panel may make such consequential directions, or enquiries under regulation 24 as the President or the tribunal panel considers appropriate.

(5) Unless the President or the tribunal panel directs otherwise, a person appointed or substituted under this regulation must be treated as a party for the purpose of any provision in these Regulations requiring a document to be served on, or sent to, or notice to be given to a party to the appeal or claim.

Notice of date, place and time of hearings

37.—(1) Subject to the provisions of paragraph (2) and regulation 39, the Secretary of the Tribunal must, after consultation with the parties, fix the date, place and time of the hearing and send to each party a notice specifying the date, place and time of the hearing.

(2) If the Secretary of the Tribunal has asked a party to provide details of their availability to attend a hearing and a party fails to comply with the request, the Secretary of the Tribunal may proceed to list the

appeal or claim for hearing without further consultation.

(3) Subject to paragraph (4), the notice of hearing referred to in paragraph (1) must be sent—

- (a) in relation to a hearing under regulation 23, 25, 26, 53 or 54, no later than 5 working days before the date fixed for a hearing,
- (b) in any other case, no later than 10 working days before the date fixed for the hearing, or
- (c) in any case, within a shorter period of time before the date fixed for the hearing in subparagraph (a) or (b) as the parties may agree.

(4) The Secretary of the Tribunal must include in or with the notice of hearing—

- (a) information and guidance, in a form approved by the President, as to attendance at the hearing of the parties and witnesses, the bringing of documents, and the right of representation or assistance as provided by regulation 50, and
- (b) a statement explaining the possible consequences of non-attendance and the right to make representations in writing by—
 - (i) the appellant or the claimant if the appellant or the claimant does not attend and is not represented;
 - (ii) the local authority, FEI governing body or the responsible body if it is not represented and if it has submitted a statement of its case, unless it stated in writing that it did not resist the appeal or the claim, or withdrew its opposition to the appeal or the claim.

(5) Subject to paragraph (6), the President or the tribunal panel may alter the place and time of any hearing and the Secretary of the Tribunal must give the parties no less than 5 working days (or a shorter time as the parties agree) notice of the new place and time of the hearing.

(6) If the parties are present when the President or the tribunal panel announce the new place and time place of the hearing, no further notice is required.

(7) Nothing in paragraph (1) or (5) obliges the Secretary of the Tribunal to consult or send a notice to any person who is not entitled to be represented at the hearing.

Transfers

38.—(1) Subject to paragraph (2), the President may refer proceedings in relation to an appeal to the First-tier Tribunal if the First-tier Tribunal has jurisdiction in relation to the proceedings.

(2) A reference under paragraph (1) must not be made unless notice has been given to the parties.

(3) If proceedings in relation to an appeal are transferred to the Tribunal by the First-tier Tribunal the Tribunal may continue with the proceedings if the Tribunal has jurisdiction in relation to the proceeding.

Power to determine the appeal or claim without a hearing

39.—(1) The President or the tribunal panel may determine the appeal or the claim or any particular issue without a hearing—

- (a) if the parties so agree in writing, or
- (b) in the circumstances described in regulation 23 (failure to submit a case statement and absence of opposition) or 33 (failure to comply with directions).

(2) Before making a determination under paragraph (1), the President or tribunal panel must consider any representations in writing already submitted by the parties (for the purpose of this regulation, the appeal application or the claim application and the parties' case statements are treated as representations in writing).

Public and private hearings: arrangements and exceptions

40.—(1) Subject to paragraph (2), all hearings of the Tribunal must be in private.

(2) The President or the tribunal panel may make an order that a hearing or part of a hearing is to be held in public if the parties agree to a public hearing and the President or the tribunal panel is satisfied that a public hearing would—

- (a) not prejudice the welfare or interests of the child or young person, and
- (b) allow for the fair hearing of the appeal or claim.

(3) Subject to paragraph (6), the following persons are entitled to attend a hearing even though it is held in private—

- (a) the parties,
- (b) the parties representatives,
- (c) the parties witnesses, and
- (d) any person who has been appointed to act as a case friend in accordance with regulation 61.

(4) The following persons are also entitled to attend a hearing even though it is held in private—

- (a) the child, where the child is not a party to the appeal or claim;

- (b) a parent of the child, where the parent is not a party to the appeal or the claim;
- (c) the clerk to the tribunal panel and the Secretary of the Tribunal;
- (d) the President, a Chair, or a lay panel member (when not sitting as a member of the tribunal panel);
- (e) a person undergoing training as a Chair, a lay panel member or as a clerk to the tribunal panel;
- (f) a person acting on behalf of the President in the training or supervision of clerks to tribunal panels;
- (g) an interpreter;
- (h) any person giving other necessary assistance to a person sitting as a member of the tribunal panel or entitled to attend the hearing further to this regulation;
- (i) any person named by the appellant or the claimant in response to the enquiry under regulation 24(a)(vi) or (vii) unless the President or the tribunal panel has determined that any such person must not attend the hearing and has notified the appellant or the claimant accordingly.

(5) The President or the tribunal panel, with the consent of the parties or their representatives actually present, may permit any other person to attend a hearing which is held in private.

(6) Without prejudice to any other powers it may have, the President or the tribunal panel may exclude from a hearing, or part of it—

- (a) a person whose conduct in the opinion of the President or the tribunal panel has disrupted, or is likely to disrupt, the hearing;
- (b) a person whose presence in the opinion of the President or the tribunal panel has made, or is likely to make, it difficult for any person to give evidence or make the representations necessary for the proper conduct of the hearing;
- (c) a representative or witness whom a party omitted to name, without reasonable cause, in response to the enquiry by the Secretary of the Tribunal under regulation 24.

(7) Except as provided in regulation 43(3) and (4) none of the persons mentioned in paragraph (4) or (5) may, except in the case of the persons specified in subparagraphs (c), (g), and (h) of paragraph (4) as their respective duties require, take any part in the hearing or (where entitled or permitted to remain) in the deliberations of the tribunal panel.

Restricted reporting orders

41.—(1) If it appears appropriate to do so the President or the tribunal panel may make an order limiting or prohibiting the publishing of any matter that is likely to lead members of the public to identify the appellant, claimant, child or other person, where it is considered that they should not be identified.

(2) In this regulation “publishing” includes, without prejudice to the generality of that expression—

- (a) publishing any matter in a programme service, as defined by section 201(1) of the Broadcasting Act 1990⁽¹⁾, and
- (b) causing any matter to be published.

(3) An order under this regulation may be made in respect of a limited period and may be varied or revoked by the President or the tribunal panel.

Procedure at hearing

42.—(1) At the beginning of the hearing the Chair must explain the order of proceedings which the tribunal panel proposes to adopt.

(2) The tribunal panel must conduct the hearing in a manner it considers appropriate to clarify the issues and handle the proceedings in accordance with the overriding objective as required by regulation 4.

(3) The tribunal panel must determine the order in which the parties are heard and the issues determined.

(4) The tribunal panel may, if it is satisfied that it is fair and just to do so, permit—

- (a) the appellant or the claimant to rely on grounds not stated in the appeal application or the claim application or the case statement and to produce evidence not presented to the local authority, FEI governing body or the responsible body before or at the time it took the disputed decision;
- (b) the local authority, FEI governing body or the responsible body to rely on grounds not specified in its case statement.

(5) If, at or after the beginning of a hearing, a member of the tribunal panel constituting three members other than the Chair is absent—

- (a) the hearing may, with the consent of the parties, be conducted by the other two members and in that event the tribunal panel is to be regarded as properly constituted and

⁽¹⁾ 1990 c. 42; section 201(1) was amended by Part 3, Chapter 6, section 360 of, and paragraph 1 of Schedule 19 to, the Communications Act 2003 (c. 21).

the decision of the tribunal panel may be taken by those two members, and

- (b) the absent member must not re-join the hearing.

Evidence at hearing

43.—(1) Subject to regulation 40(6), in the course of the hearing the parties are entitled to give evidence, to call witnesses, to question any witness and to address the tribunal panel both on the evidence, including the written evidence submitted before the hearing, and generally on the subject matter of the appeal or the claim.

(2) A party is not entitled to call more than two witnesses to give evidence orally unless the President or the tribunal panel has given permission on application by a party (in addition to any witness whose attendance is required in accordance with paragraph (6)).

(3) The President or the tribunal panel may permit the following persons to give evidence and address the tribunal panel on the subject matter of the appeal or the claim—

- (a) the child, where the child is not a party to the appeal or the claim;
- (b) the parent of the child, where the parent is not a party to the appeal or the claim;
- (c) a person who has submitted a declaration of suitability to the Tribunal in accordance with regulation 61 to act as a case friend.

(4) The President or the tribunal panel may permit—

- (a) the person, if any, named in response to an enquiry under regulation 24(a)(vii) to give evidence and address the tribunal panel on the child's or young person's views and wishes, and
- (b) the local authority or the responsible body to question the person specified in sub-paragraph (a) in relation to any evidence or address made to the tribunal panel.

(5) Evidence before the tribunal panel may be given—

- (a) orally, or
- (b) by written statement if such evidence is submitted with the appeal application or claim application or the case statement or in accordance with regulation 47.

(6) The President or the tribunal panel may, at any stage of the appeal or the claim, require the personal attendance of any maker of any written statement.

(7) The President or the tribunal panel may receive evidence of any fact which appears to the President or the tribunal panel to be relevant.

(8) The President or the tribunal panel may require any party or witness to give evidence on oath or affirmation, and for that purpose there may be administered an oath or affirmation in the correct form, or may require any evidence given by a written statement to be given by statement of truth.

Change of witness

44.—(1) The person named as a party's witness in response to an enquiry made under regulation 24 may be changed by that party if written notification is received by the Secretary of the Tribunal and a copy of the notification served on the other party no later than 5 working days before the hearing.

(2) Any application to change a witness made less than 5 working days before the hearing must be determined by the President or the tribunal panel.

Summoning a witness

45.—(1) Subject to paragraphs (2) to (5), the President or the tribunal panel may, on the application of a party or on the President's or the tribunal panel's own initiative, require by summons any person to—

- (a) attend as a witness at a hearing at such time and place as may be specified in the summons, and at any postponement or adjournment of that hearing, and
- (b) at the hearing, to answer any questions or produce any documents or other material in the person's custody or under the person's control which relate to any matter in question in the appeal or claim.

(2) No person must be compelled to give any evidence or produce any document or other material that the person could not be compelled to give or produce at a trial of an action in a court of law.

(3) In exercising the power conferred by this regulation, the President or the tribunal panel must take into account the need to protect any matter that relates to intimate personal circumstances or financial circumstances or consists of information communicated or obtained in confidence.

(4) No person may be required to attend in compliance with a summons unless the person has been given at least 5 working days' notice of the hearing or, if less than 5 working days, the person has informed the President or the tribunal panel that the person accepts the notice given.

(5) No person may be required in compliance with a summons to attend and give evidence or to produce

any document unless a sum reasonably sufficient to cover the necessary expenses of the person's attendance is paid or tendered.

(6) A party seeking a witness summons must apply in writing to the Secretary of the Tribunal at least 8 working days before the hearing, or later if the person to whom the summons is to be addressed consents in writing.

(7) A witness summons must contain—

- (a) in relation to an appeal, a statement that under section 79 of the 2018 Act, any person who without reasonable excuse fails to comply with any requirement to attend to give evidence and, if the summons so requires, to produce documents is liable on summary conviction to a fine not exceeding level 3 on the standard scale,
- (b) in relation to a claim, a statement that, under paragraph 6(8) of Schedule 17 to the 2010 Act, any person who without reasonable excuse fails to comply with any requirement to attend to give evidence and, if the summons so requires, to produce documents is liable on summary conviction to a fine not exceeding level 3 on the standard scale, and
- (c) a statement of the effect of paragraph (8).

(8) A person to whom a witness summons is addressed may apply to the President or the tribunal panel, by notice to the Secretary of the Tribunal, to vary it or set it aside.

(9) The President or the tribunal panel must not vary or set aside the witness summons without first notifying the party who applied for the issue of the witness summons and considering any representations made by that party.

Evidence by telephone, video link or other means

46. The President may, on the application of a party or on the President's or the tribunal panel's own initiative, permit a party or a witness to give evidence by telephone, through a video link or by any other means of communication, if satisfied that this would not prejudice the achievement of the overriding objective of these Regulations.

Late written evidence

47.—(1) At the beginning of the hearing, a party may submit further written evidence for admission if—

- (a) the parties agree to the admission of the further evidence, or
- (b) the evidence satisfies the conditions set out in paragraph (2).

(2) The conditions referred to in paragraph (1)(b) are that—

- (a) the evidence was not, and could not reasonably have been, available to that party before the end of the case statement period, and
- (b) a copy of the evidence was submitted to the Secretary of the Tribunal and served on the other party at least 5 working days before the hearing.

(3) Further written evidence submitted in accordance with paragraph (1)(b) may only, subject to paragraph (4), be admitted if, after considering any representations from the other party, the President or the tribunal panel is of the opinion that the extent and form of the evidence is such that it is unlikely to impede the efficient conduct of the hearing.

(4) Further written evidence must not be admitted if, in the opinion of the President or the tribunal panel, its admission would be contrary to the interests of justice.

(5) If the conditions in paragraph (2) are not met, the President or the tribunal panel may give a party permission to submit further written evidence at the hearing if the President or the tribunal panel is of the opinion that unless the evidence is admitted, there is a serious risk of prejudice to the party seeking to rely on it.

Postponement of hearing

48.—(1) The President or the tribunal panel may, on the President's or the tribunal panel's own initiative or on the application of a party, in exceptional circumstances, make an order to postpone a hearing.

(2) An application by a party under paragraph (1) must be—

- (a) made in writing stating reasons in full, and
- (b) received by the Secretary of the Tribunal, and served by the applicant on the other party, at least 5 working days before the hearing.

(3) If an order is made under paragraph (1), the Secretary of the Tribunal must give the parties no less than 5 working days (or such shorter time as the parties agree) notice of the new hearing date.

(4) Nothing in paragraph (3) obliges the Secretary of the Tribunal to consult or send a notice to any person who is not entitled to be represented at the hearing.

Adjournments and directions

49.—(1) The President or the tribunal panel may adjourn a hearing.

(2) When a hearing is adjourned—

- (a) the President or the tribunal panel may give directions to be complied with before, or at, the resumed hearing, and
- (b) the Chair may announce provisional conclusions reached by the tribunal panel. The provisional conclusions are not a decision of the tribunal panel.

(3) A direction under paragraph (2)(a) may require a party to provide such particulars, evidence or statements as may reasonably be required for the determination of the appeal or the claim.

(4) If a party fails to comply with a direction made under paragraph (2)(a), the tribunal panel may take account of that fact when determining the appeal or the claim or deciding whether to make an order for costs.

(5) If the place and time of an adjourned hearing is announced at the hearing before the adjournment, no further notice is required.

Representation at hearing

50.—(1) Subject to paragraph (2), at any hearing or part of a hearing—

- (a) the appellant or claimant may conduct the appeal or claim (with assistance from one person if the appellant or the claimant wishes), or may appear and be represented by one person whether or not legally qualified;
- (b) the local authority, FEI governing body or the responsible body may appear and be represented by one person whether or not legally qualified.

(2) The President or the tribunal panel may grant permission—

- (a) for the appellant or claimant to obtain assistance or be represented by more than one person;
- (b) for the local authority, FEI governing body or the responsible body to be represented by more than one person.

(3) If a party does not intend to attend or be represented at the hearing the party may, no later than 5 working days before the hearing, send to the Secretary of the Tribunal additional written representations in support of that party's case.

Failure to attend hearing

51.—(1) If a party fails to attend or be represented at a hearing of which that party had been notified, the tribunal panel may—

- (a) unless satisfied that there is sufficient reason for such absence, hear and determine the appeal or claim in the party's absence, or

(b) postpone or adjourn the hearing, as appropriate.

(2) Before disposing of an appeal or claim in the absence of a party, the tribunal panel must consider any representations in writing submitted by that party in response to the notice of hearing and, for the purpose of this regulation the appeal application or claim application and the parties' case statements are to be treated as representations in writing.

Tribunal panel's decision

52.—(1) For the purposes of arriving at its decision the tribunal panel must, and for the purposes of discussing a question of procedure may, notwithstanding anything contained in these Regulations, order all persons to withdraw from the sitting of the tribunal panel other than the members of the tribunal panel and any of the persons mentioned in regulation 40(4)(c) to (f), or, as their respective duties require, regulation 40(4)(g) and (h).

(2) A decision of a three member tribunal panel may be taken by a majority and where the tribunal panel is constituted by two members the Chair has a second or casting vote.

(3) The decision of the tribunal panel may be given orally at the end of the hearing or reserved and, in any event, whether there has been a hearing or not, must be recorded immediately in a document which, except in the case of a decision by consent, must also contain, or have annexed to it, a statement of the reasons (in summary form) for the tribunal panel's decision, and such document must be signed and dated by the Chair.

(4) Neither a decision given orally nor the document referred to in paragraph (3) may contain any reference to the decision being by majority (if that is the case) or to any opinion of a minority.

(5) Every decision of the tribunal panel must be entered in the Register.

(6) The Secretary of the Tribunal must send a copy of the document referred to in paragraph (3) as soon as is practicable to each party, accompanied by guidance, in a form approved by the President, about the circumstances in which there is a right to appeal against the tribunal panel decision and the procedure to be followed.

(7) Where regulation 13(11)(a) or 62(2) applies, the Secretary of the Tribunal must send a copy of the documents referred to in paragraph (6) to the appellant or claimant in addition to the representative or the case friend.

(8) Every decision is to be treated as having been made on the date on which a copy of the document recording it is sent to the appellant or claimant

(whether or not the decision has previously been announced at the end of the hearing).

After the hearing

Application or proposal for review of the Tribunal's decision

53.—(1) A party may apply to the Secretary of the Tribunal for the decision of the President or the tribunal panel to be reviewed on the grounds that—

- (a) the decision was wrongly made as a result of a material error on the part of the Tribunal administration,
- (b) a party, who was entitled to be heard at the hearing but failed to appear or to be represented, had good and sufficient reason for failing to appear,
- (c) there was an obvious and material error in the decision, or
- (d) the interests of justice so require.

(2) An application that a decision of the President or the tribunal panel is reviewed must be made—

- (a) in writing stating the grounds, and
- (b) no later than 28 days after the date on which the decision was sent to the parties.

(3) The President may—

- (a) on the application of a party or on the President's own initiative, review and set aside or vary any decision made by the President on a ground referred to in paragraph (1), or
- (b) refuse an application for a review of the President's decision in accordance with paragraph (6).

(4) The President or the Chair of the tribunal panel which decided the case may—

- (a) on the application of a party, or on the President's or Chair's own initiative, review and set aside or vary any decision made by the tribunal panel on a ground referred to in paragraph (1), or
- (b) refuse an application for a review of the tribunal panel's decision in accordance with paragraph (6).

(5) The Chair of the tribunal panel which decided the case may order a rehearing before the same or a differently constituted tribunal panel.

(6) An application for a review may be refused in whole or part by the President, or the Chair of the tribunal panel which decided the case, if in the

President's or the Chair's opinion the whole or part of it has no reasonable chance of success.

(7) Unless an application for a review is refused in accordance with paragraph (6), the review must be determined after the parties have had an opportunity to be heard—

- (a) by the President, where the decision was made by the President, or
- (b) where the decision was made by a tribunal panel, by the President or the tribunal panel which made the decision or by another tribunal panel appointed by the President.

(8) If the President or the Chair of the tribunal panel which decided the case proposes, on the President's or the Chair's own initiative, that a decision is reviewed—

- (a) the Secretary of the Tribunal must serve notice on the parties no later than 28 days after the date on which the decision was sent to the parties, and
- (b) the parties must have an opportunity to be heard.

(9) In determining an application or a proposal for a review under paragraph (3), (4) or (7), the President or the Chair may give directions to be complied with before or at the hearing of the review.

(10) If a party fails to comply with a direction made under paragraph (9), the tribunal panel may take account of that fact when determining the review or deciding whether to make an order for costs.

(11) The President or the Chair may on the application of a party, give permission for that party to change a witness for the purpose of the review hearing.

(12) An application made under paragraph (11), must be received by the Secretary of the Tribunal and served by the applicant on the other party, no later than 14 days before the review hearing.

(13) The President or the Chair must give the parties the opportunity to be heard on any application made under paragraph (11).

(14) If a decision is set aside or varied following a review under this regulation the Secretary of the Tribunal must alter the entry in the Register and must notify the parties accordingly.

Review of Tribunal's decision not to extend the period in which proceedings must be commenced

54.—(1) A decision by the President not to extend the time for submitting an appeal application under regulation 14 may be reviewed under regulation 53 on the application of a person as if the person was a party to the appeal.

(2) Where the President decides not to consider a claim which is out of time, under paragraph 4(3) of Schedule 17 to the 2010 Act, that decision may be reviewed under regulation 53 on the application of a person as if the person was a party to the claim.

(3) If an application for review is made under paragraph (1) or (2), the Secretary of the Tribunal must serve a copy of the application on the local authority, FEI governing body or the responsible body together with a notice inviting written representations within a specified period.

Application for permission to appeal to the Upper Tribunal

55.—(1) A party seeking permission to appeal on a point of law under section 81 of the 2018 Act or paragraph 6AA of Schedule 17 to the 2010 Act (appeals from the Education Tribunal for Wales to the Upper Tribunal) must make a written application to the Education Tribunal for permission to appeal.

(2) An application under paragraph (1) must be sent to the Secretary of the Tribunal no later than 28 days after the latest of the dates that the Secretary of the Tribunal sent to the party making the application—

- (a) notification of the decision,
- (b) notification that an application for the decision to be reviewed has been unsuccessful, or
- (c) notification that the decision has been varied following a review.

(3) An application under paragraph (1) must—

- (a) identify the decision to which it relates,
- (b) identify the alleged error or errors of law in the decision, and
- (c) state the result the party making the application is seeking.

(4) The President or Chair may give directions in relation to the determination of the application, and may make its decision on the application with or without a hearing.

(5) On receiving an application for permission to appeal to the Upper Tribunal the President or the Chair of the tribunal panel which decided the case must first consider, taking into account the overriding objective in regulation 4, whether to review the Tribunal's decision in accordance with regulation 53 unless the President or the Chair have already reviewed the decision or decided not to review the decision.

(6) If the President or the Chair decides not to review the decision, or reviews the decision and decides to take no action in relation to the decision, or part of it, the President or the Chair must then consider

whether to give permission to appeal in relation to the decision or that part of it.

(7) The Secretary of the Tribunal must send written notification of the President or Chair's decision on the application to the parties as soon as practicable including details of any decision to give permission to appeal made under paragraph (6).

(8) If the President or Chair has refused the application the notification under paragraph (7) must also include—

- (a) the reasons for such refusal, and
- (b) notification of the right to make an application to the Upper Tribunal for permission to appeal and the time within which, and the method by which, such application must be made.

(9) The President or Chair may give permission to appeal on limited grounds, but must comply with paragraph (8) in relation to any grounds on which it has refused permission.

Power to suspend Tribunal's decision

56. The President or the Chair of the tribunal panel which decided the case may, on application or on the President's or the Chair's own initiative, make an order to suspend the effect of the tribunal panel's decision pending the determination by the President or the Chair or the Upper Tribunal of an application for permission to appeal against, and any appeal or review of, that decision.

Orders of the Upper Tribunal or the Court

57.—(1) If any decision of the Tribunal is set aside, varied or altered in any way by order of the Upper Tribunal or the Court, the Secretary of the Tribunal must alter the entry in the Register to correspond to that order and must notify the parties accordingly.

(2) If the appeal or the claim is remitted to the Tribunal by order of the Upper Tribunal or the Court to be reheard, the Secretary of the Tribunal must notify the parties that, during a period of 15 working days (or a shorter period as agreed by the parties) each party may submit a supplementary case statement and further written evidence.

(3) If an order to strike out the appeal application or the claim application is quashed or set aside by the Upper Tribunal or the Court, the Secretary of the Tribunal must notify the parties—

- (a) in the case where the case statement period had not expired before the order to strike out took effect—

- (i) that a new case statement period is to commence, and
 - (ii) that, within the new case statement period, the parties may submit the documentation referred to in sub-paragraph (b) in respect of a case statement or evidence submitted before the strike out took effect, or
 - (b) where sub-paragraph (a) does not apply, that each party has 15 working days (or a shorter period as the parties may agree in writing) to submit a supplementary case statement and further written evidence.
- (4) The Secretary of the Tribunal must send a copy of all case statements and written evidence received from a party during the periods referred to in paragraphs (2) and (3)(b) to the other party.

Compliance with tribunal panel orders - appeals

58.—(1) If the tribunal panel, following its decision in relation to an appeal, makes an order under section 71 of the 2018 Act requiring a local authority or FEI governing body to perform the actions referred to in paragraph (2) the local authority or FEI governing body must perform the actions within the time period specified in paragraph (2).

(2) In the case of an order—

- (a) against a local authority to prepare an individual development plan, it must prepare and give a copy of the individual development plan to the child, child's parent or young person within 7 weeks;
- (b) against a FEI governing body to prepare an individual development plan, it must prepare and give a copy of the individual development plan to the young person within 35 term time days;
- (c) against a local authority to revise an individual development plan, it must revise the individual development plan and give a copy of it to the child, child's parent or young person within 7 weeks;
- (d) against an FEI governing body to revise an individual development plan, it must revise the individual development plan and give a copy of it to the young person within 35 term time days;
- (e) to continue to maintain an individual development plan (with or without revisions), with immediate effect;
- (f) against a local authority to take over responsibility for maintaining an individual

development plan, beginning with the date specified by the tribunal;

- (g) against a local authority to review an individual development plan, it must undertake the review and notify the child, child's parent or young person of the outcome of the review, in writing, within 7 weeks;
- (h) against an FEI governing body to review an individual development plan, it must undertake the review and inform the young person of the outcome of the review, in writing within 35 term time days;
- (i) to remit the case to the local authority responsible for the matter for it to reconsider whether, having regard to any observations made by the tribunal, it is necessary for a different decision to be made or a different action to be taken, the local authority must do so, and notify the child, child's parent or young person of the outcome of that reconsideration within 7 weeks;
- (j) to remit the FEI governing body responsible for the matter for it to reconsider whether, having regard to any observations made by the tribunal, it is necessary for a different decision to be made or a different action to be taken, the FEI governing body must do so, and notify the child, child's parent or young person of the outcome of that reconsideration within 35 term days.

(3) If the tribunal panel, following its decision in relation to an appeal, makes an order under section 73 of the 2018 Act requiring a home authority to perform an action referred to in paragraph (4), the home authority must perform that action within the time period specified in paragraph (4).

(4) In the case of an order—

- (a) to prepare an individual development plan, it must prepare and give a copy of the individual development plan to the child, child's parent or young person within 7 weeks;
- (b) to revise an individual development plan as specified in the order, it must revise the individual development plan and give a copy of it to the child, child's parent or young person within 7 weeks;
- (c) to remit the case to the home authority responsible for the matter for it to reconsider whether, having regard to any

observations made by the tribunal, it is necessary for a different decision to be made or different action to be taken, it must do so and notify the child, child's parent or young person of the outcome of that reconsideration within 7 weeks.

(5) In each case in paragraphs (2) and (4), unless otherwise specified, the period begins with the first working day after the order was made.

(6) Where an order is made in respect of an FEI governing body, a "term time day" means a day on which the further education institution is due to meet for the purpose of teaching students, provided that day is within a time period in which the further education institution delivers the majority of its full-time courses.

Children who lack capacity and case friends

Applications under section 70(3) of the 2018 Act for a declaration under section 71(2) of the 2018 Act relating to child's capacity to understand

59.—(1) A child or child's parent seeking a declaration from the tribunal pursuant to section 71(2) of the 2018 Act must submit an application in writing to the tribunal.

(2) The application must state—

- (a) the name and address of the person seeking the declaration and, if available, the person's telephone number and e-mail address;
- (b) the name and date of birth of the child;
- (c) the name and address of the child's school and the relevant local authority;
- (d) the applicant's relationship to the child;
- (e) the names and addresses of all persons—
 - (i) who have parental responsibility for a child, or
 - (ii) who share parental responsibility for a child, or
 - (iii) have care of the child,or reasons why the names and addresses of such persons are not provided;
- (f) a copy of the governing body's and local authority's decisions under section 84 of the 2018 Act relating to the child's capacity;
- (g) the reason or reasons for making the application;
- (h) supporting evidence of the child's capacity, or lack of capacity, within the meaning of section 85(1) of the 2018 Act;

- (i) the declaration sought.

(3) Where it appears to the President or tribunal panel that further information is required before a declaration can be made, the President or tribunal panel may direct the applicant to provide such information.

(4) The Secretary of the Tribunal must serve notice of any declaration made under section 71(2) of the 2018 Act on the applicant, the governing body, the local authority and, where appropriate, those listed in paragraph (2)(e).

(5) The Secretary of the Tribunal must record the decision and any declaration in the Register.

Who may be a case friend

60. A person may only act as a case friend if the person is not barred from regulated activity relating to children under section 3(2)(a) of the Safeguarding Vulnerable Groups Act 2006(1).

How a person becomes a case friend

61.—(1) A person who wishes to act as a case friend must submit an application in writing to the Tribunal.

(2) The application must state—

- (a) the name and address of the person who wishes to act as the child's case friend and, if available, the person's telephone number and e-mail address;
- (b) the name and date of birth of the child;
- (c) the name and address of the child's school and the relevant local authority;
- (d) the person's relationship or connection to the child;
- (e) a declaration of suitability confirming that the person satisfies the conditions and requirements specified in these Regulations and section 85(6) of the 2018 Act;
- (f) supporting evidence of the child's lack of capacity within the meaning of section 85(1) of the 2018 Act.

(3) The application must include—

- (a) the views of the child's parent in relation to the person's wish to act as the case friend, or
- (b) an explanation of why the person has not established the parent's views.

(1) Under section 3(2)(a) of the Safeguarding Vulnerable Groups Act 2006 (c. 47), a person is barred from regulated activity relating to children if the person's name is included in the list in Part 1 of Schedule 3 to that Act ("the children's barred list").

(4) Subject to paragraph (5), the declaration of suitability must be accompanied by an enhanced disclosure certificate issued by the Disclosure and Barring Service.

(5) The requirement in paragraph (4) does not apply where the person who wishes to act as the case friend is the child's parent, step-parent, brother, step-brother, half-brother, sister, step-sister, half-sister, grand-parent, uncle, aunt, nephew or niece.

(6) The Secretary of the Tribunal must—

- (a) record on the Tribunal's register the enhanced disclosure certificate's number and the start and expiry date, and
- (b) use the recorded delivery service to return the enhanced disclosure certificate to the person.

(7) The application must be accompanied by evidence to support the person's suitability to act as a case friend.

(8) The application must be signed by the person who wishes to act as the child's case friend.

(9) The person who wishes to act as the child's case friend must serve a copy of the application on—

- (a) the parties to the proceedings,
- (b) the child's parent, and
- (c) the child's school and local authority.

Steps in proceedings

62.—(1) If during the appeal or the claim the President or the tribunal panel make a finding that a child appellant or claimant lacks capacity to understand within the meaning of section 85(1) of the 2018 Act and requires a case friend to conduct the proceedings on its behalf, no party may take any further step in the appeal or the claim without the President's or the tribunal panel's permission until and unless a person who wishes to act as the appellant's or the claimant's case friend has submitted an application to the Tribunal in accordance with regulation 61.

(2) Where the President or tribunal panel has ordered that a person is a case friend, the Secretary of the Tribunal must send a copy of the order to the case friend, the child's parent and to the child's school and local authority.

(3) Where the President or tribunal panel has ordered that a person is a case friend, the Secretary of the Tribunal must send all documents and notices concerning the appeal or claim to the case friend instead of the appellant or the claimant.

(4) If paragraph (3) applies, references in these Regulations (however expressed) to sending documents to, or giving notice to, the appellant or the

claimant must be construed as references to sending documents to, or giving notice to, the case friend.

Removing a case friend

63.—(1) The President or the tribunal panel may remove a case friend by order in accordance with section 85(2)(b) of the 2018 Act on the President's or the tribunal panel's own initiative or on application, if satisfied that—

- (a) the person does not meet one or more of the conditions set out in section 85(6) of the 2018 Act, or
- (b) other good reason exists.

(2) An application for an order to remove a case friend must be supported by evidence.

(3) Where an order is made under paragraph (1), the President or the tribunal panel may stay the appeal or the claim until the appellant or the claimant has appointed a new case friend.

(4) The Secretary of the Tribunal must serve notice on the parties of any order made under paragraph (1) stating—

- (a) that the person no longer acts as the appellant's or the claimant's case friend, and
- (b) where a person has been substituted as a case friend, the name and address of the new case friend for service of notices and documents.

(5) The Secretary of the Tribunal must serve a copy of a direction made under paragraph (1) on—

- (a) the person who has been removed as the case friend,
- (b) the child's parent, and
- (c) the child's school and local authority.

NHS bodies – Reports to the Tribunal

64.—(1) An NHS body to whom a recommendation has been made by the Tribunal must make a report to the Tribunal before the end of 6 weeks beginning with the date on which the recommendation is made.

(2) The Secretary of the Tribunal must send a copy of the report to each party.

Miscellaneous

Extension of time

65.—(1) Subject to paragraph (2), the President may, on application of a party or on the President's own initiative, direct that a period of time in these Regulations or a direction made under them is extended.

(2) The President may only extend a period of time in accordance with paragraph (1) if the President considers it fair and just to do so.

(3) The President may extend a period of time by such period as the President thinks fit.

(4) Where the President has extended a period of time, reference in these Regulations or in a direction made under them to that period of time must be construed as a reference to the period of time so extended.

Withdrawal

66. A person may withdraw an appeal or a claim—

- (a) by giving notice to the Secretary of the Tribunal at any time before a hearing, or
- (b) orally at a hearing.

Orders for costs and expenses

67.—(1) The President or the Chair of the tribunal panel which decided the case must not normally make an order in respect of costs and expenses, but may, subject to paragraph (3), make such an order—

- (a) against a party if the President or the Chair is of the opinion that a party has been responsible for improper, unreasonable or negligent action or omission, or for any failure to comply with a direction or any delay which with diligence could have been avoided or that the party's conduct in making or resisting the appeal or claim was unreasonable;
- (b) against a representative if the President or the Chair is of the opinion that the representative is responsible for improper, unreasonable or negligent action or omission, or for any failure to comply with a direction or any delay which with diligence could have been avoided;
- (c) against a party who has failed to attend or be represented at a hearing of which that party has been duly notified;
- (d) against the local authority, FEI governing body or responsible body where it has not submitted a case statement under regulation 19;
- (e) against the local authority, FEI governing body or the responsible body where the President or the Chair considers that the disputed decision was unreasonable.

(2) Any order in respect of costs and expenses may be made—

- (a) as respects any costs and expenses incurred, or any allowances paid, or
- (b) as respects the whole, or any part, of any allowance (other than allowances paid to members of the Tribunal) paid by the Welsh Ministers to any person for the purposes of, or in connection with, a person's attendance at a Tribunal hearing.

(3) An order for costs may be made on the application of a party or on the President's or the Chair's own initiative.

(4) A party making an application for an order under paragraph (3) must—

- (a) submit a written application and a schedule of costs claimed to the Secretary of the Tribunal, and
- (b) serve a copy of the application and schedule of costs on the person against whom it is proposed that the order is made.

(5) An application for an order under paragraph (3) may be made at any time during the appeal or the claim but may not be made later than 28 days beginning with the date on which the tribunal panel—

- (a) issued the decision notice recording the decision which finally disposed of all issues in the appeal or the claim,
- (b) upon withdrawal of the appeal or the claim, made an order dismissing the appeal or the claim, or
- (c) following the local authority's concession to the appeal, issued the decision notice.

(6) An application for an order under paragraph (3)—

- (a) must be refused by the President or the Chair if a party is asking the Tribunal to consider a matter which is outside its powers;
- (b) may be refused in whole or part by the President or the Chair if, in the President's or the Chair's opinion, the whole or part of it has no reasonable chance of success.

(7) Unless an application for an order is refused under paragraph (6), it must be determined after the party and the person against whom it is proposed that the order is made have had an opportunity to be heard by the President or the Chair.

(8) If an order is made under paragraph (3), the President or the Chair may give directions to be complied with before or at the costs hearing.

(9) If a party fails to comply with a direction given under paragraph (8), the President or the Chair may take account of that fact when deciding whether to make an order for costs.

(10) An order under paragraph (3) may require the party or representative against whom it is made to pay a party either a specified sum in respect of the costs and expenses incurred by that other party in connection with the appeal or claim, or the whole or part of such costs as assessed if not otherwise agreed.

(11) An order under this regulation for costs to be assessed must allow the county court to make a detailed assessment of costs in accordance with the Civil Procedure Rules 1998 either on the standard basis or if specified in the order on the indemnity basis.

Power to exercise the functions of the President and Chair

68.—(1) A Chair may exercise any function which these Regulations require or authorise the President to do.

(2) Where in accordance with paragraph (1), a Chair—

- (a) is required to select the Chair to a tribunal panel, a Chair may select themselves;
- (b) makes a decision, regulations 53 and 55 apply in relation to that decision as if they referred to a Chair in place of the President.

(3) Subject to regulation 73(6), in the event of the death or incapacity of the Chair, or if the Chair ceases to be a member of the legal chair's panel, following the decision of the tribunal panel, the functions of the Chair may be exercised by the President or another Chair appointed from the legal chair's panel.

Power to exercise the functions of a panel member in relation to a review

69.—(1) In the event of the death or incapacity of a member of the tribunal panel other than the Chair, or if a person ceases to be a member of the lay panel, following a decision of the tribunal panel, the functions of the tribunal panel in relation to any review of a decision may be undertaken by the other two panel members.

(2) This regulation does not apply to a tribunal panel—

- (a) which is constituted of two members;
- (b) of which any person is authorised to act in place of the Chair in accordance with regulation 68.

The Secretary of the Tribunal

70. Any function of the Secretary of the Tribunal may be performed by another member of the staff of the Tribunal authorised by the President.

Register

71.—(1) The Secretary of the Tribunal must keep a Register of appeals and claims registered by the Tribunal.

(2) There must be entered in the Register a note of all appeals and claims registered, and the entry for each case must contain the following particulars where appropriate—

- (a) the names and addresses of the parties,
- (b) brief details of the nature of the appeal or the claim,
- (c) the date of any hearing including any hearing on preliminary or incidental matters, and, where appropriate, the nature of the hearing,
- (d) details of any directions or orders issued,
- (e) the document in which the decision of the tribunal panel has been recorded under regulation 52(3), and
- (f) whether the appeal or claim has been withdrawn.

(3) The Register or any part of it may be kept in electronic form.

Publication

72.—(1) The President may make such arrangements as the President considers appropriate for the publication of tribunal panel decisions.

(2) Decisions may be published electronically.

(3) A decision may be published in an edited form, or subject to any deletions, where the President considers that it is appropriate having had regard to—

- (a) the need to safeguard the welfare and interests of the child, the young person, or any other person,
- (b) the need to respect the private life of any person, or
- (c) any representations on the matter which any person has provided in writing to the President or the tribunal panel at any time prior to publication under the arrangements made under paragraph (1).

(4) A decision of the tribunal panel must be published in such manner as to protect the anonymity of the child or young person.

Irregularities

73.—(1) An irregularity resulting from failure to comply with any provision of these Regulations, a

practice direction⁽¹⁾ or of any direction of the President or the tribunal panel before the tribunal panel has reached its decision may not of itself render the proceedings void.

(2) Where any such irregularity comes to the attention of the tribunal panel, the tribunal panel may, if it considers that any person may have been prejudiced by the irregularity, give such directions as it thinks just, before reaching its decision to remedy the irregularity.

(3) Clerical mistakes in any document recording a direction or decision of the tribunal panel or a direction or decision of the President produced by or on behalf of the Tribunal or errors arising in such documents from accidental slips or omissions may at any time be corrected by the Chair or the President (as the case may be) by certificate signed by the Chair or the President.

(4) The Secretary of the Tribunal must as soon as practicable send a copy of any corrected document containing reasons for the tribunal panel's decision, to each party.

(5) Where a person has appointed a representative in accordance with regulation 16, the Secretary of the Tribunal must (notwithstanding regulation 13(11)(a)) send a copy of the document referred to in paragraph (4) to the person as well as the representative.

(6) Where these Regulations require the Chair to sign a document, but by reason of death or incapacity the Chair is unable to do so, the other members of the tribunal panel must sign it and certify that the Chair is unable to sign.

Proof of documents and certification of decisions

74.—(1) A document purporting to be a document issued by the Secretary of the Tribunal on behalf of the President or the tribunal panel is, unless the contrary is proved, to be considered to be a document so issued.

(2) A document purporting to be certified by the Secretary of the Tribunal as a true copy of a document containing a decision of the tribunal panel is, unless the contrary is proved, to be sufficient evidence of its contents.

Method of sending, submitting or serving notices and documents

75.—(1) A notice given under these Regulations must be in writing and a party whom the Regulations

(1) See section 61(2) of the Wales Act 2017 (c. 4) for powers to make practice directions.

require to notify a matter to the Secretary of the Tribunal must do so in writing.

(2) Notices and documents to be provided under these Regulations must be—

- (a) sent by pre-paid post to the Secretary of the Tribunal or delivered by hand to the office of the Tribunal or such other office as the Secretary of the Tribunal may notify to the parties,
- (b) sent by e-mail to the address specified for the Tribunal, or
- (c) sent or delivered by such other method as the Tribunal may permit or direct.

(3) A party who sends a notice or document to the Tribunal by e-mail must not treat the notice or document as having been delivered unless its delivery has been acknowledged by the Tribunal.

(4) Subject to paragraph (5), if a party provides an email address or other details for the service of notices or documents to them, that party must accept delivery of documents by that method.

(5) If a party informs the Tribunal and the other party that a particular form of communication, other than pre-paid post or delivery by hand, must not be used to provide documents to that party, that form of communication must not be used.

(6) If the Tribunal or a party sends a document to a party or the Tribunal by e-mail or any other electronic means of communication, the recipient may request that the sender provide a hard copy of the document to the recipient. The recipient must make such a request as soon as reasonably practicable after receiving the document electronically.

(7) The Tribunal and each party may assume that the address provided by a party or a representative is, and remains, the address to which documents must be sent or delivered unless they receive written notification to the contrary.

(8) Notices and documents which these Regulations authorise or require the President, the tribunal panel or the Secretary of the Tribunal to send may (subject to paragraph (10)) either be sent by first class post or e-mail to or delivered at—

- (a) in the case of a party—
 - (i) the party's address for service specified in the appeal application or the claim application or in a written reply or in a notice under paragraph (9), or
 - (ii) if no address for service has been so specified the party's last known address, and
- (b) in the case of any other person, the person's place of residence or business or if the person

is a corporation, the corporation's registered or principal office.

(9) A party may at any time by notice to the Secretary of the Tribunal change that party's address for service under these Regulations.

(10) The recorded delivery service must be used instead of first class post for service of a summons issued under regulation 45 requiring the attendance of a witness.

(11) A notice or document sent by the Tribunal by first class post in accordance with these Regulations, and not returned to the Tribunal, is to be taken to have been received by the addressee on the second working day after the date of posting, unless the contrary is shown.

(12) The date of posting is to be presumed, unless the contrary is shown, to be the date shown in the postmark on the envelope in which the notice or document is contained.

(13) A notice or document sent by the Tribunal to a party using e-mail is to be taken to have been delivered when it is received in legible form.

(14) Where for any sufficient reason service of any document or notice cannot be effected in the manner prescribed under this regulation, the President or the tribunal panel may dispense with service or make an order for substituted service in such manner as the President or the tribunal panel may deem fit and such service must have the same effect as service in the manner prescribed under this regulation.

Calculating time

76.—(1) An act required by these Regulations, a practice direction or a direction to be done on or by a particular day must be done by 5pm on that day.

(2) If the time specified by these Regulations, a practice direction or a direction for doing any act ends on a day other than a working day, the act is done in time if it is done on the next working day.

(3) If the time for commencing proceedings by providing the appeal application or the claim application to the Tribunal under regulation 10 ends on a day in the period beginning with 25 December and ending with 1 January, or on any day in August—

- (a) the appeal application or the claim application is provided in time if it is received by the Tribunal on the first working day after 1 January or 31 August, as appropriate, and
- (b) the days in the period beginning with 25 December and ending with 1 January and any day in August must not be counted when calculating the time by which any other act must be done.

(4) Paragraph (3)(b) does not apply where the Tribunal directs that an act must be done by or on a specified date.

Signature of documents

77. Where these Regulations require a document to be signed, that requirement is satisfied—

- (a) if the signature is written, or
- (b) in the case of a document which is communicated electronically in accordance with these Regulations, by the electronic signature of the person who is required to sign it.

Name

Minister for Education, one of the Welsh Ministers

Date

Explanatory Memorandum to:

1. The Additional Learning Needs Code for Wales;
2. The following Regulations;
 - The Additional Learning Needs (Wales) Regulations 2021;
 - The Education Tribunal for Wales Regulations 2021;
 - The Education (Pupil Referral Units) (Management Committees etc.) (Wales) (Amendment) Regulations 2021;
 - Independent Schools (Provision of Information) (Wales) (Amendment) Regulations 2021;
 - The Equality Act 2010 (Capacity of parents and persons over compulsory school age) (Wales) Regulations 2021.

This Explanatory Memorandum has been prepared by the Additional Learning Needs Transformation Team 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:

1. The Additional Learning Needs Code for Wales;
2. The Additional Learning Needs (Wales) Regulations 2021;
3. The Education Tribunal for Wales Regulations 2021;
4. The Education (Pupil Referral Units) (Management Committees etc.) (Wales) (Amendment) Regulations 2021;
5. Independent Schools (Provision of Information) (Wales) (Amendment) Regulations 2021;
6. The Equality Act 2010 (Capacity of parents and persons over compulsory school age) (Wales) Regulations 2021.

I am satisfied that the benefits justify the likely costs.

Kirsty Williams MS, Minister for Education
2 March 2021

PART 1 – EXPLANATORY MEMORANDUM

1. Description

- 1.1. Part 2 of the Additional Learning Needs and Education Tribunal (Wales) Act 2018 ('the Act') establishes the statutory system in Wales for meeting the additional learning needs of children and young people ('the ALN system'). The Additional Learning Needs (Wales) Regulations 2021 make provision about a range of matters related to the operation of the ALN system, for example prescribing time periods within which certain duties are to be performed to operate effectively and setting out the functions of an Additional Learning Needs Co-ordinator ('ALNCo'). The Additional Learning Needs Code for Wales ('the Code') also imposes requirements on the governing bodies of maintained schools in Wales, governing bodies of institutions in the further education sector ('FEIs') in Wales, local authorities and NHS bodies related to the operation of the ALN system and the exercise of functions under it. The Code also gives guidance to the public authorities that have functions under the ALN system, about the exercise of those functions under Part 2 of the Act.
- 1.2. Part 3 of the Act continues the Special Educational Needs Tribunal for Wales and renames it the Education Tribunal for Wales ('the Tribunal'). In addition to the Tribunal's jurisdiction set out in Part 2 of the Act, it has jurisdiction in relation to disability discrimination in schools (for provision about this, see section 116 of the Equality Act 2010 and Schedule 17 to that Act). The Education Tribunal for Wales Regulations 2021 make provision about the constitution of the Tribunal and set out the procedure to be followed in proceedings before the Tribunal.
- 1.3. The Education (Pupil Referral Units) (Management Committees etc.) (Wales) (Amendment) Regulations 2021 amend the Education (Pupil Referral Units) (Management Committees etc.) (Wales) Regulations 2014 ('the 2014 Regulations') to provide that a local authority must delegate the specified functions to a management committee of a pupil referral unit ('PRU'). The specified functions are the functions of the governing body under the Act which, in accordance with paragraph 1 of Schedule 1 to the Education Act 1996, are functions of the local authority in relation to a PRU.
- 1.4. The Independent Schools (Provision of Information) (Wales) (Amendment) Regulations 2021 amend the Independent Schools (Provision of Information) (Wales) Regulations 2003 in order to require an application to enter an independent school in the register of independent schools in Wales to include information about the types of additional learning provision made by the school for pupils with additional learning needs (if any).

- 1.5. The Equality Act (Capacity of parents and persons over compulsory school age) (Wales) Regulations 2021 modify certain provisions of the Equality Act 2010 in certain circumstances. The modifications ensure that the representative of child's parent who lacks capacity, or the representative of a young person who lacks capacity, can bring a claim on behalf of that individual under Schedule 17 to the Equality Act 2010.

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

- 2.1. The ALN Code, the regulations and the other regulations have been laid on 2 March 2021 as a single package. This is to show the interplay of the provisions in the respective instruments.
- 2.2. The sections of the Act containing the duties to designate people to the statutory roles (sections 60 to 62) came into force on 4 January. The Additional Learning Needs Co-ordinator (Wales) Regulations 2020 (S.I. 2020/1351) ("the ALNCo Regulations") also came into force on that date. Those Regulations set out the qualifications and experience required for a person to be designated as an ALNCo and the ALNCo's functions. Those Regulations will be revoked by the Additional Learning Needs (Wales) Regulations 2021, as the provisions in the former are re-enacted within the latter (see regulations 26 to 30).
- 2.3. The Additional Learning Needs (Wales) Regulations 2021 make three amendments to the Act.
 - 2.3.1. Regulation 4 amends section 88 of the Act about rules on giving notice and documents. The amendment is to provide that a notification or document given electronically is treated as having been given, unless the contrary is proved, on the day on which it is sent. This reflects the rule in section 14 of the Legislation (Wales) Act 2019, which does not apply to the Act.
 - 2.3.2. Regulation 19 amends section 44 of the Act to provide that an NHS body's duties under section 20(5)(a) and (c) of the Act about securing a relevant treatment or service which is additional learning provision for a detained person cease to apply from the beginning of the detained person's detention. In this situation, the home authority for the detained person already has a duty under section 42 of the Act to arrange appropriate additional learning provision and that duty is apt to deal with the detention situation. The NHS body may not practically be able to secure a relevant treatment or service for a detained person (particularly as it might not be responsible for the provision of health services to the detained person during the detention period) or the relevant treatment or service may no longer be appropriate.

- 2.3.3. Regulation 33 amends section 68 of the Act to provide that for the purposes of a local authority's duties to make arrangements for the avoidance and resolution of disagreements and independent advocacy services, a local authority is also responsible for detained persons for whom it is the home authority. It is appropriate for the home authority's arrangements to apply in relation to detained persons, as it is the authority exercising functions in relation to them and it avoids any difficulties in ascertaining which local authority would otherwise be responsible (given that the test for responsibility is based upon a person being in the area of a local authority, which is difficult to determine in a detention situation).
- 2.4. As explained elsewhere in the Explanatory Memorandum, the Code imposes requirements. Chapter 1 of the Code explains how those requirements are identified in the Code.
- 2.5. It is intended to implement the ALN system on a phased basis from 1 September 2021 (see paragraph 3.7 below), which is why the regulations do not revoke law relating to special educational needs.

3. Legislative background

- 3.1. Part 2 of the Act establishes the ALN system. At its heart, the system involves governing bodies of maintained schools and FEIs and local authorities having responsibility for deciding whether children or young people have additional learning needs and if they do, preparing and maintaining an individual development plan ('IDP') for them. An IDP sets out the needs that the child or young person has and the additional learning provision called for by those needs. There are duties to secure the additional learning provision and particular other things, set out in an IDP. The ALN system provides that children, their parents and young people have the right to appeal to the Tribunal about certain matters related to the identification of their needs and the provision to meet them.
- 3.2. The ALN system is to replace the system under Part 4 of the Education Act 1996 for identifying, assessing and making provision for children with special educational needs ('SEN'). Implementing the ALN system will take three years, from September 2021.
- 3.3. The Additional Learning Needs and Education Tribunal (Wales) Act 2018 (Commencement No 1) Order 2020 (S.I. 2020/1182) commenced various powers in the Act, provisions for the purposes of exercising powers within them and related provisions. It also commenced sections 60 to 62 which contain duties to designate people to the statutory roles and provisions related to the list of independent special post-16 institutions in Wales or England, which the Welsh Ministers must establish. The Additional Learning Needs (List of Independent Special Post-16 Institutions) (Wales) Regulations 2020 (S.I. 2020/1367) make provision about that list and applications to be included in it.
- 3.4. The Welsh Ministers are required by section 4 of the Act to issue a code on additional learning needs. The code may impose requirements about certain matters (set out at section 4(5) of the Act) and is required to include the particular requirements described in section 4(6) of the Act. It may also make provision setting out what is required to discharge the duties in sections 7(1) and 8(1) of the Act about local authorities and NHS bodies having regard to United Nations Conventions.
- 3.5. The Code may include guidance about the exercise of functions under the Act and any other matter connected with identifying and meeting additional learning needs (section 4(2) of the Act). It must include guidance about the exercise of a maintained school or FEI's governing body's function to take all reasonable steps to secure that the additional learning provision called for by a pupil or student's additional learning needs is made whilst an individual development plan is being prepared for the pupil or student (section 47(3) of the Act).

- 3.6. The Act also confers various regulation making powers on the Welsh Ministers which supplement the functions in the Act.
- 3.7. All of the sets of regulations provide that they come into force on 1 September 2021. If approved by the Senedd, for the Code to come into force, a commencement order must be made (section 5(4) of the Act). The intention is that the Code also comes into force on 1 September 2021. The Welsh Ministers intend to exercise their commencement powers (under section 100 of the Act) to provide for functions under the Act to come into force on a phased basis from 1 September 2021.
- 3.8. The Code is to be issued under the powers in section 4 of the Act (as well as containing provision made under sections 7(4) and 8(4) of the Act and the guidance required by section 47(3) of the Act). The procedure for making it is set out in section 5 of the Act, which requires that there has been consultation on a draft of it with particular persons (see below for details of the consultation) and that it cannot be issued unless a draft of it (which may be a modified draft following that consultation) has been laid before and approved by resolution of the Senedd.
- 3.9. The Additional Learning Needs (Wales) Regulations 2021 are to be made under sections 15(2), 21(10), 32(1)(b), 36(3), 37(1)(a) and (b), 45, 46, 60(4), 65(5), 67, 82, 83, 97 and 98(2) of the Act. These Regulations are subject to the approval of the Senedd by way of the draft affirmative procedure (as required by section 98(3) of the Act).
- 3.10. The Education Tribunal for Wales Regulations 2021 are to be made under sections 70(4), 74, 75, 76(3), 77, 91(6) and 92(2) of the Act and section 207(4) of, and paragraphs 6(1), (2) to (5) and (7) and 6A of Schedule 17 to, the Equality Act 2010. These Regulations are subject to the approval of the Senedd by way of the draft affirmative procedure (as required by section 98(3) of the 2018 Act and section 209(6) of the Equality Act 2010).
- 3.11. The Equality Act 2010 (Capacity of parents and persons over compulsory school age) (Wales) Regulations 2021 are to be made under section 207(4) of, and paragraph 6F of Schedule 17 to, the Equality Act 2010. These Regulations are subject to the approval of the Senedd by way of the draft affirmative procedure (as required by section 209(6) of the Equality Act 2010).
- 3.12. The Independent Schools (Provision of Information) (Wales) (Amendment) Regulations 2021 are made under sections 160(1), 168 and 210(1) and (7) of the Education Act 2002. These Regulations are subject to the negative resolution procedure (as required by section 210(4) of the Education Act 2002 and paragraph 34 of Schedule 11 to the Government of Wales Act 2006). The functions of the National Assembly for Wales under those provisions were transferred to the

Welsh Ministers by virtue of paragraph 30 of Schedule 11 to the Government of Wales Act 2006.

- 3.13. The Education (Pupil Referral Units) (Management Committees etc.) (Wales) (Amendment) Regulations 2021 are made under section 569(1), (4) and (5) of, and paragraph 15 of Schedule 1 to, the Education Act 1996. These Regulations are subject to the negative resolution procedure (as required by section 569(2) and (2C) of the Education Act 1996 and paragraph 33 of Schedule 11 to the Government of Wales Act 2006). The functions of the Secretary of State in Schedule 1 to the Education Act 1996 were transferred to the National Assembly for Wales by the National Assembly for Wales (Transfer of Functions) Order 1999 S.I. 1999/672 and then to the Welsh Ministers by virtue of paragraph 30 of Schedule 11 to the Government of Wales Act 2006.

4. Purpose and intended effect of the legislation

- 4.1. The purpose of the ALN system, including the Code and regulations under the powers in the Act, is to create a fully inclusive education system where all learners with additional learning needs are inspired, motivated and supported to reach their full potential.
- 4.2. The Code contains guidance about the exercise of functions under Part 2 of the Act and other matters connected with identifying and meeting additional learning needs. It describes and explains many of the functions in the Act and some of the provisions in regulations made under the Act. The Code itself also imposes requirements, pursuant to sections 4(5) and (6), 7 and 8 of the Act. The Code's statutory guidance includes guidance on those requirements. The guidance helps give further effect to the ALN system.
- 4.3. The purpose of many of the provisions in the Additional Learning Needs (Wales) Regulations 2021 and the requirements imposed by the Code, are intended to provide the necessary or desirable details of the ALN system to supplement the provisions in the Act, for example, setting time limits for compliance with duties under the Act, provisions affecting decisions on when an IDP is necessary and providing for a child's parent or young person's right to be exercised by a representative where that parent or young person lacks capacity. The intended effect is that the ALN system is able to operate effectively.
- 4.4. In addition, the ALN Code is intended to be the principal document used by those responsible for delivering the ALN system, especially local authorities and the staff of maintained schools and FEIs. It is, in effect, an operational handbook designed to assist those exercising functions under the Act, providing them with the details of functions involved in the ALN system and giving guidance on how to exercise them in the various circumstances in which they fall to be exercised.
- 4.5. The Code as a whole explains the operational requirements of the ALN system.
- 4.6. The Code has therefore been designed to allow those exercising functions under the Act to access the statutory guidance that applies to their individual responsibilities under the Act and to understand the process as it applies to a specific child or young person.
- 4.7. The content and format of the Code therefore focusses on an explanation of legal functions and guidance on their exercise, rather than case studies on good practice. It is intended to enable professionals (such as an Early Years ALN Lead Officer, an ALNCo in a maintained school or FEI, or a local authority officer) to understand the process as it applies to a specific child or young person, and take action so as to comply with the duties under the ALN system in a way

which is appropriate to the circumstances and gives effect to the principles underlying the ALN system.

- 4.8. The Education Tribunal for Wales Regulations 2021 make provision relating to the exercise of that Tribunal's jurisdiction under Part 2 of the Additional Learning Needs and Education Tribunal (Wales) Act 2018 which concerns additional learning needs appeals, and Chapter 1 of Part 6 of the Equality Act 2010 which concerns claims of disability discrimination in respect of school pupils. The purpose of the provisions in these Regulations is to provide for rules of procedure which allow for the Tribunal's proceedings to be conducted appropriately and effectively. The intended effect is that appeals and claims before the Tribunal are dealt with justly.
- 4.9. We have carried out a Justice Impact Assessment which has concluded the justice impact is low. We fully considered the impact of the reforms on Her Majesty's Courts and Tribunals Service with our colleagues in the Welsh Tribunals Unit during the development of the Bill – an overview of our assessment was included in the Regulatory Impact Assessment, which we published with the Bill. The provisions relating to onward appeals to the Upper Tribunal are not new as they replicate existing provisions within the Education Act 1996 and the SENTW 2012 Regulations. Consequently, there is no reason to believe that there will be any significant impact on the number of cases referred to the Upper Tribunal. Figures from 2018-2019 show that only five request for permission of the Tribunal to make an application were made, two of which were refused.
- 4.10. The proposals support the use of person centred practice (PCP). PCP encourages greater active participation by the learner and their family as well as seeking a greater understanding of decisions made. This should help learners and their families to understand the process and enable a greater feeling of ownership of those decisions made. It is expected this will reduce the level of confrontation, the number of disagreements and lower the level of animosity which prevents disagreements being resolved before they reach Tribunal.
- 4.11. We do not anticipate more appeals to the Tribunal as a result of the ALN reforms. The ALN system will be implemented in a phased approach over a 3 year period. The first year will not include the post 16 age group, which will help reduce any sudden impact on the Tribunal's service.
- 4.12. The purpose of the Education (Pupil Referral Units) (Management Committees etc.) (Wales) (Amendment) Regulations 2021 is to require a local authority to delegate to the management committee of a PRU the functions the local authority has in relation to the PRU by virtue of Schedule 1 to the Education Act 1996. The intended effect is that management committees exercise, in relation to the PRU, the functions of a governing body under the Act.

- 4.13. The purpose of the Independent Schools (Provision of Information) (Wales) (Amendment) Regulations 2021 is to amend, as required by section 160 of the Education Act 2002 (as amended by section 54(3) of the Act), the Independent Schools (Provision of Information) (Wales) Regulations 2003 so that applications to enter an independent school in the register of independent schools in Wales will include information about the types of additional learning provision made by the school for pupils with additional learning needs (if any). The intended effect is that this information will then be included in the register (see section 158 of the Education Act 2002 as amended by section 54 of the Act) and therefore the information will be available for local authorities when exercising their functions under the Act.
- 4.14. The purpose of the Equality Act 2010 (Capacity of parents and persons over compulsory school age) (Wales) Regulations 2021 is to modify references to parents and persons over compulsory school age in paragraph 3A of Schedule 17 to the Equality Act 2010. When a parent or young person lacks mental capacity (under the Mental Health Act 2005) at a time where they could take action under the Equality Act 2010, the references to them in paragraph 3A, which gives certain individuals the right to bring a claim to the Tribunal under the Equality Act 2010, are modified to read as references to their representative. The intended effect is that parents or young persons lacking capacity will, through their representative, be able to exercise the same right to bring a claim to the Tribunal under the Equality Act 2010 as those with capacity.

5. Consultation

- 5.1. A twelve week public consultation ran between 10 December 2018 and 22 March 2019 on the:
- draft ALN Code;
 - draft regulations relating to the Education Tribunal for Wales and ALN co-ordinators and the policy intention for the exercise of other regulation-making powers under the Act;
 - revisions to the Social Services and Well-being (Wales) Act 2014 Part 6 Code of Practice – Looked After and Accommodated Children.
- 5.2. The consultation included:
- the main consultation document containing 65 questions covering the above matters;
 - a version of the consultation for children and young people and an easy read version containing fifteen questions on aspects of the draft Code and proposed regulations;

- two half-day consultation events in each of the four regional education consortia areas in Wales;
 - a series of engagement sessions with children, young people and parents attended by 228 participants.
- 5.3. A summary of responses report was published on 14 June 2019 document and can be accessed at:
- <https://gov.wales/draft-additional-learning-needs-code>
- 5.4. As that report indicated, the draft ALN Code and proposed regulations cover a huge range of different topics and so the responses to the consultation were very wide ranging, containing a huge variation in opinion and very different focuses.
- 5.5. Overall, the majority of respondents responded positively. Critical responses were greatest for matters relating to:
- the definition and identification of ALN;
 - timescales within which duties must be performed;
 - the roles of the ALNCo, the Designated Educational Clinical Lead Officer ('DECLO') and Looked After Children in Education Co-ordinator;
 - arrangements for disagreement resolution, advocacy services and appeals;
 - the delegation of duties to pupil referral units;
 - individual development plan ('IDP') templates;
 - the provision of IDPs for young people not attending an education setting;
 - the ALN system as it will apply to detained persons.
- 5.6. It is worth noting that the comments received from respondents tended to come from those who were particularly opposed to certain aspects of the draft ALN Code, or who were unsure about aspects of those policies. This was also true in terms of comments on certain matters, even where the questions related to those matters in the consultation had a positive response overall. The comments also included a great number of suggested technical amendments to the ALN Code.
- 5.7. Respondents expressed concern about various terms that appear in the draft ALN Code. There were also calls for guidance on the meaning of particular terms. In considering those points further, we have been mindful of whether further elaboration would add value or whether it might risk an inadvertent narrowing or widening of the term's meaning and the constraints set by the Act.
- 5.8. In particular, some respondents questioned various aspects of the wording of the definitions of ALN and ALP. These definitions are set out in the Act and cannot be changed by the ALN Code. The wording of

the definitions of ALN and ALP used in the Act, which is repeated in the draft ALN Code, is deliberately similar to that currently used in relation to the definitions of SEN and special educational provision, with which many professionals will already be familiar.

- 5.9. Respondents also questioned other elements of the system laid down in the Act. For example, some disagreed with the principle of local authorities being responsible for preparing and maintaining IDPs for all looked after children. Others called for the creation of new requirements for which the Act makes no provision, such as making it compulsory for parties to engage in disagreement resolution before they are able to make an appeal, or requiring NHS bodies to comply with a Tribunal order. The ALN Code and regulations must align with the Act and cannot require any person to do something for which the Act provides no power.
- 5.10. Likewise, there were frequent calls to convert many of the “shoulds” included in the draft ALN Code to “musts”. The range of things about which the Act gives powers to make mandatory requirements is limited by the Act. Even where the Act does provide such a power, there is a question of whether a mandatory requirement (a “must”) or statutory guidance (a “should”) is more appropriate. An important consideration is whether there could be occasions when non-compliance would be justified and if so, whether these would be better dealt with by having specific exceptions to a mandatory requirement or by making the matter statutory guidance, which allows the person to justify a departure from it on a case-by-case basis.
- 5.11. Some respondents also expressed concern about the language style used in the draft ALN Code. As the ALN Code will impose mandatory requirements which are law, the language used must be suitably clear and precise. Similarly, the guidance in the Code needs to be suitably clear and precise so that those who must have regard to it can understand what it is they are to do unless they have a justification for not doing it. As a result, the language is quite formal in places, although on occasions where it may be difficult to follow, examples have been given to illustrate the meaning. It is also important to note that the ALN Code is primarily intended to be read and used by professionals working in the public authorities that have functions under Part 2 of the Act, as listed in Chapter 1 of the draft ALN Code. The draft ALN Code has not been written so as to be accessible to the wider public as that is not the ALN Code’s intended audience. However, local authorities are required by the Act to make arrangements to provide information and advice about the ALN system.
- 5.12. Some respondents were concerned that the draft ALN Code says little about mental capacity in relation to young people and parents. This issue has now been addressed in the revised ALN Code. Welsh Government is also working with partners in Whitehall to ensure the

Liberty Protection Safeguards Code of Practice takes account of the ALN Act and its Code and regulations.

- 5.13. Some respondents raised issues about transport provision for post-16 learners with learning difficulties or disabilities. As mentioned in the consultation document, the Welsh Government intends to consult on revisions to the Learner Travel Statutory Provision and Operational Guidance 2014. That consultation exercise is currently underway to better understand the implications of any future changes. A report on the responses to this targeted consultation will also contain recommendations for further work on revising the Measure, and is due to be published this spring. In the meantime, a non-mandatory section for transport has been included in the IDP template, provided in the Annex of the Code.
- 5.14. Some respondents suggested that the Code needs to include guidance on other relevant legislation or on matters set out elsewhere in statutory guidance. The Act is clear that the guidance the Code may contain is about the exercise of functions under Part 2 of the Act and about any other matter connected with identifying and meeting additional learning needs. Generally, therefore, it is not appropriate for the Code to provide guidance about other matters, although where appropriate, references are made to other relevant areas of law and guidance.
- 5.15. Many respondents considered that the implementation of the new ALN system would have a considerable financial impact, particularly on local authorities in Wales. The key financial implications of the Act were included in the Regulatory Impact Assessment (RIA) which accompanied the Bill. In particular, the RIA was subject to intense scrutiny by the National Assembly's Finance Committee, including a delayed vote on the financial resolution motion whilst further independent analysis was undertaken. This analysis was considered by the National Assembly before it passed the financial resolution in relation to this matter. The RIA for the Bill discussed the key provisions and associated costs with the ALN system, whereas the RIA for the Code provides further details on and considers these key provisions, reflecting more specifically on duties imposed by the Code. The Code's RIA also provides a detailed section on the amendments to the Code following the consultation in 2018/19. None of these areas were re-considered in this work, unless specific evidence was provided to counteract the original findings.
- 5.16. In recognition of the costs of moving from the current legislative framework to the new ALN system, implementation grant funding is being provided on a regional basis, co-ordinated by Regional ALN Transformation Leads, to roll-out regional, multi-agency training and professional development on the new legislative framework and its implications for all those involved in supporting learners with ALN. The training will target key practitioners with specific roles in the new

system (including the ALNCo and DECLO roles) to ensure the effective implementation of the new ALN system.

- 5.17. A number of respondents requested that the Welsh Government consider developing an electronic system to support the IDP process. Work is already underway in this area and we are currently undertaking an initial scoping exercise to establish both the feasibility and appropriateness of developing a Wales-wide online system.
- 5.18. Finally, respondents also raised concerns about the capacity of the specialist workforce, including educational psychologists, to deliver elements of the new system described in the draft ALN Code. Work is already being undertaken to improve the capacity of the specialist workforce).
- 5.19. The changes as a result of the consultation responses to the proposed revisions to the Social Services and Well-being (Wales) Act 2014 Part 6 Code of Practice – Looked After and Accommodated Children are being dealt with separately and are therefore not covered here.

Consultation on Representatives for Young People, and Parents of Children, Lacking Capacity

- 5.20. A separate consultation on proposals for representatives for young people, and parents of children, lacking mental capacity ran from 3 September to 29 October 2020.
- 5.21. The consultation documents included a draft version of Chapter 31 of the ALN Code (Representatives for young people, and parents of children, lacking mental capacity) and the draft “Young people, and parents of children, lacking capacity Regulations 2020”.
- 5.22. Following the consultation, those draft regulations were incorporated, with amendments, into the Additional Learning Needs (Wales) Regulations 2021 as Part 4.
- 5.23. The consultation found broad support for the proposals. A summary of responses was published on 22 January 2021 which can be accessed at <https://gov.wales/sites/default/files/consultations/2021-01/representatives-young-people-and-parents-of-children-lacking-capacity-summary-of-responses.pdf>

Changes to the draft Code following both consultations

- 5.24. A huge number of comments were received covering nearly every aspect of the consultation draft of the Code and proposed regulations. The Welsh Government have carefully considered what changes to make in the light of respondents’ comments. These changes, and the reasons for them, are explained in the following table. Welsh Government have also restructured the Code to improve its structure

and readability, including introducing some new chapters. Flowcharts have been removed because we found that they could be interpreted in different ways and there was a risk the flowcharts could detract from the legal text.

New Chapter	Old Chapter	What has changed
1 – Introduction	1	The introduction has been amended to reflect changes to the content of the Code (such as new chapters) and the provisions in the Additional Learning Needs (Wales) Regulations 2021. It has been streamlined to improve readability. There is also now more detailed explanations of how requirements imposed by the Code and descriptions of requirements in the Act or regulations are to be interpreted (for example, in relation to cases where a child has a case friend or a child's parent or a young person lacks capacity).
2 – The definition of ALN & ALP	7 (first part)	This chapter has been created from the first part of what was previously chapter 7 in the draft version of the Code. (The second part has created Chapter 20) Following consideration of the consultation responses; the chapter has been moved towards the beginning of the Code, with the structure and content amended to provide further guidance and greater clarity in relation to the definitions of ALN and ALP and their application in the ALN system.
3 – Principles of the Code	2	This chapter has been significantly cut back and streamlined to highlight the principles of the Code, without providing extensive examples which may have detracted from its key message.
4 – Involving and supporting children, their parents and young people	3	This chapter has been significantly redrafted to improve the structure and flow of the chapter; and to provide further guidance and greater clarity in certain areas. In particular, there is much more statutory guidance about young people's consent.
5 – Duties on local authorities & NHS bodies to have regard to UNCRC & UNCRDP	4	This chapter has only had minor amended; no significant changes were required.
6 - Advice and Information	6	This chapter has only had minor amendments, in order to reflect changes elsewhere in the Code and to improve clarity in some areas. One piece of

		statutory guidance is now a requirement and there is a little more statutory guidance.
7 – Duties on local authorities to keep additional learning provision under review	5	Chapter 7 (which was Chapter 5 in the consultation version) has been streamlined, with certain amendments made to clarify matters in some areas. Other changes have been made to bring the chapter in line with changes made elsewhere in the Code. The key aspects of this chapter have only had minor amendments, if any at all; it is mainly the supporting guidance around it which has been amended or the structure reorganised.
8 – Role of the ALN Co-ordinator	24	We have strengthened the chapter to provide further clarity on advice already provided within. Examples of this include the consideration a head of an education setting should give to the allocation of sufficient time for the ALNCo to undertake their role and the expectations around ALNCoS undertaking training and development. In accordance with the ALNCo Regulations, amendments have been made to some of the duties on ALNCoS set out within the chapter. These amendments include clarity on who has responsibility for undertaking certain tasks (regulations 5(h) and 6(h) of the draft ALNCo Regulations – previously regulations 5(i) and 6(i) of the previous version of the regulations consulted on in 2019) Furthermore, some ALNCo duties previously set out in the draft of this chapter have been removed, namely: the duty to prepare and review of information required to be published by the governing body pursuant to the code; and the duty to provide information to the individual (and in the case of a pupil, their parent) about their ALN, IDP and ALP being made. These have been removed from the chapter following their removal from the ALNCo Regulations.
9 – Role of the Designated Education Clinical Lead Officer	15 (second part)	This chapter was created by removing the section relating to the role of the Designated Education Clinical Lead

		Officer (DECLO) from the previous Chapter (15) on multi-agency working. This was done to allow a single chapter for each of the statutory roles within the ALN Code and system. The substance of the chapter has not been amended significantly, however it has been streamlined and there have been changes to improve clarity and for greater similarity in the structure to the other chapters on the statutory roles.
10 – Role of the Early Years ALN Lead Officer (ALNCo)	8 (second part)	The substance of this chapter has not significantly changed. There have been some structural changes, formatting changes and other small amendments to improve clarity.
11 – Duties on LA's about children under CSA (Compulsory School Age) and not at a maintained School	8	These chapters have been significantly amended. These chapters comprise the main duties in relation to the ALN system for the majority of children and young people. In the draft version of the Code, the requirements were set out across 4 chapters; however, having considered the responses to the consultation, they have been separated out into more specific circumstances and age ranges. Provisions related to the preparation of an IDP have been removed to Chapter 23, since many of them apply in most or all of the separate circumstances and can also be relevant when maintaining an IDP.
12 – Duties on maintained schools & LA's for children at a maintained school	9	
13 – Duties on LA's about children of CSA not attending a maintained school	11	
14 – Duties on LA about children they look after	New Chapter	
15 – Duties on Schools & LA's about Young People (YP) attending a maintained School	New Chapter	
16 – Duties on Further Education Institute (FEI) & LA about YP at a FEI	10	These structural changes are intended to make this part of the Code more user-friendly. The content itself has also been streamlined and amended significantly to provide greater clarity, consistency across the chapters, more details in some areas, to improve connections to other parts of the Code and to ensure that the requirements are clearer and effective. However, in the main, the essence of the requirements and guidance across these chapters remains unchanged. One of the most significant changes in terms of requirements, is in relation to

		requirements on local authorities to consult an Educational Psychologist. These requirements have been changed, so that when a local authority is required to decide whether a child or young person has ALN; the authority must consider whether to seek advice from an educational psychologist, and, where it considers such advice necessary to determine certain things, it must seek it. This change was as a result of responses to the consultation about the requirements being too burdensome and provides both a statutory footing for the Educational Psychologist role, but also reduces the potential significant burden that a blanket requirement to consult an Educational Psychologist in all circumstances could cause.
17 – Duties on LA's about YP not at a maintained school or FEI	12	This chapter has been significantly redrafted to correspond to the details in regulations 6 to 10 of, and Schedule 1 to, the Additional Learning Needs (Wales) Regulations 2021. However, the policy principles as originally set out in the previous draft chapter have not changed. The chapter sets out the considerations and requirements a local authority must undertake in determining whether an IDP is necessary to meet a young person's reasonable needs for education or training (where the young person is not at a maintained school or FEI in Wales). The principle considerations for securing a specialist post-16 placement reflect those under the existing system (whereby the Welsh Ministers secure such placements). In addition, other changes have been made along the lines of those described in respect of chapters 11 to 16.
18 – Children & young people in specific circumstances	23	This chapter has been significantly redrafted to improve the structure and flow of the Chapter; and provide more guidance on a range of different circumstances. There is also a new requirement in respect of children and young people whose parent is Service personnel.

19 – Children & young people subject to detention orders	22	There have been changes to explain more clearly how the ALN system applies in respect of children or young people subject to a detention order (including detained persons), including explaining what definitions mean in practice and mentioning other matters relevant to detention situations and giving more practical guidance. The Chapter also deals with referrals to NHS bodies under section 20 of the Act where an IDP is being prepared for a detained person, giving guidance on when this would be appropriate and imposing a related requirement where a relevant treatment or service is identified. The amendment to section 44 of the Act regarding an NHS body's duty under section 20 (about it not applying during the detention) is reflected. With regards to the timescales in this chapter, and in-keeping with similar amendments throughout the Code, there is now a specified period within which the action (e.g. to decide on ALN and prepare an IDP or to review an IDP) must be taken, subject to the usual exception. Previously, the requirement was just to take the action promptly. What was previously guidance about reviewing an IDP upon release of a detained person has become a requirement and there is supporting guidance around that requirement. There are also changes to align requirements with how similar ones elsewhere have been refined, to improve the cross-referencing (and reflect the structural changes) and changes to reflect requirements in the Additional Learning Needs (Wales) Regulations 2021, including the regulations dealing with the necessity of an IDP.
20 – Identifying ALN & deciding upon the ALP required	7 (second part)	As with Chapter 2 (Definition of ALN and ALP), this chapter has been created from the second part of what was previously Chapter 7 in the draft version of the

		Code. Following consideration of the consultation responses; the structure and content has amended to provide further guidance and greater clarity in relation to identifying ALN, deciding upon the ALP required, and gathering and using evidence to support those decisions and to align with changes elsewhere
21 – Multi Agency working	15 (first part)	This chapter has been amended to give greater clarity and more detail in certain places; but the majority of the content has not changed. The key change is that the section on the DECLO role has been removed and placed in a separate chapter (Chapter 9). In particular, statutory guidance on the Local Health Board to which a referral under section 20 should be made has been added, as has provision about where a Local Health Board ceases to be responsible for a child or young person.
22 – Meetings about ALN & ALP's	18	This chapter has been amended to give greater clarity and detail in certain places and to improve the structure; but the content and duties have not significantly changed. However, there is additional guidance about holding meetings virtually, as well as further guidance about matters that may need to be considered in order to enable better participation from children and young people.
23 – Preparing an IDP and its content	13	This chapter has been redrafted significantly. There were certain elements contained within the main duties chapters (now 11 to 17), relating to preparing or maintaining an IDP, which applied to all or most circumstances, and were repeated across each of those chapters and some elements that were only dealt with in one of those chapters but were potentially relevant in other situations. In order to streamline the main duties chapters, and to provide greater clarity and guidance when preparing an IDP or reviewing it, those elements of guidance have been moved and included here instead. The structure and wording within this chapter has also been amended to improve flow and ease of use. A section

		has also been added both here and in the standard form templates at Annexes A and B to provide for information about travel arrangements.
24 – Preparing an IDP and its content for LAC	14	This chapter has been amended in line with the changes to Chapter 23; and has been streamlined to avoid a duplication of the information contained in that Chapter. This Chapter now simply explains the difference in the process and the content of an IDP for a looked after child, but the guidance on the relevant content of each part of the IDP is set out in Chapter 23.
25 – Review and Revisions of IDP's	16	This chapter has been amended to give greater clarity and more detail in certain places. It has also been restructured and streamlined where possible but the essence of the content has not significantly changed.
26 – Local authority reconsiderations & taking over responsibility for IDP	17	This chapter has been amended to give greater clarity and more detail in certain places, including improving the connections to other parts of the Code. Structurally, the chapter has changed but the content has not significantly changed. Provisions about consulting an educational psychologist have been removed.
27 – Planning for and supporting transition	19	This chapter has been significantly redrafted. The chapter is now less prescriptive with less statutory guidance. This responds to the many conflicting comments received during the consultation which made apparent that transitions are flexible and will require an individualised approach. Details about seeking the consent of a child who becomes a young person to their IDP continuing to be maintained are now dealt with in Chapter 4.
28 – Transfer of responsibility for maintaining an IDP	20	This chapter has been amended to give greater clarity and more detail in certain places, including making connections to other parts of the Code and reflecting the detail of the Additional Learning Needs (Wales) Regulations 2021. Structurally, the chapter has changed but the content has not significantly changed.
29 – Ceasing to maintain an IDP	21	This chapter has been amended to give greater clarity and more detail in certain

		places. Structurally, the chapter has changed but the content has not significantly changed.
30 – Case friends for children who lack capacity	27	This chapter has been updated to reflect technical changes made to the regulations. It clearly explains how a child who lacks capacity, can use a case friend to act on their behalf when exercising certain rights. It also provides information on the role of a case friend, and how they are appointed and removed by the Tribunal.
31 – Representatives for parents of children & young people lacking capacity	New Chapter	Following the public consultation that ended on 29 October 2020, the chapter has been amended to include additional cross-references particularly to the Mental Capacity Act's Code of Practice. The chapter has also clarified that representatives can access independent advocacy services. The chapter also includes new footnotes referring to the impact of the Re: D case.
32 – Avoiding & resolving disagreements & Independent Advocacy	25	This chapter has been amended to give clarity and more detail where it was needed. Structurally, the chapter has not changed and the content and duties have not significantly changed.
33 – Appeals & Applications to the Education Tribunal	26	This chapter has been updated to reflect technical changes made to the regulations. To ensure that the chapter describes the appeal process and the timescales involved. It provides clarity in what can be appealed and by who. It includes information about how to make an application to the Tribunal regarding lack of capacity. It also includes a section about children bringing their own appeal to Tribunal.

PART 2 – REGULATORY IMPACT ASSESSMENT

ALN Code including post-consultation amendments

6. Options

- 6.1. This chapter outlines the options associated with establishing the Additional Learning Needs Code for Wales.
- 6.2. As part of these essential reforms, the ALN Code will replace the existing Special Educational Needs (SEN) Code of Practice for Wales. Over a phased three year implementation period starting from 1 September 2021, all statutory guidance in the SEN Code of Practice will be switched off with new provisions being introduced via the ALN Act, the ALN Code and related regulations.
- 6.3. This Regulatory Impact Assessment (RIA) has been developed to consider the regulatory implications for mandating requirements on local authorities and governing bodies in relation to duties set out in the ALN Code (and associated regulations).
- 6.4. The Welsh Government proposes to lay the ALN Code, along with related regulations, before the Senedd on 2 March with a plenary debate on 23 March. This RIA reviews the proposals on whether to bring into force the ALN Code.
- 6.5. The RIA reviews two options, described below.

Option one: do nothing

- 6.6. Under option one, the existing SEN system will continue with the SEN Code of Practice setting out the role of education providers in identifying and improving the experience of children with special needs.

Advantages

- 6.7. Option one does not involve any additional costs.
- 6.8. Additionally, part of the £20.244m funding agreed on 7 February 2017 to cover the costs of transition from one statutory system to another and deliver the wider system transformations could be spent elsewhere.

Disadvantages

- 6.9. The current system is inequitable. Children and young people with the most severe needs and who fall above the threshold for having a statement of SEN, have service provision which is protected by law.

In contrast, children and young people whose needs are less severe and who fall below the threshold for having a statement of SEN do not have protected provision or statutory rights.

- 6.10. The existing practices and processes associated with statements of SEN are inefficient and inflexible, and can result in ineffective provision for children and young people.
- 6.11. The current arrangements for reviewing and amending statutory plans are administratively cumbersome and involve schools inviting a prescribed set of professionals, regardless of whether their presence and input is necessary to the effectiveness of the review. Statutory reviews take considerable time to organise and prepare for. Amending a plan can, therefore, be a lengthy process and can result in learners experiencing delays in receiving the most appropriate support.
- 6.12. In addition, there is little flexibility when reviewing the provision for children and young people who are on the threshold for receiving statutory support. Where, for example, the outcomes of a statutory plan have been achieved for a child or young person, concern from parents about losing statutory entitlement may result in pressure for the plan and its provision to be maintained, despite this not necessarily being the most effective provision for the young person.
- 6.13. Finally, without the ALN Code, the reforms to the SEN system and the introduction of the new ALN system could not proceed.

7. Option two: replace SEN Code of Practice with ALN Code

- 7.1. Under option two, the existing SEN system including the SEN Code of Practice will be entirely replaced with the ALN system including the statutory ALN Code.
- 7.2. Option two is the preferred option.
- 7.3. A potential third option could have been to progress with the draft ALN Code as published in June 2019 before the consultation. However, this would not have been a genuine option given the legal requirements to conduct a meaningful consultation on the draft ALN Code, and the public commitment to making improvements to the Code before it is laid before the Senedd.

8. Advantages

- 8.1. The advantages of continuing with the planned reforms, including laying the revised ALN Code and introducing the legislative system the Code helps underpin, will be discussed in more detail under section 7. However, the key advantages relate to the reasons for reforming the SEN system in the first place; that the revised ALN

Code will make significant improvements to the support offered to children and young people with ALN in Wales.

9. Disadvantages

- 9.1. Likewise with the advantages, the disadvantages are discussed in detail below. However, the main point to note is the potential risks involved with introducing a new legislative system. There is a risk that costs will increase, both in terms of financial cost and pressure on resources. However, according to [Estyn Annual Report 2018-2019](#) "Schools and PRUs with clear leadership roles and excellent practice are well placed to make the transition from the current SEN system to the new ALN system."
- 9.2. There is also the risk of introducing these reforms at unprecedented times in education settings, with COVID-19 potentially impacting on the ability of local authorities and governing bodies (and other statutory bodies) to manage with implementation. However, this risk relates more to implementing the system rather than introducing the ALN Code.

10. Costs and benefits

- 10.1. The ALN Code includes statutory guidance about the exercise of functions under Part 2 of the ALN Act, which establishes the statutory system in Wales for meeting the ALN of children and young people. The Code also includes statutory guidance on other matters connected with identifying ALN and meeting the needs of children and young people with ALN, and describes relevant statutory requirements, including ones in the Act.
- 10.2. There are many hundreds of individual statutory duties throughout the Code, where the requirements (written as a "**must**" in the Code) takes its powers from subordinate legislation - either from the Code itself or from regulations - as opposed to deriving the powers directly from the ALN Act. These duties relate to the detail and processes of how the system will operate, including details on the roles and tasks set out in the ALN Act.
- 10.3. It is not the purpose of this RIA to discuss the impact of every statutory duty in the Code. Rather, this RIA discusses the duties in a thematic way, with specific references to the new duties as amended following consultation on the draft ALN Code.
- 10.4. To better understand the impact of the statutory duties made under subordinate legislation, every "**must**" in the Code was compiled, analysed and organised into categories of the likely cost of each duty in terms of their significance, rather than a financial estimate for each individual duty. All duties considered to be greater than a low cost

related to small, administrative tasks (such as sending a notification) were compiled into themes. These themes are discussed in detail below.

- 10.5. Where relevant, references to the costs as set out in the [Regulatory Impact Assessment](#) for the ALN Act (published in January 2018), are used here.

11. £20m funding package for delivering the ALN system

- 11.1. The £20.244m package of funding is being used to support implementation of the Act and delivery of the wider ALN Transformation Programme.
- 11.2. A large part of this funding will be used to develop the workforce so that all partners understand and are prepared for the changes being introduced. This includes workforce development to help build capacity and ensure practitioners have the skills to effectively operate the new system in order to meet learners' needs.
- 11.3. We are targeting workforce development at three levels; core skills development for all practitioners, advanced skills development through the establishment of the role of Additional Learning Needs Coordinators (ALNCos), which will replace the current SENCo role; and specialist skills development for local authority provided specialist support services available to education settings.
- 11.4. Five ALN Transformation Leads have also been in post since April 2018. Their role is to provide advice, support and challenge to local authorities, schools, early years settings and further education institutions, as they prepare for implementation of the reforms. This includes through readiness self-assessments and the development of local implementation plans. The ALN transformation leads will be responsible for rolling out implementation training on a multi-agency regional basis.

12. Themes identified from the statutory duties in the ALN Code

- Designating statutory roles (ALN co-ordinating officers)
 - DECLO
 - ALNCO
 - Early Years ALN Lead Officer
- Individual Development Plans (IDP)
 - Preparing an IDP
 - Securing ALP
 - Reviewing an IDP
- Independent Advocacy Services
- Costs for reviewing system

13. Costing of subordinate legislation

- 13.1. The RIA for the ALN Act concluded that the new ALN system itself should not increase in cost compared to the current SEN system.
- 13.2. Welsh Government has asked local authorities to provide evidence if they believe the new system will be more costly, but to date no such evidence has been received.
- 13.3. Based on the currently available evidence, we continue to support the position set out in the ALN Act's RIA. However, we do recognise there may be risks in implementing a new system when the level of funding available to local authorities, schools, FEIs and health boards is limited. This issue clearly goes wider than ALN, and relates to public sector finances more generally; however, these concerns continue to persist in any public discourse about the ALN reforms.
- 13.4. This RIA should assist the reader to understand the potential costs and benefits associated with the revised ALN Code, whilst giving an overview of the impact of the ALN Code in general, using the thematic method described above.
- 13.5. The costs and benefits discussed below are based on agreeing to Option 2.
- 13.6. The duty to designate Additional Learning Needs Co-ordinating Officers
- 13.7. Additional Learning Needs Co-ordinator (ALNCo)

14. Benefit

- 14.1. Option two will require all education settings including pupil referral units (PRUs) and FEIs to appoint an ALNCo. This extends current arrangements where existing non-statutory SENCo are used in most schools in Wales. Making the ALNCo a statutory role will bring a consistent approach to co-ordinating ALP for learners in Wales and help foster better working relationships across sectors.

15. Post-consultation additions

- 15.1. Following the consultation on the ALN Code, we have strengthened the ALNCo chapter to provide further clarity on advice already provided within. Examples of this include the considerations head teachers should give to the allocation of sufficient time for the ALNCo to undertake their role and the expectations around ALNCos undertaking training and development.
- 15.2. In accordance with the ALNCo Regulations 2020, amendments have been made to some of the duties on ALNCos set out within the chapter. These amendments provide clarity on who has responsibility for undertaking certain tasks (regulations 5(e) and 6(e) of the ALNCo regulations 2020) and on what aspects of record keeping the ALNCo must undertake (regulations 5(c) and 6(c) of the ALNCo regulations 2020). Furthermore, some duties previously set out in the draft of this chapter have been removed. These relate to what was the preparation and review of information required to be published by the governing body pursuant to the ALN Code, and the duty to provide information to the individual (and in the case of a pupil, their parent) about their ALN, IDP and ALP being made. These have been removed from the chapter and the ALNCo Regulations 2020 due to changes made elsewhere to the ALN Code in this regard.
- 15.3. These amendments are unlikely to make any significant impact on the cost or benefits associated with this part of the ALN Code, but may provide clearer support for those with statutory duties relating to the ALNCo role.

16. Cost

- 16.1. The cost for creating the ALNCo role were discussed in the ALN Act's RIA and the [integrated impact assessment](#) for the ALNCo regulations. Given the broad scope of the role and the way it will vary from setting to setting, it will not be possible to provide an estimated cost for the role. The most significant impact identified in this IIA was how the proposed regulations will contribute to the raising of standards in the co-ordination or ALP for children and

young people with ALN. Local authorities will do this by providing assurance that the new ALNCo role will be undertaken by qualified individuals (i.e. qualified teachers or experienced SENCOs) who are required to undertake the co-ordination of ALP in a consistent way, irrespective of education setting. This should result in an improvement in the way in which ALP is planned and delivered for children and young people.

- 16.2. No further financial costs have been identified within the ALNCo chapter of the ALN Code.
- 16.3. There is a theoretical risk that the new ALNCo requirements may be perceived as creating an additional burden on local authorities which may discourage current SENCOs from applying to become an ALNCo. However, there was broad support for making the ALNCo a professional role and we have not received any evidence to suggest this risk will transpire.

17. Designated education clinical lead officer (DECLO)

Benefit

- 17.1. Option two will ensure every local health board (LHB) will designate a DECLO to take responsibility for ensuring the day-to-day health provision for children and young people with ALN is effectively managed and co-ordinated.
- 17.2. Although much of the work the DECLO will be responsible for under the ALN system will already have been undertaken within each LHB currently, without this designated role the work involved to supervise the provision of health related special educational provision has been inconsistent and difficult to measure.
- 17.3. Appointing a DECLO within each health board will have the benefit of facilitating the delivery of effective, co-ordinated health services to improve outcomes for children and young people with ALN. The DECLO will also support the health board to discharge their responsibilities under the ALN system and facilitate the effective collaboration between health boards and their partners in the delivery of services for learners with ALN.
- 17.4. The DECLO will also ensure there is a robust structure for assuring the quality and safety of services and collect data about service quality, outcomes and performance; simplify the system for children, young people, parents and partners by providing a single point of contact for local authorities and others within health boards on ALN matters. In addition, the appointment of the DECLO should ensure ALN provision is a strategic priority for health boards.

- 17.5. One of the key benefits of introducing the DECLO role will be the improved links between health and other sectors, and the co-ordination of multi-agencies centred on the needs of the individual. The system is designed to cut the number of meetings and assessments required to receive ALP, and to ensure continuity of support for the individual as they transition, in age, key stages and educational development.

18. Post-consultation additions

- 18.1. There is a new chapter in the ALN Code on the role of the DECLO. This chapter was created by removing the section relating to the role of the DECLO from the Chapter 15 on multi-agency working. This was done to allow a single chapter for each of the statutory roles within the ALN Code and system. The substance of the chapter has not been amended significantly, but is now easier for the reader to follow.

19. Cost

- 19.1. The cost of introducing the DECLO role was discussed in the ALN Act's RIA where it was concluded there would be no new costs to local health boards.
- 19.2. This is because the role is expected to be fulfilled by an existing member of staff, and the DECLOs and other health professionals will undertake the required training within the hours allocated for them to undertake continuous professional development (CPD). Although the role itself is new, the duties the DECLO will be responsible for as set out in the Code are already being undertaken within health boards by exiting members of staff under the SEN system. The purpose of having a DECLO will be to standardise this role and improve multi-agency working by having a named individual in each health board. On average, each of the seven local health boards in Wales will have a healthcare professional undertaking DECLO responsibilities for approximately two days per week.
- 19.3. The duties in the ALN Code chapter relating to the DECLO role provides more details on the role itself, with guidance used to set out how DECLOs are expected to undertake their tasks. The introduction of the DECLO role and the estimation of the resource this will take poses a low and manageable risk to local health boards, particularly as DECLOs are not expected to be full time positions and will likely be undertaken by existing senior members of the health board.
- 19.4. With the duty to provide health related ALP for learners up to the age of 25, there could be an increase in the number of cases referred to

an NHS body requiring health related ALP. This risk, although not based on evidence the Welsh Government has seen, could potentially increase costs for LHBs in terms of the systems they introduce to support the DECLO role and their statutory functions under the ALN system. Although it is difficult to estimate how extending the age range to 25 will effect these costs, the Act's RIA did explain that young people who have the most complex needs and attend a specialist FE establishment will currently have a statutory learning and skills plan. Where a young person needs medical care whilst at a specialist FE establishment, the health board will be asked to contribute to the learning and skills plan. Under the ALN system, this practice will continue but health boards will be asked to contribute to the IDP instead. It was concluded that there will be no additional costs to health boards where a young person attends a specialist FE establishment.

20. Early years additional learning needs lead officer (Early Years ALNLO)

Benefit

- 20.1. Under option two, an Early Years ALNLO will be appointed by every local authority in Wales to have responsibility for co-ordinating the local authority's functions under the Act in relation to children under compulsory school age who are not attending maintained schools.
- 20.2. The Early Years ALNLO will play an important role in raising awareness of the ALN system and how it applies to children under compulsory school age; promoting early identification and prevention of ALN; and other strategic responsibilities. These duties will help families understand their children's ALN and the options available to support their education. The role should therefore include a social benefit by reducing the fears associated with ALN and reassuring parents that support is available in early years settings.
- 20.3. Another advantage of including this new role in the ALN Code will be to improve the co-ordination of provision for children in early years settings and ensure there is a single, named officer where issues can be directed to. This will help concerned families who under the SEN system may have struggled to engage with the relevant individuals.

21. Post-consultation additions

- 21.1. No significant changes to the content have been made since consultation.

22. Cost

- 22.1. The cost of introducing the Early Years ALNLO role was also mentioned in the ALN Act's RIA. As set out there, for illustrative purposes a salary of £49,700 is used to estimate the ongoing costs of introducing the early years ALN lead officer. The estimated ongoing cost to the 22 local authorities in Wales is, therefore, estimated to be approximately £1,093,400 a year. Since local authorities already undertake the functions associated with the early years ALN lead officer, this will not be an additional ongoing cost.
- 22.2. It is estimated local authorities will incur transition costs of £126,700 related to training early years ALN lead officers. The estimated cost of training early years ALN lead officers is based on the same cost model used to estimate the ALNCo training costs. That is, it is assumed the early years ALN lead officers will be trained to masters level at a cost of £3,600 per degree, with a total estimated cost of £79,200 to the 22 local authorities in Wales, and will take 10 days of paid study leave over the two year period at an estimated cost of £47,520.
- 22.3. There are no other duties in the Early Years ALNLO role chapter apart from the local authority's duty to designate an officer.

24. Individual Development Plans

- Preparing an IDP
- Securing ALP
- Reviewing an IDP

Context

- 24.1. Data shown in the Act's RIA has revealed the number of children and young people recorded as having SEN from 2011-12 to 2015-16 has been relatively stable at 23% of pupil population. Although the ALN system extends the age range to 25 years, the number of young people between the ages of 19-25 in education or training with ALN, who consent to having an IDP, is likely to be low. Welsh Government's latest figures show 83 post-19 specialist placements were secured in 2018/19. Using the figures available in the Act's RIA and from Stats Wales, there will be around 110,000 school age IDPs, with around 1,000 for below compulsory school age, and around 2,000 in all post 16 education and training.

25. Benefit

- 25.1. If option two is chosen, the introduction of the ALN Code will result in all children and young people with ALN being treated equally under the law, regardless of the severity of their need. All learners in early years settings, schools (including maintained nurseries, pupil referral units and special schools) and FEIs who require additional learning provision (ALP) will be entitled to a statutory, individual development plan (IDP) with rights of appeal. This will improve the equity of the system of support for learners whilst contributing a social benefit by extending the rights of children and young people and working towards improved educational outcomes.
- 25.2. Introducing statutory plans for all children and young people with ALN will enable a greater focus on early identification of need which should prevent or reduce conflict within the system. This could result in a long term reduction in the number of appeals going to Tribunal, however the number of potential appellants will necessarily grow with all children and young people with ALN having rights of appeal. Equitable statutory plans should also improve the way provision is secured and ensures it remains in place as long as it is required (up to the age of 25).
- 25.3. The duties in the ALN Code on local authorities and governing bodies to prepare an IDP, secure the ALP and review IDPs are broadly set out in the ALN Act and its impact has been documented in the ALN Act's RIA. However, the revised ALN Code sets out in detail how these arrangements must be undertaken. For example, many of the requirements imposed by the ALN Code and associated regulations related to IDPs are around the timescales to complete certain tasks. A local authority, for instance, should act "promptly" to decide whether it should take over responsibility for maintaining the IDP and give the notification within the period of 7 weeks from the request to take over responsibility for the IDP, unless it is unable to do so within that period due to circumstances beyond its control.
- 25.4. The benefit of imposing timescales to the specific duties related to this core function of the ALN system enables children, young people and their families to have a realistic expectation of when certain decisions or processes should be completed. This should help alleviate much of the current tension in the SEN system where delays and inconsistencies have caused significant anxiety in the past. It is also expected these timescales will help reduce the time it currently takes to complete certain decisions or processes, such as preparing a statutory plan of support. By using the word "promptly", the ALN Code expects duties to proceed without delay, whereas

only using a set timescale for every duty without first using the term “promptly” may lead to the maximum amount of time allowed to carry out any particular duty to become the default timescale.

26. Post-consultation additions

26.1. Chapters 11-15 of the ALN Code comprise the core duties in relation to the majority of children and young people with ALN. Additionally, chapters 16 and 17 comprise duties in respect of young people FEIs or not in a maintained school. These have been significantly redrafted in response to the consultation. They now appear in separate chapters, based on age specific circumstances to provide greater clarity on the roles of statutory bodies to support learners with ALN. The elements of guidance applicable to all these age groups now appear in a single chapter to provide greater clarity and guidance when preparing an IDP or considering the ALP it should contain. However, in the main, the essence of the key duties across these chapters remains unchanged.

27. Cost

- 27.1. As stated in the ALN Act’s RIA, local authorities will be responsible for preparing, maintaining and reviewing IDPs for all children with ALN who are looked after by them. It was estimated at the time of the Act’s RIA that local authorities will spend approximately one hour preparing the application at a cost of approximately £18 per application based on 20 applications each year (this number is not expected to change as a result of introducing the ALN system). As identified in the Act’s RIA, local authorities are not expected to incur any additional costs under option two. Currently, local authorities put together a case when applying to the Welsh Ministers for consent for a child or young person with a statement of SEN to be placed at an independent school which is not generally approved to admit learners with statements of SEN. Under option two, local authorities will continue to have to satisfy themselves the placement is appropriate.
- 27.2. Numerous calls for evidence, from the Deloitte research in 2015 to Welsh Government officers asking local authorities for data, has provided no indication to challenge the estimate in the ALN Act’s RIA, and ultimately that the new system is estimated to be cost neutral compared to the current SEN system.
- 27.3. Reviewing an IDP will be an ongoing process and although there are requirements to review IDPs (such as annual reviews), the work to inform these meetings should be done

continuously. The cost of reviewing IDPs will predominately be the time it takes for the ALNCo or other member of teaching staff to conduct the review meeting.

- 27.4. Likewise with preparing an IDP, there will be circumstances when plans start from scratch (a new learner from across the border, a new disability which calls for ALP), however in most cases, those with ALN will already have been identified and will likely have some provision already in place. Preparing an IDP will not be a significant cost to the school or local authority, although it could be seen as a moderate cost in the most complex cases. However, in cases where an FEI had a duty to prepare or maintain an IDP, this would be a new cost and could be seen as onerous to begin with. Therefore, FEIs may see an increase in their costs but the system as a whole is not expected to create an overall increase in cost.
- 27.5. In 2018/19, 11,095 young people, aged 16-24 years of age, were recorded as having learning difficulties and/or disabilities (LDD) in FEIs. Although it is not expected FEIs will need to prepare all IDPs from scratch (in time, many young people will arrive in the FEI with an IDP), as part of the implementation planning for the roll out of the new ALN system, consideration is given to ways of supporting FEIs to undertake their new duties.
- 27.6. Given that Statements of SEN are already being prepared for children and young people up to the age of 19 years, and individual education plans (IEPs) are in place for many more learners, the exact duties in the ALN Code are new, but in reality, they replace and improve the existing duties within the SEN system.
- 27.7. Increasing the number of children and young people who have statutory entitlement to provision could result in increased pressure for those responsible for securing ALP. Although the previous RIA for the ALN Act did not identify unmet need within the SEN system (and we do not believe the ALN system will create new demand), there is a risk the improved system may be challenging with regards to the resource currently used to deliver the SEN system.
- 27.8. With regards to the introduction of new timescales on many duties in the ALN Code and regulations, there is a small risk that the current level of resources dedicated to the SEN system will not be adequate to fulfil duties (with new timescales) under the ALN system. Although there is no evidence to suggest this, and the timescales introduced by the ALN system have been carefully chosen in consultation with stakeholders, there is a

potential for the new system to require greater resources to fulfil duties within the set timeframe.

28. Advocacy

Benefit

- 28.1. The ALN Code sets out duties on local authorities to establish independent advocacy services (IAS) for the children and young people for whom it is responsible.
- 28.2. IAS will provide expert advice and assistance, by way of representation or otherwise, to a child or young person, where the child or young person is:
- making, or intending to make, an appeal to the Tribunal;
 - considering whether to appeal to the Tribunal; or
 - taking part in, or intending to take part in arrangements for avoiding or resolving disagreement.
- 28.3. The service will be provided free of charge at the point of delivery.
- Although advocacy is frequently used under the SEN system, there is no requirement to provide an equivalent service under SEN Code of Practice. IAS is therefore necessary to provide a consistent approach to advocacy service that specifically deals with issues relating to ALN. IAS, along with a local authority's duty to make arrangements for avoiding and resolving disagreements is intended to significantly reduce the number of disputes that currently occur within the SEN system, and should, in the medium to long term, reduce the numbers of cases going to the Tribunal. This could potentially save time and money for those who may have pursued an appeal had these services not been available.

29. Post-consultation additions

- 29.1. The amendments made post-consultation have clarified the difference between IAS and other advocacy services. It is also now clearer that representatives for young people, and parents of children, who lack capacity, also have the right to access these services. These amendments will benefit those reading the ALN Code without increasing any costs.

30. Cost

- 30.1. The cost of running the new service will be met by local authorities, and will vary considerably from one authority to another. The Act's RIA provided an estimate cost of £5,300 to the local authority for dispute resolution services relating to appeals under the SEN system. Many of the advocacy

services currently available in Wales are provided by the third sector or volunteers, where costs are sometimes covered by contributions from Welsh Government. However, there are other professional advocacy services that will charge for their service.

- 30.2. There is a potential risk with the introduction of IAS over the cost of running the service to local authorities. This is related to its potential use, and the difficulty in estimating how much demand there will be for advocacy services. As the new ALN system beds in, there is a risk of an increase in cases requiring arrangements for avoiding and resolving disagreements or using IAS, which could be costly and time consuming, although careful planning and a successful implementation of the new system should counter such difficulties.

31. Reviews

Benefit

- 31.1. Under option two, the ALN Code will set out the details regarding the Welsh Ministers' duty to review the demand for, and supply of, ALP delivered through the medium of Welsh. The requirement is that such a review is undertaken once every 5 years from implementation.
- 31.2. The review will facilitate the ability to make informed policy decisions about ALP through the medium of Welsh and support the Welsh Government's Cymraeg 2050 strategy.

32. Cost

- 32.1. There will be a financial cost to reviewing the Welsh ALP which has not been worked out. However, the cost will be met by Welsh Government rather than statutory bodies, and is on the face of the Act. As an estimate, this work may be undertaken by a small team made up of one Senior Executive Officer (£47,000 per annum) and one Team Support (£23,830 per annum) for a total of 3 months. This assumes the Welsh Government will not require any external researches, and instead rely on their own Knowledge and Analytical Services to undertake any analysis of the data. The estimated costs associated with these two roles for 3 months is £17,707.50.

33. New musts in ALN Code (post-consultation)

33.1. The table below contains all new duties (**musts**) included in the ALN Code following the public consultation, with the exception of small, administrative tasks (such as sending notifications) which have been filtered out.

33.2. The table below is designed to help the reader understand the potential costs of these new duties.

Ref.	Text	Topic	Cost
19.81	Where a relevant local authority has to decide whether the child or young person has ALN, it must : (a) designate an officer to be responsible for coordinating the actions required to make that decision, any decision as to whether an IDP is necessary for a young person and, if an IDP is subsequently required, to be responsible for preparing it; (b) record the date on which it is brought to its attention, or otherwise appears to it that the child or young person may have ALN; (c) in the case of a young person, record the date on which they consented to the decision being made; (d) record a summary of how the possibility that the child or young person has ALN has been brought to its attention or why it otherwise appears to the authority that they may have ALN; (e) give the relevant notification referred to in paragraphs 22.64 – 22.65.	LA duty to designate a co-ordinator	Low The designation itself is a relatively straightforward administrative task.
16.14	The decision must be taken and the notification given promptly and in any event within the period of 35 term time days from the young person consenting to the decision being made	Decision and time scale	Low to Medium
16.26	The FEI must make the decision on ALN, prepare the plan and give a copy of it promptly and in any event within the period of 35 term time days from the young person consenting to the decision being made.	Decision and time scale	Low to Medium
19.65	A local authority maintaining an IDP for a previously detained person following their release must review the IDP and complete that review (including, as the case may be, giving a copy of the revised IDP or notification of another conclusion of the review) promptly and in any event, by the end of the period of 7 weeks starting with the person's release from detention. But this requirement to complete the review by the end of the 7 week period does not apply if it is impractical for the local authority to do so due to circumstances beyond its control.	IDP review	Low to Medium
19.67	In cases where the released child or young person is to attend a maintained school or FEI in Wales, the local authority may consider that it would be more appropriate for the school or FEI to maintain the IDP. Depending upon the circumstances, it might also be more appropriate for that institution to review the IDP. This might be the case where, for example, the IDP was recently prepared by the authority and the released person has low level needs or where the	IDP review	Low to Medium

	institution previously maintained the IDP and the period of detention was very short. If the IDP is transferred to a school or FEI[775 This would be following a direction by the local authority under section 14(4) of the Act in the case of a school or following an FEI agreeing to the authority's request under section 36(2) that the FEI become responsible for the IDP. Also, a transfer can only take place if the released person is a registered pupil of the school or is a young person enrolled as a student at the FEI. Without the local authority having reviewed it following release, the school or FEI must review the IDP promptly and in any event within the period of 35 term time days from the child or young person's release from detention. But the requirement to complete the review by the end of that period of 35 term time days, does not apply if it is impractical for the school or FEI to do so due to circumstances beyond its control.		
15.60	As part of the process of deciding whether a young person has ALN, a local authority must consider whether to seek advice from an educational psychologist and, where it considers that seeking such advice is likely to be worthwhile, it must do so.	Consider and seek advice	Low Consideration will not be overly burdensome, and will likely become part of the process. Since educational psychologists are already involved in the current system, this new provision is designed to standardise the process rather than creating something brand new. Seeking advice will therefore be small administrative task.
17.32	The local authority must first identify if the young person has desired outcomes and what they are.	Review	Low to medium. Local authorities should already be adopting a person centred approach to understanding the needs of the individuals and this could include in respect of identifying desired outcomes. In many cases, the LA will be aware of the individual through any previous engagement they had with them through the IDP process.

17.36	The local authority must consider what programmes of study may be available that would be suitable for enabling the young person to meet their desired outcomes.	Review	Low to medium. This will be a largely new requirement on Local authorities who until now have only had to consider post16 education for those who remain in school. This should become less burdensome over time as LAs develop their knowledge of post-16 education and training that is on offer.
17.38	Otherwise, the local authority must first consider programmes of study at mainstream maintained schools or FEIs (this could include such schools and FEIs in England). More often than not, those settings will be able to provide a suitable programme of study for a young person with ALN and the young person's reasonable needs to ALP would be met in undertaking it.	Review	Low to medium. This will be a largely new requirement on Local authorities who until now have only had to consider post16 education for those who remain in school. This should become less burdensome over time as LAs develop their knowledge of post-16 education and training that is on offer.
31.12	The local authority must ensure that the staff delivering these arrangements are impartial to the outcome of any potential disagreements.	Training	Low This may require staff training or guidance to ensure staff are reminded of their duties.
32.13	The local authority must ensure the arrangements made are accessible to children and young people and delivered in a way which meets their communication preferences and needs (see Chapter 3 on involving and supporting children, their parents and young people).	Accessible information	Low or medium Every local authority should already ensure the information they provide to the public is accessible. There may be a one-off cost for preparing these materials, but little to no ongoing costs.

32.11	The local authority must ensure that the staff delivering these arrangements have a detailed understanding of the ALN system. To do so, the local authority should ensure that staff providing the arrangements receive appropriate training and development to undertake their role effectively and training is refreshed to improve standards.	Training	Low This training may be adapted from the Welsh Government training material, keeping the cost low.
32.63	The local authority must ensure that all advocates: (a) understand the ALN system including the arrangements for avoiding and resolving disputes and Tribunal procedures; (b) are suitably trained, including in communicating with children and young people and those with communication difficulties, and continue to receive appropriate training and development to undertake their role effectively and to improve standards; (c) have relevant knowledge of the child's or young person's ALN; (d) maintain confidential records; (e) are not on the children's barred list (in the case of advocates for children) or the adults' barred list (in the case of advocates for young people who are considered to be "at risk"). If this information is not held by the advocacy providers, the local authority must ensure the advocates apply for an enhanced level disclosure and barred list check from the Disclosure and Barring Service before they can proceed.	Training	Low or medium The costs for training advocates should be relatively low. Welsh Government are investing in training for the ALN system and will provide free training material online. It may take some time to train everyone, but given the low numbers involved, the cost should low.

34. Consultation

34.1. A consultation on the draft ALN Code was held between 10 December 2018 and 22 March 2019.

34.2. The consultation sought views on the draft ALN Code and proposed regulations in order to consider comments and make improvements before it is laid before the Senedd.

34.3. The consultation was aimed at maintained schools, further education institutions, local authorities, local health boards, early years settings, third sector organisations and anyone else with an interest in additional learning needs.

35.4. 65 consultation questions were asked covering the following five themes:

1. The draft ALN Code;
2. Draft Education Tribunal for Wales regulations;
3. Draft ALN Co-ordinator regulations;
4. Looked after children; and
5. Impact of proposals.

35.5. A total of 644 people responded to the main consultation. A summary report can be found here:

<https://gov.wales/sites/default/files/consultations/2019-06/summary-of-responses-draft-additional-learning-needs-code.pdf>

35.6. The main themes raised during the consultation included;

- frequent calls to convert many of the “shoulds” included in the draft ALN Code to “musts”;
- concern about the language style used in the draft ALN Code;
- issues about transport provision for post-16 learners with learning difficulties or disabilities;
- calls for guidance on other relevant legislation or on matters set out elsewhere in statutory guidance;
- concerns that the new ALN system would have a considerable financial impact;
- requests to develop an electronic system to support the IDP process; and
- the capacity of the specialist workforce, including educational psychologists, to deliver elements of the new system described in the draft ALN Code.

35.7. A summary of the changes made to the ALN Code following the consultation can be found in the table from page 15 of the Explanatory Memorandum.

36. Competition Assessment

36.1. The provisions within the Act will not affect business, or charities and/or the voluntary sector in ways that raise issues related to competition. The competition filter has not been applied.

36.2. The provisions in the Act are not expected to have any impact on competition or place any restrictions on new or existing suppliers. The majority of the costs associated with the legislation are expected to fall on public bodies, who already meet these costs.

36.3. The legislation is not expected to have any negative impact on small and medium sized enterprises (SMEs) in Wales.

37. 10. Post implementation review

37.1. The phased rollout of the new ALN system will be monitored and evaluated by the Welsh Government during and post implementation. During implementation, the main focus of the work will be to establish the extent to which stakeholders are compliant with the provisions in the Act and to consider the initial effects and impacts of the Act using available data.

37.2. Additionally, Welsh Government has committed to undertaking a post-implementation review of the Act in 5 years' time; this will consist of a baseline study of the current system to inform a future evaluation of the impact of the Act. The baseline study was published by Arad Research in February 2019. The post-implementation review will be predominately focused on the outcomes of the Act for young people and parents.

37.3. Section 89 of the ALN Act sets out the duty on Welsh Ministers to reviews the sufficiency of additional learning provision in Welsh and to publish a report on the outcome within five years of the new system coming into force.

37.4. In the meantime, local authorities have an ongoing duty under section 63 of the Act keep under review the arrangements made by the authority and by the governing bodies of maintained schools in its area for children and young people who have additional learning needs.

37.5. To ensure the arrangements for providing health related ALP are sufficient and appropriate, the ALN Code sets out expectations on the DECLO to oversee the development of processes to collect and analyse robust data to measure its compliance with duties under the Act. It should also measure the effectiveness of arrangements for partnership working, and provide quality assurance of its activities in relation to children and young people with ALN.

37.6. This provides a counterweight to similar duties on local authorities to ensure both health related ALP and the ALN system itself are continuously reviewed, allowing for internal systems to be improved where necessary.

SL(5)798 – The Equality Act 2010 (Capacity of parents and persons over compulsory school age) (Wales) Regulations 2021

Background and Purpose

These Regulations are proposed to be made by the Welsh Ministers under section 207(4) of, and paragraph 6F of Schedule 17 to, the Equality Act 2010 ("the 2010 Act").

The Regulations provide persons over compulsory school age, and parents of children not over compulsory school age, who lack capacity with the right to bring a disability discrimination claim against a responsible body for a school in Wales in accordance with Schedule 17 to the 2010 Act.

The Regulations do this by providing that a representative may bring a claim on behalf of the parent or person over compulsory school age who lacks capacity. For the purposes of the Regulations, a person lacks capacity within the meaning of the Mental Capacity Act 2005 ("the 2005 Act"), namely, when they lack mental, not legal, capacity.

The Regulations also require references in section 86 of the 2010 Act to be read differently so that pupils, and persons applying to be pupils, cannot be victimised due to specified protected acts by the representative, such as bringing proceedings under the 2010 Act.

The Regulations will come into force on 1 September 2021.

Procedure

Draft Affirmative.

The Welsh Ministers have laid a draft of the Regulations before the Senedd. The Welsh Ministers cannot make the Regulations unless the Senedd approves the draft Regulations.

Technical Scrutiny

No points are identified for reporting under Standing Order 21.2 in respect of this instrument.

Merits Scrutiny

The following point is identified for reporting under Standing Order 21.3 in respect of this instrument.

1. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Senedd.

Regulations 3, 4 and 5 of these Regulations, which will come into force on 1 September 2021, refer to provisions in Schedule 17 to the 2010 Act as prospectively inserted by



paragraph 19 of Schedule 1 to the Additional Learning Needs and Education Tribunal (Wales) Act 2018 ("the 2018 Act").

The relevant provisions of paragraph 19 will therefore need to be brought into force by 1 September 2021 pursuant to a Commencement Order made by the Welsh Ministers under section 100(3) of the 2018 Act in order for the provisions of these Regulations to operate effectively.

Paragraph 3.7 of the Explanatory Memorandum to these Regulations confirms that:

"The Welsh Ministers intend to exercise their commencement powers (under section 100 of the Act) to provide for functions under the Act to come into force on a phased basis from 1 September 2021."

Welsh Government response

A Welsh Government response is not required.

Legal Advisers

Legislation, Justice and Constitution Committee

18 March 2021



Draft Regulations laid before Senedd Cymru under section 209(6) of the Equality Act 2010, for approval by resolution of Senedd Cymru

DRAFT WELSH STATUTORY
INSTRUMENTS

2021 No. (W.)

EDUCATION, WALES

EQUALITY, WALES

**The Equality Act 2010 (Capacity of
parents and persons over
compulsory school age) (Wales)
Regulations 2021**

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations supplement the procedural framework in Schedule 17 to the Equality Act 2010 (“the Act”). The Regulations provide persons over compulsory school age and parents who lack capacity with the right to bring a claim in relation to disability discrimination etc. under that Schedule. The Regulations do this by providing that a representative may bring a claim on behalf of the parent or person over compulsory school age who lacks capacity. For the purposes of the Regulations, a person lacks capacity within the meaning of the Mental Capacity Act 2005, namely, when they lack mental, not legal, capacity.

Regulation 3 provides that, where a parent of a child not over compulsory school age lacks capacity, the reference to “parent” in the provision which enables that parent to bring a claim under Schedule 17 is to be read as a reference to a representative of that parent.

Regulation 4 provides that, where a person over compulsory school age lacks capacity, the reference to “person” in the provision which enables that person to bring a claim under Schedule 17 is to be read as a reference to a representative of the person over compulsory school age.

Regulation 5 applies where regulation 3 or 4 applies to claims under paragraph 3A(1) of Schedule 17 to the

Act. Where regulation 5 applies, it requires certain references in section 86 of the Act to be read differently depending on whether a child over compulsory school age, a parent of a child not over compulsory school age, or an adult, lacks capacity. Section 86 of the Act provides that pupils, and persons applying to be pupils, cannot be victimised due to protected acts done by their parent or sibling. By requiring certain references in section 86 of the Act to be read differently, the Regulations ensure that pupils, or persons applying to be pupils, cannot be victimised for protected acts by their representative (if they are a child over compulsory school age or an adult) or a representative of their parent (if they are a child not over compulsory school age).

The Regulations stipulate that, in specified cases, the provisions of the Regulations concerning mental capacity have effect in spite of section 27(1)(g) of the Mental Capacity Act 2005.

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, it was not considered necessary to carry out a regulatory impact assessment as to the likely costs and benefits of complying with these Regulations.

Draft Regulations laid before Senedd Cymru under section 209(6) of the Equality Act 2010, for approval by resolution of Senedd Cymru

DRAFT WELSH STATUTORY
INSTRUMENTS

2021 No. (W.)

EDUCATION, WALES

EQUALITY, WALES

**The Equality Act 2010 (Capacity of
parents and persons over
compulsory school age) (Wales)
Regulations 2021**

Made

Coming into force

1 September 2021

The Welsh Ministers, in exercise of the powers conferred on them by section 207(4) of, and paragraph 6F of Schedule 17 to, the Equality Act 2010⁽¹⁾, make the following Regulations.

In accordance with section 209(6) of that Act, a draft of this instrument has been laid before and approved by a resolution of Senedd Cymru⁽²⁾.

Title, commencement and application

1.—(1) The title of these Regulations is the Equality Act 2010 (Capacity of parents and persons over compulsory school age) (Wales) Regulations 2021.

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- (1) 2010 c. 15. Paragraph 6F of Schedule 17 to the Equality Act 2010 was inserted by paragraph 19(5)(h) of Schedule 1 to the Additional Learning Needs and Education Tribunal (Wales) Act 2018 (anaw 2).
- (2) The reference in section 209(6) to the National Assembly for Wales now has effect as a reference to Senedd Cymru, by virtue of section 150A(2) of the Government of Wales Act 2006 (c. 32).

(2) These Regulations come into force on 1 September 2021.

(3) These Regulations apply in relation to Wales.

Interpretation

2. In these Regulations—

“the Act” (“*y Ddeddf*”) means the Equality Act 2010;

“adult” (“*oedolyn*”) means a person who is aged 18 years or over;

“capacity” (“*galluedd*”) has the same meaning as in the Mental Capacity Act 2005⁽¹⁾;

“child” (“*plentyn*”) means a person who has not attained the age of 18;

“compulsory school age” (“*oedran ysgol gorfodol*”) has the meaning given in section 8 of the Education Act 1996⁽²⁾;

“parent” (“*rhiant*”) has the same meaning as in the Education Act 1996;

“relevant time” (“*adeg berthnasol*”) means the time at which, under the Act, something is required or permitted to be done by or in relation to a parent or a person over compulsory school age (including, where relevant, an adult);

“representative” (“*cynrychiolydd*”), in relation to a parent or a person over compulsory school age (including, where relevant, an adult), means—

- (a) a deputy appointed by the Court of Protection under section 16(2)(b) of the Mental Capacity Act 2005 to make decisions on the parent’s or person’s behalf in relation to matters within Schedule 17 to the Act;
- (b) the donee of a lasting power of attorney (within the meaning of section 9 of the Mental Capacity Act 2005) appointed by the parent or person to make decisions on their behalf in relation to matters within Schedule 17 to the Act;
- (c) an attorney in whom an enduring power of attorney (within the meaning of Schedule 4 to the Mental Capacity Act 2005) created by the parent or person is vested, where the power of attorney is registered in accordance with paragraphs 4 and 13 of that Schedule or an application for registration of the power of attorney has been made.

⁽¹⁾ 2005 c. 9.

⁽²⁾ 1996 c. 56; section 8 was amended by section 52 of the Education Act 1997 (c. 44).

When a child's parent lacks capacity

3. When a parent of a child not over compulsory school age lacks capacity at the relevant time, the reference to “parent” in paragraph 3A(1)(b) of Schedule 17 to the Act is to be read as a reference to a representative of that parent.

When a person over compulsory school age lacks capacity

4. When a person over compulsory school age lacks capacity at the relevant time the reference to “person” in paragraph 3A(1)(a) of Schedule 17 to the Act is to be read as a reference to a representative of that person.

Victimisation for conduct of representatives

5.—(1) Where regulation 3 applies to a claim under paragraph 3A(1)(b) of Schedule 17 to the Act, the references to “parent” in section 86(2), (3) and (4) of the Act are to be read as references to a representative of that parent.

(2) Where regulation 4 applies to a claim under paragraph 3A(1)(a) of Schedule 17 to the Act in respect of a child over compulsory school age, the references to “parent” in section 86(2), (3) and (4) of the Act are to be read as references to a representative of that child.

(3) Where regulation 4 applies to a claim under paragraph 3A(1)(a) of Schedule 17 to the Act in respect of an adult, the references in section 86(2), (3) and (4) of the Act to—

- (a) “parent or sibling” are to be read as references to a representative of that adult, and
- (b) “child” are to be read as references to that adult.

Mental Capacity Act 2005

6.—(1) Regulations 3, and 5(1) and (2) have effect despite section 27(1)(g) of the Mental Capacity Act 2005(1).

(2) Where regulation 4 applies in respect of a child, the regulation has effect despite section 27(1)(g) of the Mental Capacity Act 2005.

Name

- (1) Section 27(1)(g) does not permit decisions on discharging parental responsibilities in matters not relating to a child's property to be made on a person's behalf.

Minister for Education, one of the Welsh Ministers
Date

Explanatory Memorandum to:

1. The Additional Learning Needs Code for Wales;
2. The following Regulations;
 - The Additional Learning Needs (Wales) Regulations 2021;
 - The Education Tribunal for Wales Regulations 2021;
 - The Education (Pupil Referral Units) (Management Committees etc.) (Wales) (Amendment) Regulations 2021;
 - Independent Schools (Provision of Information) (Wales) (Amendment) Regulations 2021;
 - The Equality Act 2010 (Capacity of parents and persons over compulsory school age) (Wales) Regulations 2021.

This Explanatory Memorandum has been prepared by the Additional Learning Needs Transformation Team 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:

1. The Additional Learning Needs Code for Wales;
2. The Additional Learning Needs (Wales) Regulations 2021;
3. The Education Tribunal for Wales Regulations 2021;
4. The Education (Pupil Referral Units) (Management Committees etc.) (Wales) (Amendment) Regulations 2021;
5. Independent Schools (Provision of Information) (Wales) (Amendment) Regulations 2021;
6. The Equality Act 2010 (Capacity of parents and persons over compulsory school age) (Wales) Regulations 2021.

I am satisfied that the benefits justify the likely costs.

Kirsty Williams MS, Minister for Education
18 March 2021

PART 1 – EXPLANATORY MEMORANDUM

1. Description

- 1.1. Part 2 of the Additional Learning Needs and Education Tribunal (Wales) Act 2018 ('the Act') establishes the statutory system in Wales for meeting the additional learning needs of children and young people ('the ALN system'). The Additional Learning Needs (Wales) Regulations 2021 make provision about a range of matters related to the operation of the ALN system, for example prescribing time periods within which certain duties are to be performed to operate effectively and setting out the functions of an Additional Learning Needs Co-ordinator ('ALNCo'). The Additional Learning Needs Code for Wales ('the Code') also imposes requirements on the governing bodies of maintained schools in Wales, governing bodies of institutions in the further education sector ('FEIs') in Wales, local authorities and NHS bodies related to the operation of the ALN system and the exercise of functions under it. The Code also gives guidance to the public authorities that have functions under the ALN system, about the exercise of those functions under Part 2 of the Act.
- 1.2. Part 3 of the Act continues the Special Educational Needs Tribunal for Wales and renames it the Education Tribunal for Wales ('the Tribunal'). In addition to the Tribunal's jurisdiction set out in Part 2 of the Act, it has jurisdiction in relation to disability discrimination in schools (for provision about this, see section 116 of the Equality Act 2010 and Schedule 17 to that Act). The Education Tribunal for Wales Regulations 2021 make provision about the constitution of the Tribunal and set out the procedure to be followed in proceedings before the Tribunal.
- 1.3. The Education (Pupil Referral Units) (Management Committees etc.) (Wales) (Amendment) Regulations 2021 amend the Education (Pupil Referral Units) (Management Committees etc.) (Wales) Regulations 2014 ('the 2014 Regulations') to provide that a local authority must delegate the specified functions to a management committee of a pupil referral unit ('PRU'). The specified functions are the functions of the governing body under the Act which, in accordance with paragraph 1 of Schedule 1 to the Education Act 1996, are functions of the local authority in relation to a PRU.
- 1.4. The Independent Schools (Provision of Information) (Wales) (Amendment) Regulations 2021 amend the Independent Schools (Provision of Information) (Wales) Regulations 2003 in order to require an application to enter an independent school in the register of independent schools in Wales to include information about the types of additional learning provision made by the school for pupils with additional learning needs (if any).

- 1.5. The Equality Act (Capacity of parents and persons over compulsory school age) (Wales) Regulations 2021 modify certain provisions of the Equality Act 2010 in certain circumstances. The modifications ensure that the representative of child's parent who lacks capacity, or the representative of a young person who lacks capacity, can bring a claim on behalf of that individual under Schedule 17 to the Equality Act 2010.

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

- 2.1. The ALN Code, the regulations and the other regulations have been laid on 2 March 2021 as a single package. This is to show the interplay of the provisions in the respective instruments.
- 2.2. The Additional Learning Needs (Wales) Regulations 2021 laid on 2 March were replaced on 12 March as discrepancies were identified between the English and Welsh text which have now been corrected. The Equality Act 2010 (Capacity of parents and persons over compulsory school age) (Wales) Regulations 2021, also laid on 2 March, are also replaced to address a technical issue which has been identified and now corrected. The ALN Code for Wales, laid on the 2 March, is replaced with this version as discrepancies were identified between the English and Welsh text which have now been corrected. There are also two minor changes to both language versions of the ALN Code for accuracy (in footnote 2 to paragraph 11.4 and in paragraph 15.81) and a few formatting changes to align the Welsh and English versions. We have also found some discrepancies in one common phrase used throughout the Code. Whilst the English version has exactly the same wording in the phrase, the Welsh version uses two slightly different phrases. Although there are no material changes involved, we believe it is worthwhile to make these changes to ensure a consistent approach is taken in both version of the Code. The phrase included the word used for "about" in references to "information and advice about ALN and the ALN system" was also identified. On some occasions "ar" was used and on others "am". These references have now all been changed to "am" (for example, see paragraph 11.18(b)).
- 2.3. The sections of the Act containing the duties to designate people to the statutory roles (sections 60 to 62) came into force on 4 January. The Additional Learning Needs Co-ordinator (Wales) Regulations 2020 (S.I. 2020/1351) ("the ALNCo Regulations") also came into force on that date. Those Regulations set out the qualifications and experience required for a person to be designated as an ALNCo and the ALNCo's functions. Those Regulations will be revoked by the Additional Learning Needs (Wales) Regulations 2021, as the provisions in the former are re-enacted within the latter (see regulations 26 to 30)
- 2.4. The Additional Learning Needs (Wales) Regulations 2021 make three amendments to the Act.

- 2.4.1. Regulation 4 amends section 88 of the Act about rules on giving notice and documents. The amendment is to provide that a notification or document given electronically is treated as having been given, unless the contrary is proved, on the day on which it is sent. This reflects the rule in section 14 of the Legislation (Wales) Act 2019, which does not apply to the Act.
- 2.4.2. Regulation 19 amends section 44 of the Act to provide that an NHS body's duties under section 20(5)(a) and (c) of the Act about securing a relevant treatment or service which is additional learning provision for a detained person cease to apply from the beginning of the detained person's detention. In this situation, the home authority for the detained person already has a duty under section 42 of the Act to arrange appropriate additional learning provision and that duty is apt to deal with the detention situation. The NHS body may not practically be able to secure a relevant treatment or service for a detained person (particularly as it might not be responsible for the provision of health services to the detained person during the detention period) or the relevant treatment or service may no longer be appropriate.
- 2.4.3. Regulation 33 amends section 68 of the Act to provide that for the purposes of a local authority's duties to make arrangements for the avoidance and resolution of disagreements and independent advocacy services, a local authority is also responsible for detained persons for whom it is the home authority. It is appropriate for the home authority's arrangements to apply in relation to detained persons, as it is the authority exercising functions in relation to them and it avoids any difficulties in ascertaining which local authority would otherwise be responsible (given that the test for responsibility is based upon a person being in the area of a local authority, which is difficult to determine in a detention situation).
- 2.5. As explained elsewhere in the Explanatory Memorandum, the Code imposes requirements. Chapter 1 of the Code explains how those requirements are identified in the Code.
- 2.6. It is intended to implement the ALN system on a phased basis from 1 September 2021 (see paragraph 3.7 below), which is why the regulations do not revoke law relating to special educational needs.

3. Legislative background

- 3.1. Part 2 of the Act establishes the ALN system. At its heart, the system involves governing bodies of maintained schools and FEIs and local authorities having responsibility for deciding whether children or young people have additional learning needs and if they do, preparing and maintaining an individual development plan ('IDP') for them. An IDP sets out the needs that the child or young person has and the additional learning provision called for by those needs. There are duties to secure the additional learning provision and particular other things, set out in an IDP. The ALN system provides that children, their parents and young people have the right to appeal to the Tribunal about certain matters related to the identification of their needs and the provision to meet them.
- 3.2. The ALN system is to replace the system under Part 4 of the Education Act 1996 for identifying, assessing and making provision for children with special educational needs ('SEN'). Implementing the ALN system will take three years, from September 2021.
- 3.3. The Additional Learning Needs and Education Tribunal (Wales) Act 2018 (Commencement No 1) Order 2020 (S.I. 2020/1182) commenced various powers in the Act, provisions for the purposes of exercising powers within them and related provisions. It also commenced sections 60 to 62 which contain duties to designate people to the statutory roles and provisions related to the list of independent special post-16 institutions in Wales or England, which the Welsh Ministers must establish. The Additional Learning Needs (List of Independent Special Post-16 Institutions) (Wales) Regulations 2020 (S.I. 2020/1367) make provision about that list and applications to be included in it.
- 3.4. The Welsh Ministers are required by section 4 of the Act to issue a code on additional learning needs. The code may impose requirements about certain matters (set out at section 4(5) of the Act) and is required to include the particular requirements described in section 4(6) of the Act. It may also make provision setting out what is required to discharge the duties in sections 7(1) and 8(1) of the Act about local authorities and NHS bodies having regard to United Nations Conventions.
- 3.5. The Code may include guidance about the exercise of functions under the Act and any other matter connected with identifying and meeting additional learning needs (section 4(2) of the Act). It must include guidance about the exercise of a maintained school or FEI's governing body's function to take all reasonable steps to secure that the additional learning provision called for by a pupil or student's additional learning needs is made whilst an individual development plan is being prepared for the pupil or student (section 47(3) of the Act).

- 3.6. The Act also confers various regulation making powers on the Welsh Ministers which supplement the functions in the Act.
- 3.7. All of the sets of regulations provide that they come into force on 1 September 2021. If approved by the Senedd, for the Code to come into force, a commencement order must be made (section 5(4) of the Act). The intention is that the Code also comes into force on 1 September 2021. The Welsh Ministers intend to exercise their commencement powers (under section 100 of the Act) to provide for functions under the Act to come into force on a phased basis from 1 September 2021.
- 3.8. The Code is to be issued under the powers in section 4 of the Act (as well as containing provision made under sections 7(4) and 8(4) of the Act and the guidance required by section 47(3) of the Act). The procedure for making it is set out in section 5 of the Act, which requires that there has been consultation on a draft of it with particular persons (see below for details of the consultation) and that it cannot be issued unless a draft of it (which may be a modified draft following that consultation) has been laid before and approved by resolution of the Senedd.
- 3.9. The Additional Learning Needs (Wales) Regulations 2021 are to be made under sections 15(2), 21(10), 32(1)(b), 36(3), 37(1)(a) and (b), 45, 46, 60(4), 65(5), 67, 82, 83, 97 and 98(2) of the Act. These Regulations are subject to the approval of the Senedd by way of the draft affirmative procedure (as required by section 98(3) of the Act).
- 3.10. The Education Tribunal for Wales Regulations 2021 are to be made under sections 70(4), 74, 75, 76(3), 77, 91(6) and 92(2) of the Act and section 207(4) of, and paragraphs 6(1), (2) to (5) and (7) and 6A of Schedule 17 to, the Equality Act 2010. These Regulations are subject to the approval of the Senedd by way of the draft affirmative procedure (as required by section 98(3) of the 2018 Act and section 209(6) of the Equality Act 2010).
- 3.11. The Equality Act 2010 (Capacity of parents and persons over compulsory school age) (Wales) Regulations 2021 are to be made under section 207(4) of, and paragraph 6F of Schedule 17 to, the Equality Act 2010. These Regulations are subject to the approval of the Senedd by way of the draft affirmative procedure (as required by section 209(6) of the Equality Act 2010).
- 3.12. The Independent Schools (Provision of Information) (Wales) (Amendment) Regulations 2021 are made under sections 160(1), 168 and 210(1) and (7) of the Education Act 2002. These Regulations are subject to the negative resolution procedure (as required by section 210(4) of the Education Act 2002 and paragraph 34 of Schedule 11 to the Government of Wales Act 2006). The functions of the National Assembly for Wales under those provisions were transferred to the

Welsh Ministers by virtue of paragraph 30 of Schedule 11 to the Government of Wales Act 2006.

- 3.13. The Education (Pupil Referral Units) (Management Committees etc.) (Wales) (Amendment) Regulations 2021 are made under section 569(1), (4) and (5) of, and paragraph 15 of Schedule 1 to, the Education Act 1996. These Regulations are subject to the negative resolution procedure (as required by section 569(2) and (2C) of the Education Act 1996 and paragraph 33 of Schedule 11 to the Government of Wales Act 2006). The functions of the Secretary of State in Schedule 1 to the Education Act 1996 were transferred to the National Assembly for Wales by the National Assembly for Wales (Transfer of Functions) Order 1999 S.I. 1999/672 and then to the Welsh Ministers by virtue of paragraph 30 of Schedule 11 to the Government of Wales Act 2006.

4. Purpose and intended effect of the legislation

- 4.1. The purpose of the ALN system, including the Code and regulations under the powers in the Act, is to create a fully inclusive education system where all learners with additional learning needs are inspired, motivated and supported to reach their full potential.
- 4.2. The Code contains guidance about the exercise of functions under Part 2 of the Act and other matters connected with identifying and meeting additional learning needs. It describes and explains many of the functions in the Act and some of the provisions in regulations made under the Act. The Code itself also imposes requirements, pursuant to sections 4(5) and (6), 7 and 8 of the Act. The Code's statutory guidance includes guidance on those requirements. The guidance helps give further effect to the ALN system.
- 4.3. The purpose of many of the provisions in the Additional Learning Needs (Wales) Regulations 2021 and the requirements imposed by the Code, are intended to provide the necessary or desirable details of the ALN system to supplement the provisions in the Act, for example, setting time limits for compliance with duties under the Act, provisions affecting decisions on when an IDP is necessary and providing for a child's parent or young person's right to be exercised by a representative where that parent or young person lacks capacity. The intended effect is that the ALN system is able to operate effectively.
- 4.4. In addition, the ALN Code is intended to be the principal document used by those responsible for delivering the ALN system, especially local authorities and the staff of maintained schools and FEIs. It is, in effect, an operational handbook designed to assist those exercising functions under the Act, providing them with the details of functions involved in the ALN system and giving guidance on how to exercise them in the various circumstances in which they fall to be exercised.
- 4.5. The Code as a whole explains the operational requirements of the ALN system.
- 4.6. The Code has therefore been designed to allow those exercising functions under the Act to access the statutory guidance that applies to their individual responsibilities under the Act and to understand the process as it applies to a specific child or young person.
- 4.7. The content and format of the Code therefore focusses on an explanation of legal functions and guidance on their exercise, rather than case studies on good practice. It is intended to enable professionals (such as an Early Years ALN Lead Officer, an ALNCo in a maintained school or FEI, or a local authority officer) to understand the process as it applies to a specific child or young person, and take action so as to comply with the duties under the ALN system in a way

which is appropriate to the circumstances and gives effect to the principles underlying the ALN system.

- 4.8. The Education Tribunal for Wales Regulations 2021 make provision relating to the exercise of that Tribunal's jurisdiction under Part 2 of the Additional Learning Needs and Education Tribunal (Wales) Act 2018 which concerns additional learning needs appeals, and Chapter 1 of Part 6 of the Equality Act 2010 which concerns claims of disability discrimination in respect of school pupils. The purpose of the provisions in these Regulations is to provide for rules of procedure which allow for the Tribunal's proceedings to be conducted appropriately and effectively. The intended effect is that appeals and claims before the Tribunal are dealt with justly.
- 4.9. We have carried out a Justice Impact Assessment which has concluded the justice impact is low. We fully considered the impact of the reforms on Her Majesty's Courts and Tribunals Service with our colleagues in the Welsh Tribunals Unit during the development of the Bill – an overview of our assessment was included in the Regulatory Impact Assessment, which we published with the Bill. The provisions relating to onward appeals to the Upper Tribunal are not new as they replicate existing provisions within the Education Act 1996 and the SENTW 2012 Regulations. Consequently, there is no reason to believe that there will be any significant impact on the number of cases referred to the Upper Tribunal. Figures from 2018-2019 show that only five request for permission of the Tribunal to make an application were made, two of which were refused.
- 4.10. The proposals support the use of person centred practice (PCP). PCP encourages greater active participation by the learner and their family as well as seeking a greater understanding of decisions made. This should help learners and their families to understand the process and enable a greater feeling of ownership of those decisions made. It is expected this will reduce the level of confrontation, the number of disagreements and lower the level of animosity which prevents disagreements being resolved before they reach Tribunal.
- 4.11. We do not anticipate more appeals to the Tribunal as a result of the ALN reforms. The ALN system will be implemented in a phased approach over a 3 year period. The first year will not include the post 16 age group, which will help reduce any sudden impact on the Tribunal's service.
- 4.12. The purpose of the Education (Pupil Referral Units) (Management Committees etc.) (Wales) (Amendment) Regulations 2021 is to require a local authority to delegate to the management committee of a PRU the functions the local authority has in relation to the PRU by virtue of Schedule 1 to the Education Act 1996. The intended effect is that management committees exercise, in relation to the PRU, the functions of a governing body under the Act.

- 4.13. The purpose of the Independent Schools (Provision of Information) (Wales) (Amendment) Regulations 2021 is to amend, as required by section 160 of the Education Act 2002 (as amended by section 54(3) of the Act), the Independent Schools (Provision of Information) (Wales) Regulations 2003 so that applications to enter an independent school in the register of independent schools in Wales will include information about the types of additional learning provision made by the school for pupils with additional learning needs (if any). The intended effect is that this information will then be included in the register (see section 158 of the Education Act 2002 as amended by section 54 of the Act) and therefore the information will be available for local authorities when exercising their functions under the Act.
- 4.14. The purpose of the Equality Act 2010 (Capacity of parents and persons over compulsory school age) (Wales) Regulations 2021 is to modify references to parents and persons over compulsory school age in paragraph 3A of Schedule 17 to the Equality Act 2010. When a parent or young person lacks mental capacity (under the Mental Health Act 2005) at a time where they could take action under the Equality Act 2010, the references to them in paragraph 3A, which gives certain individuals the right to bring a claim to the Tribunal under the Equality Act 2010, are modified to read as references to their representative. The intended effect is that parents or young persons lacking capacity will, through their representative, be able to exercise the same right to bring a claim to the Tribunal under the Equality Act 2010 as those with capacity.

5. Consultation

- 5.1. A twelve week public consultation ran between 10 December 2018 and 22 March 2019 on the:
- draft ALN Code;
 - draft regulations relating to the Education Tribunal for Wales and ALN co-ordinators and the policy intention for the exercise of other regulation-making powers under the Act;
 - revisions to the Social Services and Well-being (Wales) Act 2014 Part 6 Code of Practice – Looked After and Accommodated Children.
- 5.2. The consultation included:
- the main consultation document containing 65 questions covering the above matters;
 - a version of the consultation for children and young people and an easy read version containing fifteen questions on aspects of the draft Code and proposed regulations;

- two half-day consultation events in each of the four regional education consortia areas in Wales;
 - a series of engagement sessions with children, young people and parents attended by 228 participants.
- 5.3. A summary of responses report was published on 14 June 2019 document and can be accessed at:
- <https://gov.wales/draft-additional-learning-needs-code>
- 5.4. As that report indicated, the draft ALN Code and proposed regulations cover a huge range of different topics and so the responses to the consultation were very wide ranging, containing a huge variation in opinion and very different focuses.
- 5.5. Overall, the majority of respondents responded positively. Critical responses were greatest for matters relating to:
- the definition and identification of ALN;
 - timescales within which duties must be performed;
 - the roles of the ALNCo, the Designated Educational Clinical Lead Officer ('DECLO') and Looked After Children in Education Co-ordinator;
 - arrangements for disagreement resolution, advocacy services and appeals;
 - the delegation of duties to pupil referral units;
 - individual development plan ('IDP') templates;
 - the provision of IDPs for young people not attending an education setting;
 - the ALN system as it will apply to detained persons.
- 5.6. It is worth noting that the comments received from respondents tended to come from those who were particularly opposed to certain aspects of the draft ALN Code, or who were unsure about aspects of those policies. This was also true in terms of comments on certain matters, even where the questions related to those matters in the consultation had a positive response overall. The comments also included a great number of suggested technical amendments to the ALN Code.
- 5.7. Respondents expressed concern about various terms that appear in the draft ALN Code. There were also calls for guidance on the meaning of particular terms. In considering those points further, we have been mindful of whether further elaboration would add value or whether it might risk an inadvertent narrowing or widening of the term's meaning and the constraints set by the Act.
- 5.8. In particular, some respondents questioned various aspects of the wording of the definitions of ALN and ALP. These definitions are set out in the Act and cannot be changed by the ALN Code. The wording of

the definitions of ALN and ALP used in the Act, which is repeated in the draft ALN Code, is deliberately similar to that currently used in relation to the definitions of SEN and special educational provision, with which many professionals will already be familiar.

- 5.9. Respondents also questioned other elements of the system laid down in the Act. For example, some disagreed with the principle of local authorities being responsible for preparing and maintaining IDPs for all looked after children. Others called for the creation of new requirements for which the Act makes no provision, such as making it compulsory for parties to engage in disagreement resolution before they are able to make an appeal, or requiring NHS bodies to comply with a Tribunal order. The ALN Code and regulations must align with the Act and cannot require any person to do something for which the Act provides no power.
- 5.10. Likewise, there were frequent calls to convert many of the “shoulds” included in the draft ALN Code to “musts”. The range of things about which the Act gives powers to make mandatory requirements is limited by the Act. Even where the Act does provide such a power, there is a question of whether a mandatory requirement (a “must”) or statutory guidance (a “should”) is more appropriate. An important consideration is whether there could be occasions when non-compliance would be justified and if so, whether these would be better dealt with by having specific exceptions to a mandatory requirement or by making the matter statutory guidance, which allows the person to justify a departure from it on a case-by-case basis.
- 5.11. Some respondents also expressed concern about the language style used in the draft ALN Code. As the ALN Code will impose mandatory requirements which are law, the language used must be suitably clear and precise. Similarly, the guidance in the Code needs to be suitably clear and precise so that those who must have regard to it can understand what it is they are to do unless they have a justification for not doing it. As a result, the language is quite formal in places, although on occasions where it may be difficult to follow, examples have been given to illustrate the meaning. It is also important to note that the ALN Code is primarily intended to be read and used by professionals working in the public authorities that have functions under Part 2 of the Act, as listed in Chapter 1 of the draft ALN Code. The draft ALN Code has not been written so as to be accessible to the wider public as that is not the ALN Code’s intended audience. However, local authorities are required by the Act to make arrangements to provide information and advice about the ALN system.
- 5.12. Some respondents were concerned that the draft ALN Code says little about mental capacity in relation to young people and parents. This issue has now been addressed in the revised ALN Code. Welsh Government is also working with partners in Whitehall to ensure the

Liberty Protection Safeguards Code of Practice takes account of the ALN Act and its Code and regulations.

- 5.13. Some respondents raised issues about transport provision for post-16 learners with learning difficulties or disabilities. As mentioned in the consultation document, the Welsh Government intends to consult on revisions to the Learner Travel Statutory Provision and Operational Guidance 2014. That consultation exercise is currently underway to better understand the implications of any future changes. A report on the responses to this targeted consultation will also contain recommendations for further work on revising the Measure, and is due to be published this spring. In the meantime, a non-mandatory section for transport has been included in the IDP template, provided in the Annex of the Code.
- 5.14. Some respondents suggested that the Code needs to include guidance on other relevant legislation or on matters set out elsewhere in statutory guidance. The Act is clear that the guidance the Code may contain is about the exercise of functions under Part 2 of the Act and about any other matter connected with identifying and meeting additional learning needs. Generally, therefore, it is not appropriate for the Code to provide guidance about other matters, although where appropriate, references are made to other relevant areas of law and guidance.
- 5.15. Many respondents considered that the implementation of the new ALN system would have a considerable financial impact, particularly on local authorities in Wales. The key financial implications of the Act were included in the Regulatory Impact Assessment (RIA) which accompanied the Bill. In particular, the RIA was subject to intense scrutiny by the National Assembly's Finance Committee, including a delayed vote on the financial resolution motion whilst further independent analysis was undertaken. This analysis was considered by the National Assembly before it passed the financial resolution in relation to this matter. The RIA for the Bill discussed the key provisions and associated costs with the ALN system, whereas the RIA for the Code provides further details on and considers these key provisions, reflecting more specifically on duties imposed by the Code. The Code's RIA also provides a detailed section on the amendments to the Code following the consultation in 2018/19. None of these areas were re-considered in this work, unless specific evidence was provided to counteract the original findings.
- 5.16. In recognition of the costs of moving from the current legislative framework to the new ALN system, implementation grant funding is being provided on a regional basis, co-ordinated by Regional ALN Transformation Leads, to roll-out regional, multi-agency training and professional development on the new legislative framework and its implications for all those involved in supporting learners with ALN. The training will target key practitioners with specific roles in the new

system (including the ALNCo and DECLO roles) to ensure the effective implementation of the new ALN system.

- 5.17. A number of respondents requested that the Welsh Government consider developing an electronic system to support the IDP process. Work is already underway in this area and we are currently undertaking an initial scoping exercise to establish both the feasibility and appropriateness of developing a Wales-wide online system.
- 5.18. Finally, respondents also raised concerns about the capacity of the specialist workforce, including educational psychologists, to deliver elements of the new system described in the draft ALN Code. Work is already being undertaken to improve the capacity of the specialist workforce).
- 5.19. The changes as a result of the consultation responses to the proposed revisions to the Social Services and Well-being (Wales) Act 2014 Part 6 Code of Practice – Looked After and Accommodated Children are being dealt with separately and are therefore not covered here.

Consultation on Representatives for Young People, and Parents of Children, Lacking Capacity

- 5.20. A separate consultation on proposals for representatives for young people, and parents of children, lacking mental capacity ran from 3 September to 29 October 2020.
- 5.21. The consultation documents included a draft version of Chapter 31 of the ALN Code (Representatives for young people, and parents of children, lacking mental capacity) and the draft “Young people, and parents of children, lacking capacity Regulations 2020”.
- 5.22. Following the consultation, those draft regulations were incorporated, with amendments, into the Additional Learning Needs (Wales) Regulations 2021 as Part 4.
- 5.23. The consultation found broad support for the proposals. A summary of responses was published on 22 January 2021 which can be accessed at <https://gov.wales/sites/default/files/consultations/2021-01/representatives-young-people-and-parents-of-children-lacking-capacity-summary-of-responses.pdf>

Changes to the draft Code following both consultations

- 5.24. A huge number of comments were received covering nearly every aspect of the consultation draft of the Code and proposed regulations. The Welsh Government have carefully considered what changes to make in the light of respondents’ comments. These changes, and the reasons for them, are explained in the following table. Welsh Government have also restructured the Code to improve its structure

and readability, including introducing some new chapters. Flowcharts have been removed because we found that they could be interpreted in different ways and there was a risk the flowcharts could detract from the legal text.

New Chapter	Old Chapter	What has changed
1 – Introduction	1	The introduction has been amended to reflect changes to the content of the Code (such as new chapters) and the provisions in the Additional Learning Needs (Wales) Regulations 2021. It has been streamlined to improve readability. There is also now more detailed explanations of how requirements imposed by the Code and descriptions of requirements in the Act or regulations are to be interpreted (for example, in relation to cases where a child has a case friend or a child's parent or a young person lacks capacity).
2 – The definition of ALN & ALP	7 (first part)	This chapter has been created from the first part of what was previously chapter 7 in the draft version of the Code. (The second part has created Chapter 20) Following consideration of the consultation responses; the chapter has been moved towards the beginning of the Code, with the structure and content amended to provide further guidance and greater clarity in relation to the definitions of ALN and ALP and their application in the ALN system.
3 – Principles of the Code	2	This chapter has been significantly cut back and streamlined to highlight the principles of the Code, without providing extensive examples which may have detracted from its key message.
4 – Involving and supporting children, their parents and young people	3	This chapter has been significantly redrafted to improve the structure and flow of the chapter; and to provide further guidance and greater clarity in certain areas. In particular, there is much more statutory guidance about young people's consent.
5 – Duties on local authorities & NHS bodies to have regard to UNCRC & UNCRDP	4	This chapter has only had minor amended; no significant changes were required.
6 - Advice and Information	6	This chapter has only had minor amendments, in order to reflect changes elsewhere in the Code and to improve clarity in some areas. One piece of

		statutory guidance is now a requirement and there is a little more statutory guidance.
7 – Duties on local authorities to keep additional learning provision under review	5	Chapter 7 (which was Chapter 5 in the consultation version) has been streamlined, with certain amendments made to clarify matters in some areas. Other changes have been made to bring the chapter in line with changes made elsewhere in the Code. The key aspects of this chapter have only had minor amendments, if any at all; it is mainly the supporting guidance around it which has been amended or the structure reorganised.
8 – Role of the ALN Co-ordinator	24	We have strengthened the chapter to provide further clarity on advice already provided within. Examples of this include the consideration a head of an education setting should give to the allocation of sufficient time for the ALNCo to undertake their role and the expectations around ALNCos undertaking training and development. In accordance with the ALNCo Regulations, amendments have been made to some of the duties on ALNCos set out within the chapter. These amendments include clarity on who has responsibility for undertaking certain tasks (regulations 5(h) and 6(h) of the draft ALNCo Regulations – previously regulations 5(i) and 6(i) of the previous version of the regulations consulted on in 2019) Furthermore, some ALNCo duties previously set out in the draft of this chapter have been removed, namely: the duty to prepare and review of information required to be published by the governing body pursuant to the code; and the duty to provide information to the individual (and in the case of a pupil, their parent) about their ALN, IDP and ALP being made. These have been removed from the chapter following their removal from the ALNCo Regulations.
9 – Role of the Designated Education Clinical Lead Officer	15 (second part)	This chapter was created by removing the section relating to the role of the Designated Education Clinical Lead

		Officer (DECLO) from the previous Chapter (15) on multi-agency working. This was done to allow a single chapter for each of the statutory roles within the ALN Code and system. The substance of the chapter has not been amended significantly, however it has been streamlined and there have been changes to improve clarity and for greater similarity in the structure to the other chapters on the statutory roles.
10 – Role of the Early Years ALN Lead Officer (ALNCo)	8 (second part)	The substance of this chapter has not significantly changed. There have been some structural changes, formatting changes and other small amendments to improve clarity.
11 – Duties on LA's about children under CSA (Compulsory School Age) and not at a maintained School	8	These chapters have been significantly amended. These chapters comprise the main duties in relation to the ALN system for the majority of children and young people. In the draft version of the Code, the requirements were set out across 4 chapters; however, having considered the responses to the consultation, they have been separated out into more specific circumstances and age ranges. Provisions related to the preparation of an IDP have been removed to Chapter 23, since many of them apply in most or all of the separate circumstances and can also be relevant when maintaining an IDP.
12 – Duties on maintained schools & LA's for children at a maintained school	9	
13 – Duties on LA's about children of CSA not attending a maintained school	11	
14 – Duties on LA about children they look after	New Chapter	
15 – Duties on Schools & LA's about Young People (YP) attending a maintained School	New Chapter	
16 – Duties on Further Education Institute (FEI) & LA about YP at a FEI	10	These structural changes are intended to make this part of the Code more user-friendly. The content itself has also been streamlined and amended significantly to provide greater clarity, consistency across the chapters, more details in some areas, to improve connections to other parts of the Code and to ensure that the requirements are clearer and effective. However, in the main, the essence of the requirements and guidance across these chapters remains unchanged. One of the most significant changes in terms of requirements, is in relation to

		requirements on local authorities to consult an Educational Psychologist. These requirements have been changed, so that when a local authority is required to decide whether a child or young person has ALN; the authority must consider whether to seek advice from an educational psychologist, and, where it considers such advice necessary to determine certain things, it must seek it. This change was as a result of responses to the consultation about the requirements being too burdensome and provides both a statutory footing for the Educational Psychologist role, but also reduces the potential significant burden that a blanket requirement to consult an Educational Psychologist in all circumstances could cause.
17 – Duties on LA's about YP not at a maintained school or FEI	12	This chapter has been significantly redrafted to correspond to the details in regulations 6 to 10 of, and Schedule 1 to, the Additional Learning Needs (Wales) Regulations 2021. However, the policy principles as originally set out in the previous draft chapter have not changed. The chapter sets out the considerations and requirements a local authority must undertake in determining whether an IDP is necessary to meet a young person's reasonable needs for education or training (where the young person is not at a maintained school or FEI in Wales). The principle considerations for securing a specialist post-16 placement reflect those under the existing system (whereby the Welsh Ministers secure such placements). In addition, other changes have been made along the lines of those described in respect of chapters 11 to 16.
18 – Children & young people in specific circumstances	23	This chapter has been significantly redrafted to improve the structure and flow of the Chapter; and provide more guidance on a range of different circumstances. There is also a new requirement in respect of children and young people whose parent is Service personnel.

19 – Children & young people subject to detention orders	22	There have been changes to explain more clearly how the ALN system applies in respect of children or young people subject to a detention order (including detained persons), including explaining what definitions mean in practice and mentioning other matters relevant to detention situations and giving more practical guidance. The Chapter also deals with referrals to NHS bodies under section 20 of the Act where an IDP is being prepared for a detained person, giving guidance on when this would be appropriate and imposing a related requirement where a relevant treatment or service is identified. The amendment to section 44 of the Act regarding an NHS body's duty under section 20 (about it not applying during the detention) is reflected. With regards to the timescales in this chapter, and in-keeping with similar amendments throughout the Code, there is now a specified period within which the action (e.g. to decide on ALN and prepare an IDP or to review an IDP) must be taken, subject to the usual exception. Previously, the requirement was just to take the action promptly. What was previously guidance about reviewing an IDP upon release of a detained person has become a requirement and there is supporting guidance around that requirement. There are also changes to align requirements with how similar ones elsewhere have been refined, to improve the cross-referencing (and reflect the structural changes) and changes to reflect requirements in the Additional Learning Needs (Wales) Regulations 2021, including the regulations dealing with the necessity of an IDP.
20 – Identifying ALN & deciding upon the ALP required	7 (second part)	As with Chapter 2 (Definition of ALN and ALP), this chapter has been created from the second part of what was previously Chapter 7 in the draft version of the

		Code. Following consideration of the consultation responses; the structure and content has amended to provide further guidance and greater clarity in relation to identifying ALN, deciding upon the ALP required, and gathering and using evidence to support those decisions and to align with changes elsewhere
21 – Multi Agency working	15 (first part)	This chapter has been amended to give greater clarity and more detail in certain places; but the majority of the content has not changed. The key change is that the section on the DECLO role has been removed and placed in a separate chapter (Chapter 9). In particular, statutory guidance on the Local Health Board to which a referral under section 20 should be made has been added, as has provision about where a Local Health Board ceases to be responsible for a child or young person.
22 – Meetings about ALN & ALP's	18	This chapter has been amended to give greater clarity and detail in certain places and to improve the structure; but the content and duties have not significantly changed. However, there is additional guidance about holding meetings virtually, as well as further guidance about matters that may need to be considered in order to enable better participation from children and young people.
23 – Preparing an IDP and its content	13	This chapter has been redrafted significantly. There were certain elements contained within the main duties chapters (now 11 to 17), relating to preparing or maintaining an IDP, which applied to all or most circumstances, and were repeated across each of those chapters and some elements that were only dealt with in one of those chapters but were potentially relevant in other situations. In order to streamline the main duties chapters, and to provide greater clarity and guidance when preparing an IDP or reviewing it, those elements of guidance have been moved and included here instead. The structure and wording within this chapter has also been amended to improve flow and ease of use. A section

		has also been added both here and in the standard form templates at Annexes A and B to provide for information about travel arrangements.
24 – Preparing an IDP and its content for LAC	14	This chapter has been amended in line with the changes to Chapter 23; and has been streamlined to avoid a duplication of the information contained in that Chapter. This Chapter now simply explains the difference in the process and the content of an IDP for a looked after child, but the guidance on the relevant content of each part of the IDP is set out in Chapter 23.
25 – Review and Revisions of IDP's	16	This chapter has been amended to give greater clarity and more detail in certain places. It has also been restructured and streamlined where possible but the essence of the content has not significantly changed.
26 – Local authority reconsiderations & taking over responsibility for IDP	17	This chapter has been amended to give greater clarity and more detail in certain places, including improving the connections to other parts of the Code. Structurally, the chapter has changed but the content has not significantly changed. Provisions about consulting an educational psychologist have been removed.
27 – Planning for and supporting transition	19	This chapter has been significantly redrafted. The chapter is now less prescriptive with less statutory guidance. This responds to the many conflicting comments received during the consultation which made apparent that transitions are flexible and will require an individualised approach. Details about seeking the consent of a child who becomes a young person to their IDP continuing to be maintained are now dealt with in Chapter 4.
28 – Transfer of responsibility for maintaining an IDP	20	This chapter has been amended to give greater clarity and more detail in certain places, including making connections to other parts of the Code and reflecting the detail of the Additional Learning Needs (Wales) Regulations 2021. Structurally, the chapter has changed but the content has not significantly changed.
29 – Ceasing to maintain an IDP	21	This chapter has been amended to give greater clarity and more detail in certain

		places. Structurally, the chapter has changed but the content has not significantly changed.
30 – Case friends for children who lack capacity	27	This chapter has been updated to reflect technical changes made to the regulations. It clearly explains how a child who lacks capacity, can use a case friend to act on their behalf when exercising certain rights. It also provides information on the role of a case friend, and how they are appointed and removed by the Tribunal.
31 – Representatives for parents of children & young people lacking capacity	New Chapter	Following the public consultation that ended on 29 October 2020, the chapter has been amended to include additional cross-references particularly to the Mental Capacity Act's Code of Practice. The chapter has also clarified that representatives can access independent advocacy services. The chapter also includes new footnotes referring to the impact of the Re: D case.
32 – Avoiding & resolving disagreements & Independent Advocacy	25	This chapter has been amended to give clarity and more detail where it was needed. Structurally, the chapter has not changed and the content and duties have not significantly changed.
33 – Appeals & Applications to the Education Tribunal	26	This chapter has been updated to reflect technical changes made to the regulations. To ensure that the chapter describes the appeal process and the timescales involved. It provides clarity in what can be appealed and by who. It includes information about how to make an application to the Tribunal regarding lack of capacity. It also includes a section about children bringing their own appeal to Tribunal.

PART 2 – REGULATORY IMPACT ASSESSMENT

ALN Code including post-consultation amendments

6. Options

- 6.1. This chapter outlines the options associated with establishing the Additional Learning Needs Code for Wales.
- 6.2. As part of these essential reforms, the ALN Code will replace the existing Special Educational Needs (SEN) Code of Practice for Wales. Over a phased three year implementation period starting from 1 September 2021, all statutory guidance in the SEN Code of Practice will be switched off with new provisions being introduced via the ALN Act, the ALN Code and related regulations.
- 6.3. This Regulatory Impact Assessment (RIA) has been developed to consider the regulatory implications for mandating requirements on local authorities and governing bodies in relation to duties set out in the ALN Code (and associated regulations).
- 6.4. The Welsh Government proposes to lay the ALN Code, along with related regulations, before the Senedd on 2 March with a plenary debate on 23 March. This RIA reviews the proposals on whether to bring into force the ALN Code.
- 6.5. The RIA reviews two options, described below.

Option one: do nothing

- 6.6. Under option one, the existing SEN system will continue with the SEN Code of Practice setting out the role of education providers in identifying and improving the experience of children with special needs.

Advantages

- 6.7. Option one does not involve any additional costs.
- 6.8. Additionally, part of the £20.244m funding agreed on 7 February 2017 to cover the costs of transition from one statutory system to another and deliver the wider system transformations could be spent elsewhere.

Disadvantages

- 6.9. The current system is inequitable. Children and young people with the most severe needs and who fall above the threshold for having a statement of SEN, have service provision which is protected by law.

In contrast, children and young people whose needs are less severe and who fall below the threshold for having a statement of SEN do not have protected provision or statutory rights.

- 6.10. The existing practices and processes associated with statements of SEN are inefficient and inflexible, and can result in ineffective provision for children and young people.
- 6.11. The current arrangements for reviewing and amending statutory plans are administratively cumbersome and involve schools inviting a prescribed set of professionals, regardless of whether their presence and input is necessary to the effectiveness of the review. Statutory reviews take considerable time to organise and prepare for. Amending a plan can, therefore, be a lengthy process and can result in learners experiencing delays in receiving the most appropriate support.
- 6.12. In addition, there is little flexibility when reviewing the provision for children and young people who are on the threshold for receiving statutory support. Where, for example, the outcomes of a statutory plan have been achieved for a child or young person, concern from parents about losing statutory entitlement may result in pressure for the plan and its provision to be maintained, despite this not necessarily being the most effective provision for the young person.
- 6.13. Finally, without the ALN Code, the reforms to the SEN system and the introduction of the new ALN system could not proceed.

7. Option two: replace SEN Code of Practice with ALN Code

- 7.1. Under option two, the existing SEN system including the SEN Code of Practice will be entirely replaced with the ALN system including the statutory ALN Code.
- 7.2. Option two is the preferred option.
- 7.3. A potential third option could have been to progress with the draft ALN Code as published in June 2019 before the consultation. However, this would not have been a genuine option given the legal requirements to conduct a meaningful consultation on the draft ALN Code, and the public commitment to making improvements to the Code before it is laid before the Senedd.

8. Advantages

- 8.1. The advantages of continuing with the planned reforms, including laying the revised ALN Code and introducing the legislative system the Code helps underpin, will be discussed in more detail under section 7. However, the key advantages relate to the reasons for reforming the SEN system in the first place; that the revised ALN

Code will make significant improvements to the support offered to children and young people with ALN in Wales.

9. Disadvantages

- 9.1. Likewise with the advantages, the disadvantages are discussed in detail below. However, the main point to note is the potential risks involved with introducing a new legislative system. There is a risk that costs will increase, both in terms of financial cost and pressure on resources. However, according to [Estyn Annual Report 2018-2019](#) "Schools and PRUs with clear leadership roles and excellent practice are well placed to make the transition from the current SEN system to the new ALN system."
- 9.2. There is also the risk of introducing these reforms at unprecedented times in education settings, with COVID-19 potentially impacting on the ability of local authorities and governing bodies (and other statutory bodies) to manage with implementation. However, this risk relates more to implementing the system rather than introducing the ALN Code.

10. Costs and benefits

- 10.1. The ALN Code includes statutory guidance about the exercise of functions under Part 2 of the ALN Act, which establishes the statutory system in Wales for meeting the ALN of children and young people. The Code also includes statutory guidance on other matters connected with identifying ALN and meeting the needs of children and young people with ALN, and describes relevant statutory requirements, including ones in the Act.
- 10.2. There are many hundreds of individual statutory duties throughout the Code, where the requirements (written as a "**must**" in the Code) takes its powers from subordinate legislation - either from the Code itself or from regulations - as opposed to deriving the powers directly from the ALN Act. These duties relate to the detail and processes of how the system will operate, including details on the roles and tasks set out in the ALN Act.
- 10.3. It is not the purpose of this RIA to discuss the impact of every statutory duty in the Code. Rather, this RIA discusses the duties in a thematic way, with specific references to the new duties as amended following consultation on the draft ALN Code.
- 10.4. To better understand the impact of the statutory duties made under subordinate legislation, every "**must**" in the Code was compiled, analysed and organised into categories of the likely cost of each duty in terms of their significance, rather than a financial estimate for each individual duty. All duties considered to be greater than a low cost

related to small, administrative tasks (such as sending a notification) were compiled into themes. These themes are discussed in detail below.

- 10.5. Where relevant, references to the costs as set out in the [Regulatory Impact Assessment](#) for the ALN Act (published in January 2018), are used here.

11. £20m funding package for delivering the ALN system

- 11.1. The £20.244m package of funding is being used to support implementation of the Act and delivery of the wider ALN Transformation Programme.
- 11.2. A large part of this funding will be used to develop the workforce so that all partners understand and are prepared for the changes being introduced. This includes workforce development to help build capacity and ensure practitioners have the skills to effectively operate the new system in order to meet learners' needs.
- 11.3. We are targeting workforce development at three levels; core skills development for all practitioners, advanced skills development through the establishment of the role of Additional Learning Needs Coordinators (ALNCos), which will replace the current SENCo role; and specialist skills development for local authority provided specialist support services available to education settings.
- 11.4. Five ALN Transformation Leads have also been in post since April 2018. Their role is to provide advice, support and challenge to local authorities, schools, early years settings and further education institutions, as they prepare for implementation of the reforms. This includes through readiness self-assessments and the development of local implementation plans. The ALN transformation leads will be responsible for rolling out implementation training on a multi-agency regional basis.

12. Themes identified from the statutory duties in the ALN Code

- Designating statutory roles (ALN co-ordinating officers)
 - DECLO
 - ALNCO
 - Early Years ALN Lead Officer
- Individual Development Plans (IDP)
 - Preparing an IDP
 - Securing ALP
 - Reviewing an IDP
- Independent Advocacy Services
- Costs for reviewing system

13. Costing of subordinate legislation

- 13.1. The RIA for the ALN Act concluded that the new ALN system itself should not increase in cost compared to the current SEN system.
- 13.2. Welsh Government has asked local authorities to provide evidence if they believe the new system will be more costly, but to date no such evidence has been received.
- 13.3. Based on the currently available evidence, we continue to support the position set out in the ALN Act's RIA. However, we do recognise there may be risks in implementing a new system when the level of funding available to local authorities, schools, FEIs and health boards is limited. This issue clearly goes wider than ALN, and relates to public sector finances more generally; however, these concerns continue to persist in any public discourse about the ALN reforms.
- 13.4. This RIA should assist the reader to understand the potential costs and benefits associated with the revised ALN Code, whilst giving an overview of the impact of the ALN Code in general, using the thematic method described above.
- 13.5. The costs and benefits discussed below are based on agreeing to Option 2.
- 13.6. The duty to designate Additional Learning Needs Co-ordinating Officers
- 13.7. Additional Learning Needs Co-ordinator (ALNCo)

14. Benefit

- 14.1. Option two will require all education settings including pupil referral units (PRUs) and FEIs to appoint an ALNCo. This extends current arrangements where existing non-statutory SENCo are used in most schools in Wales. Making the ALNCo a statutory role will bring a consistent approach to co-ordinating ALP for learners in Wales and help foster better working relationships across sectors.

15. Post-consultation additions

- 15.1. Following the consultation on the ALN Code, we have strengthened the ALNCo chapter to provide further clarity on advice already provided within. Examples of this include the considerations head teachers should give to the allocation of sufficient time for the ALNCo to undertake their role and the expectations around ALNCos undertaking training and development.
- 15.2. In accordance with the ALNCo Regulations 2020, amendments have been made to some of the duties on ALNCos set out within the chapter. These amendments provide clarity on who has responsibility for undertaking certain tasks (regulations 5(e) and 6(e) of the ALNCo regulations 2020) and on what aspects of record keeping the ALNCo must undertake (regulations 5(c) and 6(c) of the ALNCo regulations 2020). Furthermore, some duties previously set out in the draft of this chapter have been removed. These relate to what was the preparation and review of information required to be published by the governing body pursuant to the ALN Code, and the duty to provide information to the individual (and in the case of a pupil, their parent) about their ALN, IDP and ALP being made. These have been removed from the chapter and the ALNCo Regulations 2020 due to changes made elsewhere to the ALN Code in this regard.
- 15.3. These amendments are unlikely to make any significant impact on the cost or benefits associated with this part of the ALN Code, but may provide clearer support for those with statutory duties relating to the ALNCo role.

16. Cost

- 16.1. The cost for creating the ALNCo role were discussed in the ALN Act's RIA and the [integrated impact assessment](#) for the ALNCo regulations. Given the broad scope of the role and the way it will vary from setting to setting, it will not be possible to provide an estimated cost for the role. The most significant impact identified in this IIA was how the proposed regulations will contribute to the raising of standards in the co-ordination or ALP for children and

young people with ALN. Local authorities will do this by providing assurance that the new ALNCo role will be undertaken by qualified individuals (i.e. qualified teachers or experienced SENCOs) who are required to undertake the co-ordination of ALP in a consistent way, irrespective of education setting. This should result in an improvement in the way in which ALP is planned and delivered for children and young people.

- 16.2. No further financial costs have been identified within the ALNCo chapter of the ALN Code.
- 16.3. There is a theoretical risk that the new ALNCo requirements may be perceived as creating an additional burden on local authorities which may discourage current SENCOs from applying to become an ALNCo. However, there was broad support for making the ALNCo a professional role and we have not received any evidence to suggest this risk will transpire.

17. Designated education clinical lead officer (DECLO)

Benefit

- 17.1. Option two will ensure every local health board (LHB) will designate a DECLO to take responsibility for ensuring the day-to-day health provision for children and young people with ALN is effectively managed and co-ordinated.
- 17.2. Although much of the work the DECLO will be responsible for under the ALN system will already have been undertaken within each LHB currently, without this designated role the work involved to supervise the provision of health related special educational provision has been inconsistent and difficult to measure.
- 17.3. Appointing a DECLO within each health board will have the benefit of facilitating the delivery of effective, co-ordinated health services to improve outcomes for children and young people with ALN. The DECLO will also support the health board to discharge their responsibilities under the ALN system and facilitate the effective collaboration between health boards and their partners in the delivery of services for learners with ALN.
- 17.4. The DECLO will also ensure there is a robust structure for assuring the quality and safety of services and collect data about service quality, outcomes and performance; simplify the system for children, young people, parents and partners by providing a single point of contact for local authorities and others within health boards on ALN matters. In addition, the appointment of the DECLO should ensure ALN provision is a strategic priority for health boards.

- 17.5. One of the key benefits of introducing the DECLO role will be the improved links between health and other sectors, and the co-ordination of multi-agencies centred on the needs of the individual. The system is designed to cut the number of meetings and assessments required to receive ALP, and to ensure continuity of support for the individual as they transition, in age, key stages and educational development.

18. Post-consultation additions

- 18.1. There is a new chapter in the ALN Code on the role of the DECLO. This chapter was created by removing the section relating to the role of the DECLO from the Chapter 15 on multi-agency working. This was done to allow a single chapter for each of the statutory roles within the ALN Code and system. The substance of the chapter has not been amended significantly, but is now easier for the reader to follow.

19. Cost

- 19.1. The cost of introducing the DECLO role was discussed in the ALN Act's RIA where it was concluded there would be no new costs to local health boards.
- 19.2. This is because the role is expected to be fulfilled by an existing member of staff, and the DECLOs and other health professionals will undertake the required training within the hours allocated for them to undertake continuous professional development (CPD). Although the role itself is new, the duties the DECLO will be responsible for as set out in the Code are already being undertaken within health boards by exiting members of staff under the SEN system. The purpose of having a DECLO will be to standardise this role and improve multi-agency working by having a named individual in each health board. On average, each of the seven local health boards in Wales will have a healthcare professional undertaking DECLO responsibilities for approximately two days per week.
- 19.3. The duties in the ALN Code chapter relating to the DECLO role provides more details on the role itself, with guidance used to set out how DECLOs are expected to undertake their tasks. The introduction of the DECLO role and the estimation of the resource this will take poses a low and manageable risk to local health boards, particularly as DECLOs are not expected to be full time positions and will likely be undertaken by existing senior members of the health board.
- 19.4. With the duty to provide health related ALP for learners up to the age of 25, there could be an increase in the number of cases referred to

an NHS body requiring health related ALP. This risk, although not based on evidence the Welsh Government has seen, could potentially increase costs for LHBs in terms of the systems they introduce to support the DECLO role and their statutory functions under the ALN system. Although it is difficult to estimate how extending the age range to 25 will effect these costs, the Act's RIA did explain that young people who have the most complex needs and attend a specialist FE establishment will currently have a statutory learning and skills plan. Where a young person needs medical care whilst at a specialist FE establishment, the health board will be asked to contribute to the learning and skills plan. Under the ALN system, this practice will continue but health boards will be asked to contribute to the IDP instead. It was concluded that there will be no additional costs to health boards where a young person attends a specialist FE establishment.

20. Early years additional learning needs lead officer (Early Years ALNLO)

Benefit

- 20.1. Under option two, an Early Years ALNLO will be appointed by every local authority in Wales to have responsibility for co-ordinating the local authority's functions under the Act in relation to children under compulsory school age who are not attending maintained schools.
- 20.2. The Early Years ALNLO will play an important role in raising awareness of the ALN system and how it applies to children under compulsory school age; promoting early identification and prevention of ALN; and other strategic responsibilities. These duties will help families understand their children's ALN and the options available to support their education. The role should therefore include a social benefit by reducing the fears associated with ALN and reassuring parents that support is available in early years settings.
- 20.3. Another advantage of including this new role in the ALN Code will be to improve the co-ordination of provision for children in early years settings and ensure there is a single, named officer where issues can be directed to. This will help concerned families who under the SEN system may have struggled to engage with the relevant individuals.

21. Post-consultation additions

- 21.1. No significant changes to the content have been made since consultation.

22. Cost

- 22.1. The cost of introducing the Early Years ALNLO role was also mentioned in the ALN Act's RIA. As set out there, for illustrative purposes a salary of £49,700 is used to estimate the ongoing costs of introducing the early years ALN lead officer. The estimated ongoing cost to the 22 local authorities in Wales is, therefore, estimated to be approximately £1,093,400 a year. Since local authorities already undertake the functions associated with the early years ALN lead officer, this will not be an additional ongoing cost.
- 22.2. It is estimated local authorities will incur transition costs of £126,700 related to training early years ALN lead officers. The estimated cost of training early years ALN lead officers is based on the same cost model used to estimate the ALNCo training costs. That is, it is assumed the early years ALN lead officers will be trained to masters level at a cost of £3,600 per degree, with a total estimated cost of £79,200 to the 22 local authorities in Wales, and will take 10 days of paid study leave over the two year period at an estimated cost of £47,520.
- 22.3. There are no other duties in the Early Years ALNLO role chapter apart from the local authority's duty to designate an officer.

24. Individual Development Plans

- Preparing an IDP
- Securing ALP
- Reviewing an IDP

Context

- 24.1. Data shown in the Act's RIA has revealed the number of children and young people recorded as having SEN from 2011-12 to 2015-16 has been relatively stable at 23% of pupil population. Although the ALN system extends the age range to 25 years, the number of young people between the ages of 19-25 in education or training with ALN, who consent to having an IDP, is likely to be low. Welsh Government's latest figures show 83 post-19 specialist placements were secured in 2018/19. Using the figures available in the Act's RIA and from Stats Wales, there will be around 110,000 school age IDPs, with around 1,000 for below compulsory school age, and around 2,000 in all post 16 education and training.

25. Benefit

- 25.1. If option two is chosen, the introduction of the ALN Code will result in all children and young people with ALN being treated equally under the law, regardless of the severity of their need. All learners in early years settings, schools (including maintained nurseries, pupil referral units and special schools) and FEIs who require additional learning provision (ALP) will be entitled to a statutory, individual development plan (IDP) with rights of appeal. This will improve the equity of the system of support for learners whilst contributing a social benefit by extending the rights of children and young people and working towards improved educational outcomes.
- 25.2. Introducing statutory plans for all children and young people with ALN will enable a greater focus on early identification of need which should prevent or reduce conflict within the system. This could result in a long term reduction in the number of appeals going to Tribunal, however the number of potential appellants will necessarily grow with all children and young people with ALN having rights of appeal. Equitable statutory plans should also improve the way provision is secured and ensures it remains in place as long as it is required (up to the age of 25).
- 25.3. The duties in the ALN Code on local authorities and governing bodies to prepare an IDP, secure the ALP and review IDPs are broadly set out in the ALN Act and its impact has been documented in the ALN Act's RIA. However, the revised ALN Code sets out in detail how these arrangements must be undertaken. For example, many of the requirements imposed by the ALN Code and associated regulations related to IDPs are around the timescales to complete certain tasks. A local authority, for instance, should act "promptly" to decide whether it should take over responsibility for maintaining the IDP and give the notification within the period of 7 weeks from the request to take over responsibility for the IDP, unless it is unable to do so within that period due to circumstances beyond its control.
- 25.4. The benefit of imposing timescales to the specific duties related to this core function of the ALN system enables children, young people and their families to have a realistic expectation of when certain decisions or processes should be completed. This should help alleviate much of the current tension in the SEN system where delays and inconsistencies have caused significant anxiety in the past. It is also expected these timescales will help reduce the time it currently takes to complete certain decisions or processes, such as preparing a statutory plan of support. By using the word "promptly", the ALN Code expects duties to proceed without delay, whereas

only using a set timescale for every duty without first using the term “promptly” may lead to the maximum amount of time allowed to carry out any particular duty to become the default timescale.

26. Post-consultation additions

26.1. Chapters 11-15 of the ALN Code comprise the core duties in relation to the majority of children and young people with ALN. Additionally, chapters 16 and 17 comprise duties in respect of young people FEIs or not in a maintained school. These have been significantly redrafted in response to the consultation. They now appear in separate chapters, based on age specific circumstances to provide greater clarity on the roles of statutory bodies to support learners with ALN. The elements of guidance applicable to all these age groups now appear in a single chapter to provide greater clarity and guidance when preparing an IDP or considering the ALP it should contain. However, in the main, the essence of the key duties across these chapters remains unchanged.

27. Cost

- 27.1. As stated in the ALN Act’s RIA, local authorities will be responsible for preparing, maintaining and reviewing IDPs for all children with ALN who are looked after by them. It was estimated at the time of the Act’s RIA that local authorities will spend approximately one hour preparing the application at a cost of approximately £18 per application based on 20 applications each year (this number is not expected to change as a result of introducing the ALN system). As identified in the Act’s RIA, local authorities are not expected to incur any additional costs under option two. Currently, local authorities put together a case when applying to the Welsh Ministers for consent for a child or young person with a statement of SEN to be placed at an independent school which is not generally approved to admit learners with statements of SEN. Under option two, local authorities will continue to have to satisfy themselves the placement is appropriate.
- 27.2. Numerous calls for evidence, from the Deloitte research in 2015 to Welsh Government officers asking local authorities for data, has provided no indication to challenge the estimate in the ALN Act’s RIA, and ultimately that the new system is estimated to be cost neutral compared to the current SEN system.
- 27.3. Reviewing an IDP will be an ongoing process and although there are requirements to review IDPs (such as annual reviews), the work to inform these meetings should be done

continuously. The cost of reviewing IDPs will predominately be the time it takes for the ALNCo or other member of teaching staff to conduct the review meeting.

- 27.4. Likewise with preparing an IDP, there will be circumstances when plans start from scratch (a new learner from across the border, a new disability which calls for ALP), however in most cases, those with ALN will already have been identified and will likely have some provision already in place. Preparing an IDP will not be a significant cost to the school or local authority, although it could be seen as a moderate cost in the most complex cases. However, in cases where an FEI had a duty to prepare or maintain an IDP, this would be a new cost and could be seen as onerous to begin with. Therefore, FEIs may see an increase in their costs but the system as a whole is not expected to create an overall increase in cost.
- 27.5. In 2018/19, 11,095 young people, aged 16-24 years of age, were recorded as having learning difficulties and/or disabilities (LDD) in FEIs. Although it is not expected FEIs will need to prepare all IDPs from scratch (in time, many young people will arrive in the FEI with an IDP), as part of the implementation planning for the roll out of the new ALN system, consideration is given to ways of supporting FEIs to undertake their new duties.
- 27.6. Given that Statements of SEN are already being prepared for children and young people up to the age of 19 years, and individual education plans (IEPs) are in place for many more learners, the exact duties in the ALN Code are new, but in reality, they replace and improve the existing duties within the SEN system.
- 27.7. Increasing the number of children and young people who have statutory entitlement to provision could result in increased pressure for those responsible for securing ALP. Although the previous RIA for the ALN Act did not identify unmet need within the SEN system (and we do not believe the ALN system will create new demand), there is a risk the improved system may be challenging with regards to the resource currently used to deliver the SEN system.
- 27.8. With regards to the introduction of new timescales on many duties in the ALN Code and regulations, there is a small risk that the current level of resources dedicated to the SEN system will not be adequate to fulfil duties (with new timescales) under the ALN system. Although there is no evidence to suggest this, and the timescales introduced by the ALN system have been carefully chosen in consultation with stakeholders, there is a

potential for the new system to require greater resources to fulfil duties within the set timeframe.

28. Advocacy

Benefit

28.1. The ALN Code sets out duties on local authorities to establish independent advocacy services (IAS) for the children and young people for whom it is responsible.

28.2. IAS will provide expert advice and assistance, by way of representation or otherwise, to a child or young person, where the child or young person is:

- making, or intending to make, an appeal to the Tribunal;
- considering whether to appeal to the Tribunal; or
- taking part in, or intending to take part in arrangements for avoiding or resolving disagreement.

28.3. The service will be provided free of charge at the point of delivery.

Although advocacy is frequently used under the SEN system, there is no requirement to provide an equivalent service under SEN Code of Practice. IAS is therefore necessary to provide a consistent approach to advocacy service that specifically deals with issues relating to ALN. IAS, along with a local authority's duty to make arrangements for avoiding and resolving disagreements is intended to significantly reduce the number of disputes that currently occur within the SEN system, and should, in the medium to long term, reduce the numbers of cases going to the Tribunal. This could potentially save time and money for those who may have pursued an appeal had these services not been available.

29. Post-consultation additions

29.1. The amendments made post-consultation have clarified the difference between IAS and other advocacy services. It is also now clearer that representatives for young people, and parents of children, who lack capacity, also have the right to access these services. These amendments will benefit those reading the ALN Code without increasing any costs.

30. Cost

30.1. The cost of running the new service will be met by local authorities, and will vary considerably from one authority to another. The Act's RIA provided an estimate cost of £5,300 to the local authority for dispute resolution services relating to appeals under the SEN system. Many of the advocacy

services currently available in Wales are provided by the third sector or volunteers, where costs are sometimes covered by contributions from Welsh Government. However, there are other professional advocacy services that will charge for their service.

- 30.2. There is a potential risk with the introduction of IAS over the cost of running the service to local authorities. This is related to its potential use, and the difficulty in estimating how much demand there will be for advocacy services. As the new ALN system beds in, there is a risk of an increase in cases requiring arrangements for avoiding and resolving disagreements or using IAS, which could be costly and time consuming, although careful planning and a successful implementation of the new system should counter such difficulties.

31. Reviews

Benefit

- 31.1. Under option two, the ALN Code will set out the details regarding the Welsh Ministers' duty to review the demand for, and supply of, ALP delivered through the medium of Welsh. The requirement is that such a review is undertaken once every 5 years from implementation.
- 31.2. The review will facilitate the ability to make informed policy decisions about ALP through the medium of Welsh and support the Welsh Government's Cymraeg 2050 strategy.

32. Cost

- 32.1. There will be a financial cost to reviewing the Welsh ALP which has not been worked out. However, the cost will be met by Welsh Government rather than statutory bodies, and is on the face of the Act. As an estimate, this work may be undertaken by a small team made up of one Senior Executive Officer (£47,000 per annum) and one Team Support (£23,830 per annum) for a total of 3 months. This assumes the Welsh Government will not require any external researches, and instead rely on their own Knowledge and Analytical Services to undertake any analysis of the data. The estimated costs associated with these two roles for 3 months is £17,707.50.

33. New musts in ALN Code (post-consultation)

33.1. The table below contains all new duties (**musts**) included in the ALN Code following the public consultation, with the exception of small, administrative tasks (such as sending notifications) which have been filtered out.

33.2. The table below is designed to help the reader understand the potential costs of these new duties.

Ref.	Text	Topic	Cost
19.81	Where a relevant local authority has to decide whether the child or young person has ALN, it must : (a) designate an officer to be responsible for coordinating the actions required to make that decision, any decision as to whether an IDP is necessary for a young person and, if an IDP is subsequently required, to be responsible for preparing it; (b) record the date on which it is brought to its attention, or otherwise appears to it that the child or young person may have ALN; (c) in the case of a young person, record the date on which they consented to the decision being made; (d) record a summary of how the possibility that the child or young person has ALN has been brought to its attention or why it otherwise appears to the authority that they may have ALN; (e) give the relevant notification referred to in paragraphs 22.64 – 22.65.	LA duty to designate a co-ordinator	Low The designation itself is a relatively straightforward administrative task.
16.14	The decision must be taken and the notification given promptly and in any event within the period of 35 term time days from the young person consenting to the decision being made	Decision and time scale	Low to Medium
16.26	The FEI must make the decision on ALN, prepare the plan and give a copy of it promptly and in any event within the period of 35 term time days from the young person consenting to the decision being made.	Decision and time scale	Low to Medium
19.65	A local authority maintaining an IDP for a previously detained person following their release must review the IDP and complete that review (including, as the case may be, giving a copy of the revised IDP or notification of another conclusion of the review) promptly and in any event, by the end of the period of 7 weeks starting with the person's release from detention. But this requirement to complete the review by the end of the 7 week period does not apply if it is impractical for the local authority to do so due to circumstances beyond its control.	IDP review	Low to Medium
19.67	In cases where the released child or young person is to attend a maintained school or FEI in Wales, the local authority may consider that it would be more appropriate for the school or FEI to maintain the IDP. Depending upon the circumstances, it might also be more appropriate for that institution to review the IDP. This might be the case where, for example, the IDP was recently prepared by the authority and the released person has low level needs or where the	IDP review	Low to Medium

	institution previously maintained the IDP and the period of detention was very short. If the IDP is transferred to a school or FEI[775 This would be following a direction by the local authority under section 14(4) of the Act in the case of a school or following an FEI agreeing to the authority's request under section 36(2) that the FEI become responsible for the IDP. Also, a transfer can only take place if the released person is a registered pupil of the school or is a young person enrolled as a student at the FEI. Without the local authority having reviewed it following release, the school or FEI must review the IDP promptly and in any event within the period of 35 term time days from the child or young person's release from detention. But the requirement to complete the review by the end of that period of 35 term time days, does not apply if it is impractical for the school or FEI to do so due to circumstances beyond its control.		
15.60	As part of the process of deciding whether a young person has ALN, a local authority must consider whether to seek advice from an educational psychologist and, where it considers that seeking such advice is likely to be worthwhile, it must do so.	Consider and seek advice	Low Consideration will not be overly burdensome, and will likely become part of the process. Since educational psychologists are already involved in the current system, this new provision is designed to standardise the process rather than creating something brand new. Seeking advice will therefore be small administrative task.
17.32	The local authority must first identify if the young person has desired outcomes and what they are.	Review	Low to medium. Local authorities should already be adopting a person centred approach to understanding the needs of the individuals and this could include in respect of identifying desired outcomes. In many cases, the LA will be aware of the individual through any previous engagement they had with them through the IDP process.

17.36	The local authority must consider what programmes of study may be available that would be suitable for enabling the young person to meet their desired outcomes.	Review	Low to medium. This will be a largely new requirement on Local authorities who until now have only had to consider post16 education for those who remain in school. This should become less burdensome over time as LAs develop their knowledge of post-16 education and training that is on offer.
17.38	Otherwise, the local authority must first consider programmes of study at mainstream maintained schools or FEIs (this could include such schools and FEIs in England). More often than not, those settings will be able to provide a suitable programme of study for a young person with ALN and the young person's reasonable needs to ALP would be met in undertaking it.	Review	Low to medium. This will be a largely new requirement on Local authorities who until now have only had to consider post16 education for those who remain in school. This should become less burdensome over time as LAs develop their knowledge of post-16 education and training that is on offer.
31.12	The local authority must ensure that the staff delivering these arrangements are impartial to the outcome of any potential disagreements.	Training	Low This may require staff training or guidance to ensure staff are reminded of their duties.
32.13	The local authority must ensure the arrangements made are accessible to children and young people and delivered in a way which meets their communication preferences and needs (see Chapter 3 on involving and supporting children, their parents and young people).	Accessible information	Low or medium Every local authority should already ensure the information they provide to the public is accessible. There may be a one-off cost for preparing these materials, but little to no ongoing costs.

32.11	The local authority must ensure that the staff delivering these arrangements have a detailed understanding of the ALN system. To do so, the local authority should ensure that staff providing the arrangements receive appropriate training and development to undertake their role effectively and training is refreshed to improve standards.	Training	Low This training may be adapted from the Welsh Government training material, keeping the cost low.
32.63	The local authority must ensure that all advocates: (a) understand the ALN system including the arrangements for avoiding and resolving disputes and Tribunal procedures; (b) are suitably trained, including in communicating with children and young people and those with communication difficulties, and continue to receive appropriate training and development to undertake their role effectively and to improve standards; (c) have relevant knowledge of the child's or young person's ALN; (d) maintain confidential records; (e) are not on the children's barred list (in the case of advocates for children) or the adults' barred list (in the case of advocates for young people who are considered to be "at risk"). If this information is not held by the advocacy providers, the local authority must ensure the advocates apply for an enhanced level disclosure and barred list check from the Disclosure and Barring Service before they can proceed.	Training	Low or medium The costs for training advocates should be relatively low. Welsh Government are investing in training for the ALN system and will provide free training material online. It may take some time to train everyone, but given the low numbers involved, the cost should low.

34. Consultation

34.1. A consultation on the draft ALN Code was held between 10 December 2018 and 22 March 2019.

34.2. The consultation sought views on the draft ALN Code and proposed regulations in order to consider comments and make improvements before it is laid before the Senedd.

34.3. The consultation was aimed at maintained schools, further education institutions, local authorities, local health boards, early years settings, third sector organisations and anyone else with an interest in additional learning needs.

35.4. 65 consultation questions were asked covering the following five themes:

1. The draft ALN Code;
2. Draft Education Tribunal for Wales regulations;
3. Draft ALN Co-ordinator regulations;
4. Looked after children; and
5. Impact of proposals.

35.5. A total of 644 people responded to the main consultation. A summary report can be found here:

<https://gov.wales/sites/default/files/consultations/2019-06/summary-of-responses-draft-additional-learning-needs-code.pdf>

35.6. The main themes raised during the consultation included;

- frequent calls to convert many of the “shoulds” included in the draft ALN Code to “musts”;
- concern about the language style used in the draft ALN Code;
- issues about transport provision for post-16 learners with learning difficulties or disabilities;
- calls for guidance on other relevant legislation or on matters set out elsewhere in statutory guidance;
- concerns that the new ALN system would have a considerable financial impact;
- requests to develop an electronic system to support the IDP process; and
- the capacity of the specialist workforce, including educational psychologists, to deliver elements of the new system described in the draft ALN Code.

35.7. A summary of the changes made to the ALN Code following the consultation can be found in the table from page 15 of the Explanatory Memorandum.

36. Competition Assessment

36.1. The provisions within the Act will not affect business, or charities and/or the voluntary sector in ways that raise issues related to competition. The competition filter has not been applied.

36.2. The provisions in the Act are not expected to have any impact on competition or place any restrictions on new or existing suppliers. The majority of the costs associated with the legislation are expected to fall on public bodies, who already meet these costs.

36.3. The legislation is not expected to have any negative impact on small and medium sized enterprises (SMEs) in Wales.

37. 10. Post implementation review

37.1. The phased rollout of the new ALN system will be monitored and evaluated by the Welsh Government during and post implementation. During implementation, the main focus of the work will be to establish the extent to which stakeholders are compliant with the provisions in the Act and to consider the initial effects and impacts of the Act using available data.

37.2. Additionally, Welsh Government has committed to undertaking a post-implementation review of the Act in 5 years' time; this will consist of a baseline study of the current system to inform a future evaluation of the impact of the Act. The baseline study was published by Arad Research in February 2019. The post-implementation review will be predominately focused on the outcomes of the Act for young people and parents.

37.3. Section 89 of the ALN Act sets out the duty on Welsh Ministers to reviews the sufficiency of additional learning provision in Welsh and to publish a report on the outcome within five years of the new system coming into force.

37.4. In the meantime, local authorities have an ongoing duty under section 63 of the Act keep under review the arrangements made by the authority and by the governing bodies of maintained schools in its area for children and young people who have additional learning needs.

37.5. To ensure the arrangements for providing health related ALP are sufficient and appropriate, the ALN Code sets out expectations on the DECLO to oversee the development of processes to collect and analyse robust data to measure its compliance with duties under the Act. It should also measure the effectiveness of arrangements for partnership working, and provide quality assurance of its activities in relation to children and young people with ALN.

37.6. This provides a counterweight to similar duties on local authorities to ensure both health related ALP and the ALN system itself are continuously reviewed, allowing for internal systems to be improved where necessary.

Agenda Item 4.11

SL(5)778 – The Animal Welfare (Licensing of Activities Involving Animals) (Wales) Regulations 2021

Background and Purpose

These Regulations provide for the licensing of persons involved in Wales in selling animals as pets and make it an offence for commercial third parties to sell puppies and kittens under 6 months.

These Regulations specify activities for the purposes of section 13(1) of the Animal Welfare Act 2006 ("the 2006 Act") and provides for local authorities to be the licensing authorities. As such, subject to qualifying criteria, any person wishing to carry on any of these activities in Wales must obtain a licence from the local authority under these Regulations. These requirements replace the requirements, in Wales, to obtain a licence under the Pet Animals Act 1951.

A person who carries on any of these activities in Wales without a licence will commit an offence under section 13(6) of the 2006 Act and is liable to imprisonment for a term of up to six months, a fine or both. Under section 30 of the 2006 Act, local authorities may prosecute for any offence under the Act.

The Regulations set out how a person may apply to the local authority for a licence and sets out matters in respect of which a local authority must be satisfied when considering the grant or renewal of a licence. The Regulations provide for a local authority to charge fees to cover the costs it incurs in performing this function, considering a licence holder's compliance with the Regulations, enforcement and administration. The Regulations specify that a local authority must attach certain licence conditions to each licence granted or renewed. Further, a local authority must appoint an inspector when it considers it appropriate, for the purpose of ensuring that the licence conditions are being complied with. The Regulations require a local authority to have regard to guidance issued by the Welsh Ministers in carrying out their functions, and provides powers for inspectors to take samples from animals.

Procedure

Draft Affirmative.

The Welsh Ministers have laid a draft of the Regulations before the Senedd. The Welsh Ministers cannot make the Regulations unless the Senedd approves the draft Regulations.

Technical Scrutiny

No points are identified for reporting under Standing Order 21.2 in respect of this instrument.



Merits Scrutiny

The following points are identified for reporting under Standing Order 21.3 in respect of this instrument.

1. Standing Order 21.3(i) – that it imposes a charge on the Welsh Consolidated Fund or contains provisions requiring payments to be made to that Fund or any part of the government or to any local or public authority in consideration of any licence or consent or of any services to be rendered, or prescribes the amount of any such charge or payment.

Regulation 12 of these Regulations allows local authorities to charge fees to cover the costs incurred in performing their licensing functions.

2. Standing Order 21.3(ii) - that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Senedd

Concerns have been raised regarding the consultation undertaken in relation to the Regulations.

The Head of Public Affairs at The Kennel Club wrote to the Committee on 9 March 2021 to share the Club's concerns about the potential unintended consequences of the Regulations. Their [letter](#) describes the Club's concerns:

"...The Welsh Government did not consult on the introduction of a de facto new licensing threshold for dog breeders in either the 2019 or 2020 consultations, nor has this been taken into account in the legislation's accompanying explanatory memorandum or accompanying regulatory impact assessment. As such, we are highly concerned that the Regulations' implications – in terms of the general puppy buying public, breeders and licensing authorities – will not have been duly considered..."

We considered this letter in our meeting on 15 March 2021. Following the meeting, we wrote to the Minister enclosing a copy of the Club's letter, to draw the Minister's attention to it at the earliest opportunity, ahead of the debate on the Regulations on 23rd March.

Welsh Government response

Merit Scrutiny point 2: Response requested to the following from the Kennel Club;

"...The Welsh Government did not consult on the introduction of a de facto new licensing threshold for dog breeders in either the 2019 or 2020 consultations, nor has this been taken into account in the legislation's accompanying explanatory memorandum or accompanying regulatory impact assessment. As such, we are highly concerned that the Regulations' implications – in terms of the general puppy buying public, breeders and licensing authorities – will not have been duly considered..."



It is not accepted that these regulations introduce a 'de facto new licensing threshold for dog breeders'. These regulations do not affect breeders they relate to the activity of selling animals as pets in the course of a business.

These regulations are of almost identical effect to the Animal Welfare (Licencing of Activities Involving Animals) (England) Regulations 2018 (as amended by the Animal Welfare (Licensing of Activities Involving Animals) (England) (Amendment) Regulations 2019). The only distinction relates to a category of breeder who breeds more than three litters from two bitches in a 12 month period. This category arises as the 2018 regulations at Schedule 1, Part 5, Para 8 excludes breeders from the licence based on the number of litters only whereas the Animal Welfare (Breeding of Dogs) (Wales) Regulations 2014, used for exclusion in these regulations, also requires ownership of 3 or more breeding bitches.

Whether a small scale breeder will be required to hold a licence under these regulations will be determined based on the 'in the course of a business' test and in accordance with statutory guidance to Local Authorities which is yet to be drafted and will be the subject of consultation with stakeholders.

It is correct that it is anticipated that some small scale breeders who were not required to hold a licence previously will be required to do so under these regulations much as a small breeder in England would be required to do so. It is not the intention that all small breeders will be required to do so but given the large sums that can be involved even when the number of puppies is small there is an attendant risk that the financial incentives will overcome welfare concerns. These regulations and the guidance will reduce that risk as far as is possible

It is noted that the Kennel Club in their letter to the committee raised concerns about overzealous Local Authorities. This will be accounted for when guidance is produced and as part of the Local Authority training project that will be carried out over the next three years and is designed to ensure consistency in the application of these, as well as the Breeding of Dogs regulations.

The introductions to both the consultations in 2019 and 2020 and the Children In Wales consultation referred to *"optimising welfare standards across the whole industry..."*, *"A key aspect of this legislation is to promote responsible breeding and ensure puppies are bred in suitable conditions"* and *"the proposals being considered will entail changing licensing arrangements for the sale of pet animals, including puppies..."*. It was not explicit that wider changes were contemplated but it was apparent that this was being considered.

In response to all consultations there were a large number of responses suggesting that the licencing of pet sales more widely than just in respect of third parties was desirable. It was apparent from the responses (as published) that there was wide support for such a step. It would have been remiss of the Welsh Ministers not to react to this.

In respect of the Explanatory Memorandum this makes it clear the changes to licencing arrangements include a ban on commercial third party sales and that there will be alignment with the English 2018 regulations. There is a reference quoted with approval that *"Dogs should only be available from licensed, regulated breeders or approved rehoming organisations."* It is suggested that *"in Wales, a ban is seen as only one of the steps necessary*



to improve the welfare of dogs and cats at breeding premises. The combination of new regulations on pet sales and a three year, Welsh Government funded, project tackling barriers to enforcement; enhanced training; better guidance; and improved use of resources within local authorities for improvements to the enforcement and delivery of the existing The Animal Welfare (Breeding of Dogs) (Wales) Regulations 2014 will result in lasting improvements to the welfare standards of puppies bred in Wales.” It is confirmed that it is not our intent to include licenced breeders in the new regime.

The Regulatory Impact Assessment draws no distinction between licenced and unlicenced breeders. The table at para 7.18 is based on all breeders. As a result the impact on all breeders who also make sales, both licenced and unlicenced, was considered.

Legal Advisers

Legislation, Justice and Constitution Committee

17 March 2021



Draft Regulations laid before Senedd Cymru in accordance with section 61(2) of the Animal Welfare Act 2006, for approval by resolution of Senedd Cymru.

DRAFT WELSH STATUTORY
INSTRUMENTS

2021 No. (W.)

ANIMALS, WALES

**The Animal Welfare (Licensing of
Activities Involving Animals)
(Wales) Regulations 2021**

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations provide for the licensing of persons involved in Wales in selling animals as pets.

Regulation 3 specifies these activities for the purposes of section 13(1) of the Animal Welfare Act 2006 (“the 2006 Act”) and provides for local authorities to be the licensing authorities. The consequence of this specification is that, subject to qualifying criteria, any person wishing to carry on any of these activities in Wales must obtain a licence from the local authority under these Regulations. These requirements replace the requirements, in Wales, to obtain a licence under the Pet Animals Act 1951.

A person who carries on any of these activities in Wales without a licence under these Regulations commits an offence under section 13(6) of the 2006 Act and is liable to imprisonment for a term of up to 6 months, a fine or both. Under section 30 of the 2006 Act, local authorities may prosecute for any offence under that Act.

Part 2 of the Regulations sets out how a person may apply to the local authority for a licence and sets out matters in respect of which a local authority must be satisfied when considering the grant or renewal of a licence. It provides for a local authority to charge fees to cover the costs it incurs in performing this function, considering a licence holder’s compliance with these Regulations, enforcement and administration. It specifies that a local authority must attach certain licence conditions to each licence granted or renewed. It provides that a local authority must appoint an

inspector when it considers it appropriate, for the purpose of ensuring that the licence conditions are being complied with. It requires a local authority to have regard to guidance issued by the Welsh Ministers in carrying out their functions under these Regulations. It provides powers for inspectors to take samples from animals.

Part 3 sets out the circumstances and procedures under which a licence may be suspended, varied or revoked. It also provides that the breach of a condition of a licence or the obstruction of any inspector appointed for the purposes of enforcement of these Regulations is an offence and applies relevant post-conviction powers contained in the 2006 Act.

Part 4 provides for appeals against licensing decisions by local authorities.

Part 5 makes repeals, consequential amendments and saving provision.

Part 6 sets out that local authorities must provide certain information to the Welsh Ministers.

Schedule 1 describes each type of licensable activity.

Schedule 2 sets out the general conditions that apply to all licensable activities.

Schedule 3 sets out the specific conditions that apply to each licensable activity.

Schedule 4 lists persons who may not apply for a licence.

Schedule 5 provides for repeals and consequential amendments.

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, a regulatory impact assessment has been prepared as to the likely costs and benefits of complying with these Regulations in Wales. A copy can be obtained from the Office of the Chief Veterinary Officer, Welsh Government, Cathays Park, Cardiff CF10 3NQ or by emailing a request to: CompanionAnimalWelfare@gov.wales.

Draft Regulations laid before Senedd Cymru in accordance with section 61(2) of the Animal Welfare Act 2006, for approval by resolution of Senedd Cymru.

DRAFT WELSH STATUTORY
INSTRUMENTS

2021 No. (W.)

ANIMALS, WALES

**The Animal Welfare (Licensing of
Activities Involving Animals)
(Wales) Regulations 2021**

Made

Coming into force

10 September 2021

The Welsh Ministers, as the appropriate national authority in relation to Wales⁽¹⁾, make the following Regulations in exercise of the powers conferred by section 13(2), (7), (8) and (10) of, and Parts 1 and 3 of Schedule 1 to, the Animal Welfare Act 2006⁽²⁾.

In accordance with section 13(9) of that Act, the Welsh Ministers have consulted those persons appearing to them to represent interests with which these Regulations are concerned as they considered appropriate.

In accordance with section 61(2) of that Act⁽³⁾, a draft of this instrument has been laid before, and approved by resolution of, Senedd Cymru.

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- (1) The “appropriate national authority” is defined in section 62(1) of the Animal Welfare Act 2006 (c. 45). Functions conferred on the National Assembly for Wales are now vested in the Welsh Ministers by virtue of section 162 of, and paragraphs 30 and 32 of Schedule 11 to, the Government of Wales Act 2006 (c. 32).
- (2) 2006 c. 45.
- (3) By virtue of section 162 of, and paragraph 34 of Schedule 11 to, the Government of Wales Act 2006, the reference in section 61(2) to “House of Parliament” includes Senedd Cymru.

PART 1

Introduction

Title, commencement and application

1.—(1) The title of these Regulations is the Animal Welfare (Licensing of Activities Involving Animals) (Wales) Regulations 2021.

(2) These Regulations come into force on 10 September 2021.

(3) These Regulations apply to Wales except paragraph 2 of Schedule 5 which applies to both England and Wales.

Interpretation

2. In these Regulations—

“the Act” (“*y Ddeddf*”) means the Animal Welfare Act 2006;

“adult dog” (“*ci llawndwf*”) means a dog which is not less than 6 months old;

“general condition” (“*amod cyffredinol*”) means the conditions set out in Schedule 2;

“kitten” (“*cath fach*”) means a cat aged less than 6 months;

“licence” (“*trwydded*”), except as the context otherwise requires in regulation 10(1)(b) or where more specifically provided, means a licence to carry on a licensable activity granted or renewed under these Regulations and cognate expressions are to be construed accordingly;

“licence conditions” (“*amodau trwydded*”) means—

(a) the general conditions, and

(b) the relevant specific conditions;

“licensable activity” (“*gweithgaredd trwyddedadwy*”) means an activity described in paragraph 2 of Schedule 1;

“local authority” (“*awdurdod lleol*”) means the council for a county or county borough in Wales;

“operator” (“*gweithredwr*”) means an individual who—

(a) carries on, attempts to carry on or knowingly allows to be carried on a licensable activity, or

(b) where a licence has been granted or renewed, is the licence holder;

“pet” (“*anifail anwes*”) means an animal mainly or permanently, or intended to be mainly or permanently, kept by a person for—

(a) personal interest,

- (b) companionship,
- (c) ornamental purposes, or
- (d) any combination of paragraphs (a) to (c);

“puppy” (“*ci bach*”) means a dog aged less than 6 months;

“relevant specific conditions” (“*amodau penodol perthnasol*”) means, in relation to the activity of selling animals as pets (or with a view to their being later resold as pets) as described in paragraph 2 of Schedule 1, the conditions set out in Schedule 3;

“veterinary surgeon” (“*milfeddyg*”) means a person registered in the register of veterinary surgeons, or the supplementary veterinary register, kept under the Veterinary Surgeons Act 1996⁽¹⁾.

Licensing of operators

3.—(1) Each licensable activity is a specified activity for the purposes of section 13(1) of the Act.

(2) A local authority is the licensing authority for any licensable activity carried on in premises in its area.

PART 2

Grant, renewal and variation with consent of a licence and inspection of premises

Conditions of grant or renewal of a licence

4.—(1) This regulation applies where—

- (a) a local authority has received from an operator an application in writing for the grant or renewal of a licence to carry on a licensable activity on premises in the local authority’s area, and
- (b) the application gives such information as the local authority has required.

(2) The local authority must—

- (a) appoint one or more suitably qualified inspectors to inspect any premises on which the licensable activity or any part of it is being or is to be carried on, and
- (b) following that inspection, grant a licence to the operator, or renew the operator’s licence, in accordance with the application if it is satisfied that—
 - (i) the licence conditions will be met,

⁽¹⁾ 1971 c. 80.

- (ii) any appropriate fee has been paid in accordance with regulation 12, and
- (iii) the grant or renewal is appropriate having taken into account the report submitted to it in accordance with regulation 9.

(3) A local authority must attach to each licence granted or renewed—

- (a) the general conditions, and
- (b) the relevant specific conditions.

(4) In considering whether the licence conditions will be met, a local authority must take account of the applicant's conduct as the operator of the licensable activity to which the application for the grant or renewal relates, whether the applicant is a fit and proper person to be the operator of that activity and any other relevant circumstances.

(5) A local authority must not grant a licence to an operator, or renew an operator's licence, in any circumstances other than those described in these Regulations.

(6) All licences granted or renewed in relation to any of these licensable activities are subject to the licence conditions.

Period of licence

5. A local authority may grant or renew a licence for any period up to 1 year.

Power to take samples from animals

6. An inspector may, for the purposes of ensuring the licence conditions are being complied with, take samples for laboratory testing from any animals on premises occupied by an operator.

Duty to assist in the taking of samples from animals

7. An operator must comply with any reasonable request of an inspector to facilitate the identification and examination of an animal and the taking of samples in accordance with regulation 6 and, in particular, must arrange the suitable restraint of an animal if so requested by an inspector.

Variation or revocation of a licence on the application, or with the consent, of a licence holder

8. A local authority may at any time vary or revoke a licence—

- (a) on the application in writing of the licence holder, or
- (b) on its own initiative, with the consent in writing of the licence holder.

Inspector's report

9.—(1) Where a local authority arranges an inspection pursuant to regulation 4(2)(a), it must arrange for the submission to it of a report by the inspector.

(2) The inspector's report must—

- (a) contain information about the operator, any relevant premises, any relevant records, the condition of any animals and any relevant matter, and
- (b) state whether or not the inspector considers that the licence conditions will be met.

Persons who may not apply for a licence

10.—(1) The following persons may not apply for a licence in respect of any licensable activity—

- (a) a person listed as a disqualified person in paragraphs 2 to 8 of Schedule 4 where the time limit for any appeal against that disqualification has expired or where, if an appeal was made, that appeal was refused;
- (b) a person listed in paragraph 1 of Schedule 4 as having held a licence which was revoked where the time limit for any appeal against that revocation has expired or where, if an appeal was made, that appeal was refused.

(2) Any licence granted or renewed, or held by, a person mentioned in paragraph (1)(a) or (b) is automatically revoked.

Death of a licence holder

11.—(1) In the event of the death of a licence holder, the licence is deemed to have been granted to, or renewed in respect of, the personal representatives of that former licence holder.

(2) In the circumstances described in paragraph (1), the licence is to remain in force for 3 months beginning with the date of the death of the former licence holder or for as long as it was due to remain in force but for the death (whichever period is shorter) but remain subject to the provisions in Part 2.

(3) The personal representatives must notify in writing the local authority which granted or renewed the licence that they are now the licence holders within 28 days beginning with the date of the death of the former licence holder.

(4) If the personal representatives fail so to notify the local authority within the period specified in paragraph (3), the licence ceases to have effect on the expiry of that period.

(5) The local authority which granted or renewed the licence may, on the application of the personal representatives, extend the period specified in paragraph (2) for up to 3 months if it satisfied that the extension is necessary for the purpose of winding up the estate of the former licence holder and is appropriate in all the circumstances.

Fees

12.—(1) A local authority may charge such fees as it considers necessary for—

- (a) the consideration of an application for the grant, renewal or variation of a licence including any inspection relating to that consideration, and for the grant, renewal or variation,
- (b) the reasonable anticipated costs of consideration of a licence holder's compliance with these Regulations and the licence conditions to which the licence holder is subject in circumstances other than those described in sub-paragraph (a) including any inspection relating to that consideration,
- (c) the reasonable anticipated costs of enforcement in relation to any licensable activity of an unlicensed operator, and
- (d) the reasonable anticipated costs of compliance with regulation 26.

(2) The fee charged for the consideration of an application for the grant, renewal or variation of a licence and for any inspection relating to that consideration must not exceed the reasonable costs of that consideration and related inspection.

Guidance

13. A local authority must have regard in the carrying out of its functions under these Regulations to such guidance as may be issued by the Welsh Ministers.

PART 3

Enforcement and notices

Grounds for suspension, variation without consent or revocation of a licence

14. A local authority may, without any requirement for the licence holder's consent, decide to suspend, vary or revoke a licence at any time on being satisfied that—

- (a) the licence conditions are not being complied with,
- (b) there has been a breach of these Regulations,
- (c) information supplied by the licence holder is false or misleading,
- (d) it is necessary to protect the welfare of an animal, or
- (e) the licence holder would not be able to apply for a new licence in accordance with regulation 10.

Procedure for suspension or variation without consent

15.—(1) Except as otherwise provided in this regulation, the suspension or variation of a licence following a decision under regulation 14 has effect at the end of a period of 7 working days beginning with the date on which notice of the decision is issued to the licence holder or, if that date is not a working day, the next working day.

(2) If it is necessary to protect the welfare of an animal, the local authority may specify in the notice of its decision that the suspension or variation has immediate effect.

(3) A decision to suspend or vary a licence must—

- (a) be notified to the licence holder in writing,
- (b) state the local authority's grounds for suspension or variation,
- (c) state when it comes into effect,
- (d) specify measures that the local authority considers are necessary in order to remedy the grounds, and
- (e) explain the right of the licence holder to make written representations in accordance with paragraph (4) and give details of the person to whom such representations may be made and the date by the end of which they must be received.

(4) The licence holder may make written representations which must be received by the local authority within 7 working days beginning with the date of issue of notice of the decision under regulation 14 to suspend or vary the licence or, if that date is not a working day, the next working day.

(5) Except in relation to notices under paragraph (2), where a licence holder makes written representations which are received by the local authority within the period specified in paragraph (4), the suspension or variation is not to have effect unless the local authority, after considering the representations, suspends or varies the licence in accordance with paragraph (6)(a).

(6) Within 7 working days beginning with the date of receipt of any representations made in accordance with paragraph (5), the local authority must, after considering the representations—

- (a) suspend or vary the licence,
- (b) cancel its decision under regulation 14 to suspend or vary the licence,
- (c) confirm the suspension or variation of the licence under paragraph (2), or
- (d) reinstate the licence if it has been suspended, or cancel its variation if it has been varied, under paragraph (2).

(7) The local authority must issue to the licence holder written notice of its decision under paragraph (6) and the reasons for it within 7 working days beginning with the date of receipt of any representations made in accordance with paragraph (4) or, if that date is not a working day, beginning with the next working day.

(8) The local authority's decision under paragraph (6) is to have effect on service of its notice under paragraph (7).

(9) Paragraph (10) applies if the local authority fails to comply with paragraph (6) or (7).

(10) Where this paragraph applies, after 7 working days beginning with the date of receipt of any representations made in accordance with paragraph (4) or, if that date is not a working day, beginning with the next working day—

- (a) a licence suspended under paragraph (2) is to be deemed to be reinstated;
- (b) a licence varied under paragraph (2) is to be deemed to have effect as if it had not been so varied;
- (c) a licence suspended under paragraph (6)(a) is to be deemed to be reinstated;
- (d) a licence varied under paragraph (6)(a) is to be deemed to have effect as if it had not been so varied;
- (e) any licence held by the licence holder other than a licence suspended or varied under paragraph (2) or (6)(a) which the local authority decided to suspend or vary under regulation 14 is to be deemed to remain in force and not to be so varied.

(11) Once a licence has been suspended for 28 days, the local authority must on the next working day—

- (a) reinstate it without varying it,
- (b) vary and reinstate it as varied, or
- (c) revoke it.

(12) If the local authority fails to comply with paragraph (11), the licence is to be deemed to have been reinstated without variation with immediate effect.

Reinstatement of a suspended licence by a local authority

16.—(1) A local authority must reinstate a suspended licence by way of written notice once it is satisfied that the grounds specified in the notice of suspension have been or will be remedied.

(2) Where a local authority reinstates a licence under paragraph (1), it may reduce the period for which it is reinstated.

Notice of revocation

17.—(1) A revocation decision must—

- (a) be notified in writing to the licence holder,
- (b) state the local authority's grounds for revocation, and
- (c) give notice of the licence holder's rights of appeal to a magistrates' court and the period under regulation 23 within which such an appeal may be brought.

(2) The decision has effect on service of the notice.

Obstruction of inspectors

18. A person must not intentionally obstruct an inspector appointed for the purposes of the enforcement of these Regulations in the exercise of any powers conferred by or under the Act.

Offences

19.—(1) It is an offence for a person, without lawful authority or excuse—

- (a) to breach a licence condition;
- (b) to fail to comply with regulation 7 or 18.

(2) A person who commits an offence under paragraph (1) is liable on summary conviction to a fine.

Powers of entry

20. Breach of a licence condition must be treated as a relevant offence for the purposes of section 23 of the Act (entry and search under warrant in connection with offences).

Post-conviction powers

21. The relevant post-conviction powers contained in sections 34 and 42 of the Act apply in relation to a conviction for an offence under regulation 19.

Notices

22.—(1) Any notice issued by a local authority under these Regulations may be amended, suspended or revoked by the local authority in writing at any time.

(2) A notice may be served on a person by—

- (a) personal delivery,
- (b) leaving it or sending it by post to the person's current or last known postal address, or
- (c) emailing it to the person's current or last known email address.

PART 4

Appeals

Appeals

23.—(1) Any operator who is aggrieved by a decision by a local authority to refuse to grant or renew, or the decision to revoke, a licence may appeal to a magistrates' court.

(2) The procedure on an appeal to a magistrates' court under paragraph (1) is by way of complaint, and the Magistrates' Courts Act 1980⁽¹⁾ applies to the proceedings.

(3) The period within which an appeal may be brought is 28 days beginning with the day following the date on which the decision is notified.

PART 5

Repeals, consequential amendments and saving provision

Repeals and consequential amendments

24. Schedule 5 (repeals and consequential amendments) is to have effect.

⁽¹⁾ 1980 c. 43.

Saving provision

25. Any unexpired licence granted in accordance with the provisions of the Pet Animal Act 1951⁽¹⁾ continues in force for the remainder of its term subject to the provisions of that Act as it had effect on the relevant date.

PART 6

Provision of information to the Welsh Ministers

Provision of information to the Welsh Ministers

26.—(1) Each local authority must provide the following information to the Welsh Ministers in writing—

- (a) the number of licences in force in its area on each reference date, and
- (b) the average level of fees it has charged for licences it has granted or renewed in each reference period.

(2) Each local authority must provide the information to the Welsh Ministers—

- (a) in electronic form, or secure that it is accessible to the Welsh Ministers in electronic form, and
- (b) no later than the next 31 May following the relevant reference date.

(3) In this regulation—

“reference date” (“*dyddiad cyfeirio*”) means 31 March;

“reference period” (“*cyfnod cyfeirio*”) means the period beginning with 10 September 2021 and ending with 31 March 2022 and each subsequent period of 12 months beginning with the 1 April.

Name

Minister for Environment, Energy and Rural Affairs,
one of the Welsh Ministers

Date

(1) 1951 c. 35 (14 & 15 Geo 6).

SCHEDULE 1

Licensable activities

PART 1 Business test

1. The circumstances which a local authority must take into account in determining whether an activity is being carried on in the course of a business for the purposes of this Schedule include, for example, whether the operator—

- (a) makes any sale by, or otherwise carries on, the activity with a view to making a profit, or
- (b) earns any commission or fee from the activity.

PART 2 Selling animals as pets

2. Selling animals as pets (or with a view to their being later resold as pets) in the course of a business including keeping animals in the course of a business with a view to their being sold or resold.

3. The activity described in paragraph 2 does not include—

- (a) selling animals in the course of an aquaculture production business authorised under regulation 5(1) of the Aquatic Animal Health (England and Wales) Regulations 2009⁽¹⁾, or
- (b) a person who is the holder of a licence under the Animal Welfare (Breeding of Dogs) (Wales) Regulations 2014⁽²⁾ selling;
 - (i) puppies the person has bred themselves from the premises where the puppy was bred, or;
 - (ii) adult dogs the person has bred themselves.

(1) S.I. 2009/463.

(2) S.I. 2014/3266 (W. 333)

SCHEDULE 2

General conditions

Licence display

1.—(1) A copy of the licence must be clearly and prominently displayed on any premises on which the licensable activity is carried on.

(2) The name of the licence holder followed by the number of the licence holder's licence must be clearly and prominently displayed on any website used in respect of the licensable activity.

Records

2.—(1) The licence holder must ensure that at any time all the records that the licence holder is required to keep as a condition of the licence are available for inspection by an inspector in a visible and legible form or, where any such records are stored in electronic form, in a form from which they can readily be produced in a visible and legible form.

(2) The licence holder must keep all such records for at least 3 years beginning with the date on which the record was created.

Use, number and type of animal

3.—(1) No animals or types of animal other than those animals and types of animal specified in the licence may be used in relation to the relevant licensable activity.

(2) The number of animals kept for the licensable activity at any time must not exceed the maximum that is reasonable taking into account the facilities and staffing on any premises on which the licensable activity is carried on.

Staffing

4.—(1) Sufficient numbers of people who are competent for the purpose must be available to provide a level of care that ensures that the welfare needs of all the animals are met.

(2) The licence holder or a designated manager and any staff employed to care for the animals must have competence to identify the normal behaviour of the species for which they are caring and to recognise signs of, and take appropriate measures to mitigate or prevent, pain, suffering, injury, disease or abnormal behaviour.

(3) The licence holder must provide and ensure the implementation of a written training policy, which complies with the requirements of paragraph 9, for all staff.

Suitable environment

5.—(1) All areas, equipment and appliances to which the animals have access must present minimal risks of injury, illness and escape and must be constructed in materials that are robust, safe and durable, in a good state of repair and well maintained.

(2) Animals must be kept at all times in an environment suitable to their species and condition (including health status and age) with respect to—

- (a) their behavioural needs;
- (b) its situation, space, air quality, cleanliness and temperature;
- (c) the water quality (where relevant);
- (d) noise levels;
- (e) light levels;
- (f) ventilation.

(3) Staff must ensure that the animals are kept clean and comfortable.

(4) Where appropriate for the species, a toileting area and opportunities for toileting must be provided.

(5) Procedures must be in place to ensure accommodation and any equipment within it is cleaned as often as necessary and good hygiene standards are maintained and the accommodation must be capable of being thoroughly cleaned and disinfected.

(6) The animals must be transported and handled in a manner (including for example in relation to housing, temperature, ventilation and frequency) that protects them from pain, suffering, injury and disease.

(7) All the animals must be easily accessible to staff and for inspection and there must be sufficient light for the staff to work effectively and observe the animals.

(8) All resources must be provided in a way (for example as regards, frequency, location and access points) that minimises competitive behaviour or the dominance of individual animals.

(9) The animals must not be left unattended in any situation or for any period likely to cause them distress.

Suitable diet

6.—(1) The animals must be provided with a suitable diet in terms of quality, quantity and frequency and any new feeds must be introduced gradually to allow the animals to adjust to them.

(2) Feed and (where appropriate) water intake must be monitored, and any problems recorded and addressed.

(3) Feed and drinking water provided to the animals must be unspoilt and free from contamination.

(4) Feed and drinking receptacles must be capable of being cleaned and disinfected, or disposable.

(5) Constant access to fresh, clean drinking water must be provided in a suitable receptacle for the species that requires it.

(6) Where feed is prepared on the premises on which the licensable activity is carried on, there must be hygienic facilities for its preparation, including a working surface, hot and cold running water and storage.

Monitoring of behaviour and training of animals

7.—(1) Active and effective environmental enrichment must be provided to the animals in inside and any outside environments.

(2) For species whose welfare depends partly on exercise, opportunities to exercise which benefit the animals' physical and mental health must be provided, unless advice from a veterinary surgeon suggests otherwise.

(3) The animals' behaviour and any changes of behaviour must be monitored and advice must be sought, as appropriate and without delay, from a veterinary surgeon or, in the case of fish, any person competent to give such advice if adverse or abnormal behaviour is detected.

(4) Where used, training methods or equipment must not cause pain, suffering or injury.

(5) All immature animals must be given suitable and adequate opportunities to—

- (a) learn how to interact with people, their own species and other animals where such interaction benefits their welfare, and
- (b) become habituated to noises, objects and activities in their environment.

Animal handling and interactions

8.—(1) All people responsible for the care of the animals must be competent in the appropriate handling of each animal to protect it from pain, suffering, injury or disease.

(2) The animals must be kept separately or in suitable compatible social groups appropriate to the species and individual animals and no animals from a social species may be isolated or separated from others of their species for any longer than is necessary.

(3) The animals must have at least daily opportunities to interact with people where such interaction benefits their welfare.

Protection from pain, suffering, injury and disease

9.—(1) Written procedures must—

- (a) be in place and implemented covering—
 - (i) feeding regimes;
 - (ii) cleaning regimes;
 - (iii) transportation;
 - (iv) the prevention of, and control of the spread of, disease;
 - (v) monitoring and ensuring the health and welfare of all the animals;
 - (vi) the death or escape of an animal (including the storage of carcasses);
- (b) be in place covering the care of the animals following the suspension or revocation of the licence or during and following an emergency.

(2) All people responsible for the care of the animals must be made fully aware of these procedures.

(3) Appropriate isolation, in separate self-contained facilities, must be available for the care of sick, injured or potentially infectious animals.

(4) All reasonable precautions must be taken to prevent and control the spread among the animals and people of infectious diseases, pathogens and parasites.

(5) All excreta and soiled bedding for disposal must be stored and disposed of in a hygienic manner and in accordance with any relevant legislation.

(6) Sick or injured animals must receive prompt attention from a veterinary surgeon or, in the case of fish, an appropriately competent person and the advice of that veterinary surgeon or, in the case of fish, that competent person must be followed.

(7) Where necessary, animals must receive preventative treatment by an appropriately competent person.

(8) The licence holder must register with a veterinary surgeon with an appropriate level of experience in the health and welfare requirements of any animals specified in the licence and the contact details of that veterinary surgeon must be readily available to all staff on the premises on which the licensable activity is carried on.

(9) Prescribed medicines must be stored safely and securely to safeguard against unauthorised access, at the correct temperature, and used in accordance with the instructions of the veterinary surgeon.

(10) Medicines other than prescribed medicines must be stored, used and disposed of in accordance with the instructions of the manufacturer or veterinary surgeon.

(11) Cleaning products must be suitable, safe and effective against pathogens that pose a risk to the animals and must be used, stored and disposed of in accordance with the manufacturer's instructions and used in a way which prevents distress or suffering of the animals.

(12) No person may euthanize an animal except a veterinary surgeon or a person who has been authorised by a veterinary surgeon as competent for such purpose or in the case of fish, a person who is competent for such purpose.

(13) All animals must be checked at least once daily and more regularly as necessary to check for any signs of pain, suffering, injury, disease or abnormal behaviour and vulnerable animals must be checked more frequently.

(14) Any signs of pain, suffering, injury, disease or abnormal behaviour must be recorded and the advice and further advice (if necessary) of a veterinary surgeon (or in the case of fish, of an appropriately competent person) must be sought and followed.

Emergencies

10.—(1) A written emergency plan, acceptable to the local authority, must be in place, known and available to all the staff on the premises on which the licensable activity is carried on, and followed where necessary to ensure appropriate steps are taken to protect all the people and animals on the premises in case of fire or in case of breakdown of essential heating, ventilation and aeration or filtration systems or other emergencies.

(2) The plan must include details of the emergency measures to be taken for the extrication of the animals should the premises become uninhabitable and an emergency telephone list that includes the fire service and police.

(3) External doors and gates must be lockable.

(4) A designated key holder with access to all animal areas must at all times be within reasonable travel distance of the premises and available to attend in an emergency.

SCHEDULE 3

Specific conditions: selling animals as pets

Interpretation

1. In this Schedule—

“prospective owner” (“*darpar berchennog*”) means a person purchasing an animal to keep or to be kept as a pet;

“premises” (“*mangre*”) means the premises on which the licensable activity of selling animals as pets (or with a view to their being later resold as pets) is carried on;

“purchaser” (“*prynwr*”) means a person purchasing an animal to keep as a pet or with a view to it later being resold as a pet.

Records and advertisements

2.—(1) A register must be maintained for all the animals or, in the case of fish, all the groups of fish, on the premises which must include—

- (a) the full name of the supplier of the animal,
- (b) the animal’s sex (where known),
- (c) (except in the case of fish) the animal’s age (where known),
- (d) details of any veterinary treatment (where known),
- (e) the date of birth of the animal or, if the animal was acquired by the licence holder, the date of its acquisition,
- (f) the date of the sale of the animal by the licence holder, and
- (g) the date of the animal’s death (if applicable).

(2) Where an animal is undergoing any medical treatment—

- (a) this fact must be clearly indicated—
 - (i) in writing next to it, or
 - (ii) (where appropriate) by labelling it accordingly, and
- (b) it must not be sold.

(3) Any advertisement for the sale of an animal must—

- (a) include the number of the licence holder’s licence,
- (b) specify the local authority that issued the licence,

- (c) include a recognisable photograph of the animal being advertised,
- (d) (except in the case of fish) display the age of the animal being advertised,
- (e) state the country of residence of the animal from which it is being sold, and
- (f) state the country of origin of the animal.

Prospective sales: pet care and advice

3.—(1) The licence holder and all staff must ensure that any equipment and accessories being sold with an animal are suitable for the animal.

(2) The licence holder and all staff must ensure that the prospective owner is provided with information on the appropriate care of the animal including in relation to—

- (a) feeding,
- (b) housing,
- (c) handling,
- (d) husbandry,
- (e) the life expectancy of its species,
- (f) the provision of suitable accessories, and
- (g) veterinary care.

(3) Appropriate reference materials on the care of all animals for sale must be on display and provided to the prospective owner.

(4) The licence holder and all staff must have been suitably trained to advise prospective owners about the animals being sold.

(5) The licence holder and all staff must ensure that the purchaser is informed of the country of origin of the animal and the species, and where known, the age, sex and veterinary record of the animal being sold.

Suitable accommodation

4.—(1) Animals must be kept in housing which minimises stress including from other animals and the public.

(2) Where members of the public can view or come into contact with the animals, signage must be in place to deter disturbance of the animals.

(3) Dangerous wild animals (if any) must be kept in cages that are secure and lockable and appropriate for the species.

(4) For the purposes of sub-paragraph (3), “dangerous wild animal” means an animal of a kind

specified in the first column of the Schedule to the Dangerous Wild Animals Act 1976⁽¹⁾.

Sale of animals

5.—(1) No animal of any of the following descriptions may be sold as a pet, or sold with a view to being resold as a pet, by or on behalf of the licence holder—

- (a) unweaned mammals;
- (b) mammals weaned at an age at which they should not have been weaned;
- (c) non-mammals that are incapable of feeding themselves;
- (d) puppies, kittens, ferrets or rabbits, aged under 8 weeks;
- (e) puppies or kittens which were not bred by the licence holder at the premises.

(2) The sale of a dog must be completed in the presence of the purchaser on the premises.

Protection from pain, suffering, injury and disease

6.—(1) All animals for sale must be in good health.

(2) Any animal with a condition which is likely to affect the quality of life must not be moved, transferred or offered for sale but may be moved to an isolation facility or veterinary care facility if required until the animal has recovered.

(3) When arranging for the receipt of animals, the licence holder must make reasonable efforts to ensure that they will be transported in a suitable manner.

(4) Animals must be transported or handed to purchasers in suitable containers for the species and expected duration of the journey.

(1) 1976 c. 38. The Schedule was substituted in relation to England and Wales by article 2 of S.I. 2007/2465.

SCHEDULE 4

Persons who may not apply for a licence

1. A person who has at any time held a licence which was revoked under regulation 14 of these Regulations.
2. A person who is disqualified under section 33 of the Welfare of Animals Act (Northern Ireland) 2011(1).
3. A person who is disqualified under section 34 of the Act.
4. A person who is disqualified under section 40(1) and (2) of the Animal Health and Welfare (Scotland) Act 2006(2).
5. A person who is disqualified under section 6(2) of the Dangerous Wild Animals 1976(3) from keeping a dangerous wild animal.
6. A person who is disqualified under section 5(3) of the Pet Animals Act 1951(4) from keeping a pet shop.
7. A person who is disqualified under section 1(1) of the Protection of Animals (Amendment) Act 1954(5) from having custody of an animal.
8. A person who is disqualified under section 3 of the Protection of Animals Act 1911(6) from the ownership of an animal.

-
(1)	2011 c. 16.
(2)	2006 asp 11.
(3)	1976 c. 38; section 6(2) has been amended but the amendments are not relevant.
(4)	Section 5(3) was amended by paragraph 3(2) of Schedule 3 to the Animal Welfare Act 2006.
(5)	1954 c. 40 (2 & 3 Eliz 2); section 1 was repealed by Schedule 4 to the Animal Welfare Act 2006.
(6)	1911 c. 27 (1 & 2 Geo 5); section 3 was repealed by Schedule 4 to the Animal Welfare Act 2006.

SCHEDULE 5

Repeals and consequential amendments

Pet Animals Act 1951

1. The Pet Animals Act 1951, section 1(1) (restriction on keeping a pet shop) ceases to have effect in relation to Wales.

Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018

2. In Schedule 6(1)(c)(ii) to the Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018⁽¹⁾, for “the Pet Animals Act 1951 to keep the shop” substitute “regulations 2 and 4 of the Animal Welfare (Licensing of Activities Involving Animals) (Wales) Regulations 2021”.

⁽¹⁾ SI 2014/486

Explanatory Memorandum to the Animal Welfare (Licensing of Activities Involving Animals) (Wales) Regulations 2021

This Explanatory Memorandum has been prepared by the department for Economy, Skills and Natural Resources 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/Deputy Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of The Animal Welfare (Licensing of Activities Involving Animals) (Wales) Regulations 2021. I am satisfied that the benefits justify the likely costs.

Lesley Griffiths AM

Minister for Environment, Energy and Rural Affairs

2 March 2021

Introduction

This document covers both the Explanatory Memorandum (EM) (Part 1) and the Resource Impact Assessment (RIA) (Part 2).

PART 1 – EXPLANATORY MEMORANDUM

1. Description

- 1.1 These Regulations provide for the licensing of persons involved in Wales in selling animals as pets and make it an offence for commercial third parties to sell puppies and kittens under 6 months.
- 1.2 These Regulations will specify activities for the purposes of section 13(1) of the Animal Welfare Act 2006¹ (“the 2006 Act”) and provides for local authorities to be the licensing authorities. The consequence of this specification is that, subject to qualifying criteria, any person wishing to carry on any of these activities in Wales must obtain a licence from the local authority under these Regulations. These requirements replace the requirements, in Wales, to obtain a licence under the Pet Animals Act 1951².
- 1.3 A person who carries on any of these activities in Wales without a licence under these Regulations commits an offence under section 13(6) of the 2006 Act and is liable to imprisonment for a term of up to six months, a fine or both. Under section 30 of the 2006 Act, local authorities may prosecute for any offence under the Act.
- 1.4 The Regulations set out how a person may apply to the local authority for a licence and sets out matters in respect of which a local authority must be satisfied when considering the grant or renewal of a licence. It provides for a local authority to charge fees to cover the costs it incurs in performing this function, considering a licence holder’s compliance with these Regulations, enforcement and administration. It specifies that a local authority must attach certain licence conditions to each licence granted or renewed. It provides that a local authority must appoint an inspector when it considers it appropriate, for the purpose of ensuring that the licence conditions are being complied with. It requires a local authority to have regard to guidance issued by the Welsh Ministers in carrying out their functions under these Regulations. It provides powers for inspectors to take samples from animals.

¹ <https://www.legislation.gov.uk/ukpga/2006/45/contents>

² <https://www.legislation.gov.uk/ukpga/Geo6/14-15/35>

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

- 2.1 This version of the instrument replaces the original version laid on 27th January 2021 which was withdrawn.
- 2.2 There was an error in the previous version which has been corrected.
- 2.3 This version of the instrument provides that puppy sales can only take place at the premises where the puppy was bred. This applies where a sale is made as part of a licensable activity under these regulations and is also a condition of exclusion from the definition of licensable activity for breeders licensed under the Animal Welfare (Breeding of Dogs) (Wales) Regulations 2014 (2014/3266 (W. 333)).

3. Legislative background

- 3.1 Currently commercial third party sellers of pets in Wales are licensed under section 1(1) of the Pet Animals Act 1951. Section 13 of the AWA enables the repeal of the Pet Animals Act 1951 and provides the power to make regulations for the licensing or registration or activities involving animals.
- 3.2 Schedule 1, Part 1, para 11 (Fees) allow for regulations to include provision for fees or other charges in relation to the carrying out of functions of the licensing authority.
- 3.3 The Welsh Ministers, are the appropriate national authority in relation to Wales³, The Regulations are made in exercise of the powers conferred by sections 13(2), (7), (8) and (10) of, and Parts 1 and 3 of Schedule 1 to, the Animal Welfare Act 2006⁴.
- 3.4 In accordance with section 13(9) of that Act, the Welsh Ministers have consulted those persons appearing to them to represent interests with which these Regulations are concerned as they considered appropriate.
- 3.5 These Regulations follow the Senedd's draft affirmative procedure.
- 3.6 The Regulations will be similar in nature to The Animal Welfare (Licensing of Activities Involving Animals) (England) (Amendment) Regulations 2019⁵ which came into force on 6 April 2020 banning the third party sale of puppies and kittens.

(3) The “appropriate national authority” is defined in section 62(1) of the Animal Welfare Act 2006 (c. 45). Functions conferred on the National Assembly for Wales are now vested in the Welsh Ministers by virtue of section 162 of, and paragraphs 30 and 32 of Schedule 11 to, the Government of Wales Act 2006 (c. 32)

(4) 2006 c. 45.

5 Animal Welfare (Licensing of Activities Involving Animals) (England) (Amendment) Regulations 2019

4. Purpose and intended effect of the legislation

- 4.1 The Minister for Energy, Environment and Rural Affairs is proposing the introduction of legislation to ban commercial third party sales of puppies and kittens.
- 4.2 The proposals will change the licensing arrangements for the sale of animals as pets which includes a ban on the commercial third party sale of puppies and kittens. Optimising welfare standards across Wales is a priority and a consequence of the new Regulations is to promote responsible breeding and ensure puppies and kittens are bred in suitable conditions. A ban on its own cannot tackle all the problems associated with puppy trading. The proposed ban will be one part of the work associated with improvements in welfare standards at dog breeding establishments which include tackling barriers to enforcement.
- 4.3 Legitimate commercial third party sales of puppies and kittens are undertaken by those who are licenced pet sellers: this could be a traditional pet shop type setting, a domestic dwelling, dealers acting as brokers between breeders or breeders who sell puppies from litters they have not bred themselves. Currently in Wales, they are required to hold a licence under the Pet Animals Act 1951.
- 4.4 The Pet Animals Act 1951 section 1(1) (restriction on keeping a pet shop) will cease to have effect in relation to Wales and will be replaced by *The Animal Welfare (Licensing of Activities Involving Animals) (Wales) Regulations 2021*. This will provide for the licensing of persons involved in Wales in selling animals as pets and make it an offence for commercial third parties to sell puppies and kittens under 6 months.
- 4.5 There are concerns commercial third party sales of puppies and kittens may be associated with poorer welfare conditions for the animals compared with direct purchase from the breeder. The introduction to several new and unfamiliar environments, and the increased likelihood of multiple journeys the puppies or kittens have to undertake have the potential to contribute to an increased risk of disease and lack of socialisation and habituation for the puppies and kittens.
- 4.6 The Regulations are being drafted as a first step towards ensuring the welfare of puppies and kittens in Wales, who are currently being bred and sold onto third parties, is improved significantly by being sold only by breeders directly to the new owner. Legislation which relates to the selling of pets should reflect best practice. Allowing commercial third parties to sell puppies and kittens means, in most cases, purchasers will not see the puppy or kitten interacting with the bitch/queen or the siblings or the conditions they have been bred in.

The new Regulations will also:

- Align the licensing process with other Administrations. This is to ensure there are no inconsistencies between the Administrations where some breeders may cross the border to avoid being caught up in the legislation which applies to that region.
- Provide a future opportunity to include other licensed animal welfare establishments including, but not exclusively, horse stables and riding schools.
- Provide a legislative mechanism for future changes to the Animal Welfare (Breeding of Dogs) (Wales) Regulations 2014⁶.

4.7 The Regulations will be similar in nature to The Animal Welfare (Licensing of Activities Involving Animals) (England) (Amendment) Regulations 2019⁷ which prohibits the sale of puppies and kittens by third parties and came into force in England on 6 April 2020. The England Regulations do not restrict breeders in England selling puppies and kittens to third party sellers in Wales. The introduction of this new legislation will prevent existing third party sellers in Wales selling puppies and kittens, it will also prevent future third party sellers of puppies and kittens and will provide an opportunity to stop breeders and brokers in England continuing to sell in Wales. Scotland are also bringing forward legislation on this issue.

4.8 The 2016 EFRA report 'Animal Welfare in England: Domestic Pets'⁸ states:

“Responsible breeders would never sell through a pet shop licence holder. The process of selling through a third party seller has an unavoidable negative impact upon the welfare of puppies. It also distances the purchaser from the environment in which their puppy was bred. Banning third party sales so that the public bought directly from breeders would bring public scrutiny to bear on breeders, thereby improving the welfare conditions of puppies. It would also bring a positive financial impact to breeders, allowing them to retain money that is currently lost in the supply chain. We acknowledge that difficulties of public access, due to a rural location, security issues and diseases, may be challenging for some breeders. On balance, however, we consider it is more important that animal welfare standards are ensured across all breeders. (Paragraph 90)

“We recommend that the Government ban third party sales of dogs. Dogs should only be available from licensed, regulated breeders or approved rehoming.” organisations.” (Paragraph 91)

4.9 In England, a petition associated with the Lucy's Law campaign gained over 100,000 signatures and was debated in Parliament on 21 May 2018. The Lucy's Law campaign called for an immediate ban on the

⁶ <https://www.legislation.gov.uk/wsi/2014/3266/contents/made>

⁷ <https://www.legislation.gov.uk/ukdsi/2019/9780111186954>

⁸ <https://publications.parliament.uk/pa/cm201617/cmselect/cmenvfru/117/117.pdf>

sale of puppies by pet shops and other third-party commercial dealers. The campaigners claimed regulating commercial third party sales is ineffective to prevent harm and a ban is therefore necessary.

- 4.10 Local Authorities across the UK were asked to sign up to the principles of Lucy's Law. Local Authorities across the UK were asked to sign up to the principles of Lucy's Law and there was widespread support from Local Authorities in Wales.
- 4.11 In February 2018 Defra launched a Call for Evidence for banning third party sales of puppies and kittens in England. They received just over 300 responses and around 70% supported a ban.
- 4.12 The Defra consultation exercise on banning commercial third party sales of puppies and kittens received 6,854 responses in the 4 weeks it ran (22 August – 19 September 2018). The overwhelming majority supported a ban.
- 4.13 Almost from the time Defra announced they intended to ban the third party sales of puppies and kittens Welsh Government has been lobbied, petitioned and repeatedly asked by Assembly Members/Members of the Senedd when Wales would be introducing a ban. Between May 2018 and December 2019 the MEERA received 74 pieces of correspondence and 63 in 2020. The Climate Change, Environment and Rural Affairs committee has also expressed complete support in the bringing forward the legislative changes required.
- 4.14 The Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018 were amended (The Animal Welfare (Licensing of Activities Involving Animals) (England) (Amendment) Regulations 2019) to include a ban on commercial third party sales of puppies and kittens. The ban came into force on 6th April 2020.
- 4.15 In her Oral Statement of 19th June 2018 the Minister for Environment, Energy and Rural Affairs, Lesley Griffiths committed to an investigation of third party sales in Wales. A consultation on the impact of a ban on third party sales of puppies and kittens was launched in early 2019 with a final consultation taking place in 2020.
- 4.16 Both DEFRA and Welsh Government consultations have shown widespread support for banning third party sales of puppies and kittens. However, in Wales, a ban is seen as only one of the steps necessary to improve the welfare of dogs and cats at breeding premises. The combination of new regulations on pet sales and a three year, Welsh Government funded, project tackling barriers to enforcement; enhanced training; better guidance; and improved use of resources within local authorities for improvements to the enforcement and delivery of the existing The Animal Welfare (Breeding of Dogs) (Wales)

Regulations 2014⁹ will result in lasting improvements to the welfare standards of puppies bred in Wales.

- 4.17 The Pet Animals Act 1951 section 1(1) (restriction on keeping a pet shop) will cease to have effect in relation to Wales and will be replaced by *The Animal Welfare (Licensing of Activities Involving Animals) (Wales) Regulations 2021*. These Regulations will provide for the licensing of persons involved in Wales in selling animals as pets and make it an offence for commercial third parties to sell puppies and kittens under 6 months.
- 4.18 It is not the policy intent of the regulations to require holders of licences under the Animal Welfare (Breeding of Dogs) (Wales) Regulations 2014 who are selling dogs they have bred themselves at the premises to also hold a licence under these regulations. The regulations originally laid on the 27 January have been re-laid to reflect this.
- 4.19 New licensing under the Regulations would improve the welfare of puppies and kittens and dogs and cats used for breeding, aligning the licensing process with other Administrations. This is to ensure there are minimal inconsistencies between the Administrations where some breeders may cross the border to avoid being caught up in the legislation which applies in each country.
- 4.20 This new legislation will also provide a mechanism for future changes to the Animal Welfare (Breeding of Dogs) (Wales) Regulations 2014 and an opportunity to include other licensed animal welfare establishments including, but not exclusively, Horse Stables, Riding Schools, in the future.

5. Consultation

Details of the Welsh Government's consultation activities are available in Part 2 of this document under the RIA considerations.

⁹ <https://www.legislation.gov.uk/wsi/2014/3266/contents/made>

PART 2 – REGULATORY IMPACT ASSESSMENT

Rationale for intervention and intended effects

- 5.1 In 2019, a public consultation took place which looked at the evidence on what stage the government should intervene in breeding premises to address the concerns about animal welfare. The consultation responses showed widespread support for banning third party sales of puppies and kittens.
- 5.2 A ban is seen as only the first necessary step to improve the welfare of dogs and cats and their offspring. The combination of new Regulations on pet sales and a three year, Welsh Government funded, project tackling barriers to enforcement; enhanced training; better guidance; and improved use of resources within local authorities for improvements to the enforcement and delivery of the existing Breeding Regulations will result in lasting improvements to the welfare standards of puppies bred in Wales.
- 5.3 Under current rules, it is possible for someone to sell puppies and/or kittens in Wales, in the course of business, without having bred them themselves. Such sales, known as commercial third party sales. The 2016 EFRA Report on Animal Welfare in England: Domestic pets highlights the issues associated with selling through a third party seller commenting on the unavoidable negative impact on the welfare of puppies and the distance of the purchaser from the environment in which the puppy was bred. Also stating banning third party sales so that the public bought directly from the breeder would bring scrutiny to bear on breeders thereby improving welfare conditions of puppies. There is a justification for Welsh Government to intervene to drive up welfare standards.
- 5.4 There are no specific provisions in the subordinate legislation which charge expenditure on the Welsh Consolidated Fund.

6. Options

Options

Policy options considered, including alternatives to regulation

The options considered were:

1. Do nothing (baseline) - Keep the status quo i.e. business as usual.
2. Introduce a licensing or registration scheme which would allow commercial third party sellers to continue to sell puppies and kittens, subject to certain conditions.

3. Introduce a ban on commercial third party sales of puppies and kittens in Wales.

7. Costs and benefits

Option 1: Business as usual – allow commercial third party sellers to continue to sell puppies and kittens

- 7.1 This is the baseline option and as such there are no additional costs or benefits associated with this option.
- 7.2 Business as usual would not meet the Welsh Government commitment to ensuring a high standard of welfare for all animals kept in Wales is maintained at all stages of their life.
- 7.3 Whilst the 'do nothing' approach would be cost-neutral for commercial third party sellers and effect no change on Local Authorities, it is clear that the status quo is an insufficient approach to improving and enforcing welfare standards of puppies and kittens being sold in Wales. It would also mean that Wales would most likely see an increase in the numbers of puppies and kittens sold via third party sellers in Wales and/or new pet shops established as the ban on commercial third party sales of puppies and kittens which came into force in England on 6 April 2020 specifies puppies and kittens can be sold to third party sellers in Wales.
- 7.4 Scotland are also planning to introduce legislation to ban third party sales of puppies and kittens which could leave Wales in a vulnerable position.
- 7.5 The existing licensing regime will continue. Licences are issued/renewed on an annual basis following inspection.
- 7.6 For Local Authorities, Regulation 12 of the Animal Welfare (Licensing of Activities Involving Animals) (Wales) Regulations 2021 allows them to charge such fees as considered necessary for the consideration of an application for the grant of a licence, or its renewal or variation, including any inspection relating to that consideration, and for the actual grant, renewal or variation of a licence. Fees can also be charged for the reasonable anticipated costs of consideration of a licence holder's compliance with the Regulations and the licence conditions to which the licence holder is subject in circumstances other than those described in the Regulations, including any inspection relating to that consideration; the reasonable anticipated costs of providing information to the Welsh Ministers in line with regulation 30; and the reasonable anticipated costs of enforcement in relation to the licensable activity of an unlicensed pet shop owner. Whilst the fees charged must not

exceed the reasonable costs of the consideration of the points outlined in this paragraph, the Regulations should allow for any enforcement action to be cost-neutral.

Option 2: Introduce a licensing or registration scheme which would allow commercial third party sellers to continue to sell puppies and kittens, subject to certain conditions.

- 7.7 This option would have the same impact as Option 1 'Do nothing'. It would be cost neutral as existing legislation permits local authorities to add conditions to license holders. This option does not meet the commitment to ensuring a high standard of welfare for all animals kept in Wales is maintained at all stages of their life.
- 7.8 Campaigners for Lucy's Law believed regulating commercial third party sales is ineffective to prevent harm and a ban is therefore necessary.
- 7.9 This option is not being considered further.

Option 3: Ban the commercial third party sale of puppies and kittens

- 7.10 This option does meet the Welsh Government commitment to ensuring a high standard of welfare for all animals kept in Wales is maintained at all stages of their life.
- 7.11 There are 115 licensed pet shops in Wales, of which 10 currently hold licenses permitting them to sell puppies and kittens. There are many issues associated with commercial third party sales, including the poor welfare conditions, trauma of transportation, premature separation from the mother, lack of socialisation, poor health and hygiene standards and lack of medical screening for breeding bitches and stud dogs. All these result in puppies potentially having debilitating inherited diseases and conditions, vulnerability to life threatening diseases, behavioural problems and lack of socialisation. The responses to the consultation for the ban of commercial third party sale of puppies and kittens suggest overwhelming support for a ban.
- 7.12 A ban is seen as only the first step necessary to improve the welfare of dogs and cats and their offspring. The combination of new Regulations on pet sales and a three year, Welsh Government funded, project tackling barriers to enforcement; enhanced training; better guidance; and improved use of resources within local authorities for improvements to the enforcement and delivery of the existing Breeding Regulations will result in lasting improvements to the welfare standards of puppies bred in Wales.
- 7.13 The new Regulations would repeal and replace the Pet Shop Act 1951 would continue to allow local authorities to charge such fees as

considered necessary for the consideration of an application for the grant of a licence, or its renewal or variation of licences permitting the sale of animals as pets. Fees can also be charged for the reasonable anticipated costs of consideration of a licence holder's compliance with the Regulations and the licence conditions.

Assessment of impact on business

- 7.14 The puppy market is in many respects, complicated and poorly understood. There is a high demand for puppies - in the region of 750,000 puppies per annum across the UK and around 55,000 in Wales each year. From the information available sales from licensed third party sellers accounts for a small proportion of the overall puppy sales. With a very significant, if not a majority, of these puppies being bred by low volume breeders who operate totally independently of each other and who sell from domestic premises.
- 7.15 It is estimated a ban would generate a direct cost of between £2.0m and £3.6m per year to commercial third party sellers in Wales, as they would lose the future profits they would have continued to make from third party sales in the absence of a ban. It is likely the ban would also have an impact on breeders who currently sell via third party sellers.
- 7.16 We have assumed that a proportion of these breeders would no longer be able to operate as a result of a ban on third party sales; if so they could incur an annual direct cost of between £75,000 and £130,000 per annum from the loss of future profits. Breeders that stay in the market would have to sell directly to consumers rather than selling via third party sellers. We anticipate that they would see an increase in profits as they would be able to sell their puppies and kittens for the market rate rather than a discounted rate. We estimate an annual direct benefit to breeders of between £1.4m and £2.6m.
- 7.17 In addition the market share of breeders who drop out of the market might be picked up by other domestic breeders, and domestic breeders might also pick up the market share previously associated with imported puppies and kittens which were sold by third party sellers. These impacts have been classed as indirect benefits and have not been monetised at this stage.

Expected level of business impact

- 7.18 The table below shows the expected impacts to businesses associated with option 3, relative to the baseline (option 1 – do nothing).

Expected impacts of Options 3 relative to baseline (Option 1 - Do Nothing)		
Cost to third party sellers	They would no longer be able to sell puppies and kittens without breeding them and so would lose the profits they currently get from third party sales	Annual cost of between £2.0m and £3.6m per annum. (direct impact)
Cost to breeders	Some breeders may leave the market if they can no longer sell via a third party.	Annual cost of between £75,000 and £130,000. (direct impact)
Benefit to breeders	By selling the animals directly to consumers, breeders are expected to get a higher revenue from doing so (as they will no longer split the profits with third parties).	Annual benefit of between £1.4m and £2.6m million (direct impact)
Benefit to breeders	Some breeders may pick up the market share of other breeders who leave the market, and may pick up the market share previously held by imported animals which were sold by third party sellers.	Annual unquantified benefit (indirect impact)

7.19 There is significant uncertainty around the size of these impacts. The data available on third party sales of puppies and kittens is limited. In order to quantify these impacts, we have used evidence from a number of sources including evidence collected by DEFRA through a Call For Evidence (CFE) - to try and assess the scale of the existing trade, the size of the impacts and the number of businesses affected but there are lots of evidence gaps, particularly for kittens.

7.20 Information provided by the RSPCA in response to Defra's Call for Evidence estimated there were between 40,000 and 80,000 puppies sold via a third party seller in Great Britain each year (prior to the ban in England).

7.21 To apportion these figures WG have used the latest regional data published by the UK Pet Food Manufacturers Association (UK PFMA)¹⁰ which shows approximately 7.4% of the GB dog population lives in Wales. On this basis, we estimate between 3,000 and 6,000 puppies are sold via a third party seller in Wales each year. The estimate of the number of puppies sold via a third party seller in Wales each year has a significant bearing on the scale of the impact of the Regulations on sellers and breeders. Given the uncertainty around the number of third party sales, we have undertaken sensitivity analysis looking at the impact of changing this variable. The sensitivity analysis is on page 17.

7.22 Data from the UK PFMA¹¹ shows there were approximately 596,000 cats living in Wales in 2018. Taking the average life of a cat to be

¹⁰ <https://www.pfma.org.uk/dog-population-2018>

¹¹ <https://www.pfma.org.uk/cat-population-2018>

approximately 14 years and assuming that the cat population remains broadly stable, this suggests there will be 42,500 kittens sold in Wales each year. The proportion of kittens sold via a third party seller is believed to be lower than that for puppies. In the absence of firm evidence, we have assumed 3% of kittens are sold via a third party seller or approximately 1,300 kitten each year.

7.23 The following sections set out how the cost estimates have been calculated.

Cost to third party sellers in Wales (see also Sensitivity Analysis 7.40)

7.24 There will be a cost to third party sellers as the ban means they will lose the profit on the sale of any puppies and kittens which they have not bred.

7.25 The value of a puppy has increased significantly during 2020 as the lockdowns introduced across the UK to help combat coronavirus have generated a surge in demand. Data from the Pets4homes website suggests the average price of a puppy in 2020 was £1,875, this is more than double the price recorded in the corresponding period in 2019 (£810).

7.26 Whether the higher prices will be sustained is unclear. Covid-19 vaccinations are now being rolled out and it is hoped the type of national lockdown experienced in 2020 and the start of this year will not be required going forward. As a result, Welsh Government anticipate that the demand for puppies and the price of puppies will return to pre-lockdown levels (this is considered further in the sensitivity analysis). The following calculations are therefore based on the average cost of a puppy in 2019, which was £810. Applying this average value to the estimated number of puppies sold via a third party seller in Wales each year gives a range for the annual revenue of between £2.4m and £4.8m.

7.27 As above, we estimate around 1,300 kittens are sold via third party in Wales each year. Based on the Pets4homes website, we have assumed that the average price for a kitten is £480. The revenue generated from the third party sale of kittens in Wales each year is therefore estimated to be £0.6m.

7.28 Overall, the annual revenue generated from the third party sale of puppies and kittens in Wales is estimated to range between £3.0m and £5.4m.

7.29 To estimate the cost of the ban to third party sellers, we need to understand how the revenue from third party sales is split between the sellers and the breeders and also the costs which third party sellers incur prior to the sale. Evidence on the split of revenue between sellers and breeders is limited.

730 The Canine Action 2016 report¹² states that Welsh breeders responding to the 2011 Welsh licensing Consultation indicated that around 60% of the sales value goes to third party sellers. A 2017 Scottish Government report¹³ included a case study which showed UK third party sellers of puppies imported from Ireland were getting around 86% of the sales revenue. Taking an average of these two reports gives a central estimate of the third party seller's share of the revenue of 73%. In the absence of any alternative evidence, the same revenue split is assumed for the third party sale of kittens.

7.31 Based on this, the seller's share of the revenue from the third party sale of puppies and kittens is estimated to be between £2.2m and £4.0m per annum.

7.32 Third party sellers would be expected to incur some costs in the period between receiving puppies and kittens from their breeder and the point of sale (for example, for food and accommodation). These costs are estimated to be £50 per puppy and £35 per kitten. Taking these costs into account gives an estimate of the profit third party sellers will lose as a result of a ban of between £2.0m and £3.6m per annum.

Cost to breeders

7.33 Breeders who currently sell via a third party will not necessarily be forced out of business by a ban on third party sales. A large proportion of these breeders are expected to choose to continue breeding and to sell the puppies and/or kittens to consumers directly. However, for a variety of reasons (such as location or security issues), this will not be an option for all breeders. The Canine Action 2016 report considered whether rural location in Wales would act as a hindrance to direct selling and found 89% of breeders that sold puppies to third parties are based in postal areas where direct sale should be feasible. This figure is based on breeders in one rural area in Wales and does not consider factors other than location (e.g. security). For the purposes of this RIA, we have assumed that 20% of breeders who currently sell via a third party will have to drop out of the market if a ban is introduced. This assumption is considered further in the sensitivity analysis.

7.34 We estimated above that 73% of the revenue from the third party sale of puppies and kittens goes to the seller and this leaves 27% of the revenue for the breeders. However, not all of the puppies and kittens sold in Wales via a third party seller will have been bred in Wales or even the UK. The impact of a ban on overseas breeders is outside of the scope of this RIA and so the revenue figures need to be adjusted

¹² <https://cariadcampaign.files.wordpress.com/2016/05/licensed-third-party-puppy-vending-in-gb-20164.pdf>

¹³ <http://www.gov.scot/Publications/2017/11/1736/347297>

to reflect this. Canine Action's 2016 report¹⁴, found around 12% of pet shops were importing puppies from outside the UK. There have been reports during the 2020 lockdowns of an increase in the number of puppies imported into the UK but in the absence of firm evidence of this, the 12% figure has been used. The number of kittens imported into the UK for sale is believed to be significantly lower and so a figure of 2% has been used. The revenue to UK breeders from the third party sale of puppies and kitten is therefore estimated to be between £0.7m and £1.3m.

7.35 Assuming that 20% of UK breeders will drop out of the market and experience a loss of revenue as a result of the ban, we estimate a loss in sales revenue to UK breeders of between £145,000 and £260,000 per year. To calculate the loss of profit, we need to take account of the costs the breeders incur. In the absence of alternative evidence, it is assumed that breeder's profits are 50% of the revenue they receive from third party sales. On this basis the cost (lost profit) to UK breeders from a ban on third party sales is estimated to be between £75,000 and £130,000. Given that a large number of UK puppy breeders are based in Wales, much of this cost will fall to businesses in Wales.

7.36 It is difficult to make assumptions on the likelihood of breeders in Wales reducing the volume of their breeding stock or ceasing trading altogether as a result of the ban on third party sales. There are no current figures on how many puppies are sold via a third party from breeders in Wales. The third party sale ban in England may have provided some information on the impact on breeders in Wales had it not been for the timing of the Covid-19 pandemic and subsequent lockdowns. During this time it was permitted for breeders to deliver puppies to purchasers and therefore eliminating the possibility of following the recommended advice of viewing the puppy with its mother. Due to the significant increase in demand for puppies during this time, and the inflated prices people were prepared to pay for them it would be unlikely that large scale breeders would opt out of the market due to the closure of their previous route to market.

Benefit to breeders

7.37 Although the evidence on why breeders choose to sell via third party sellers is limited, we expect the majority of breeders will to continue to operate and to sell their puppies and kittens directly to consumers and potentially for a higher price than if they had sold them to a third party seller. While the breeder would be expected to incur some additional costs by selling directly to consumers (when compared to selling to a third party) such as advertising the animals for sale and additional feed costs, the higher selling price would be expected to cover those costs. There would therefore be a potential benefit to breeders.

14 <https://cariadcampaign.files.wordpress.com/2016/05/licensed-third-party-puppy-vending-in-gb-20164.pdf>

7.38 It is anticipated that the profits which currently go to third party sellers could instead be captured by breeders, should they choose to remain in the market. The annual profits currently made by third party sellers in Wales was estimated to be between £2.0m and £3.6m. Adjusting this to reflect that some puppies and kittens are currently imported and the assumption that 20% of breeders would drop out of the market suggests a potential benefit for the remaining UK breeders of between £1.4m and £2.6m. Again, much of this benefit is expected to accrue in Wales.

Indirect benefit to breeders

7.39 Some breeders may pick up the market share of other breeders who leave the market and may pick up the market share previously held by imported animals which were sold by third party sellers. These benefits are classed as indirect and have not been monetised.

Sensitivity analysis undertaken by Welsh Government Economist

7.40 There are a number of areas of uncertainty in the above analysis which have required us to make quite broad assumptions in order to estimate the impact of a ban on the third party sale of puppies and kittens on sellers and breeders. The following sensitivity analysis looks at the impact of changing some of the key assumptions on the headline results in the analysis. In each case, only one assumption is changed at a time. The sensitivity analysis focuses on the assumptions around the third party sale of puppies since these have a greater impact on the results than the assumptions around kitten sales.

Number of puppies sold via a third party in Wales

7.41 The calculations in the RIA are based on a report from the RSPCA which suggests between 40,000 and 80,000 puppies were sold via a third party seller in Great Britain each year before the ban on third party sales was introduced in England. The number of third party sales in Wales is estimated by apportioning this GB figure according to Wales' share of the dog population as given by data from the UK Pet Food Manufacturers Association (7.4%).

7.42 Commercial third party sellers are those who are licensed pet sellers. However, there are relatively few pet shops in Wales which are licensed to sell puppies and kittens and unlike in England (prior to the ban on the third party sales of puppies and kittens) there are no pet 'supermarkets' selling puppies and kittens in Wales. As such, it has been suggested that apportioning the estimated number of GB third

party sales according to the size of dog population may over-estimate the number of third party sales in Wales.

- 7.43 If we were to assume that between 2% and 5% of the estimated annual GB third party puppy sales take place in Wales then this would equate to between 800 and 4,000 puppies being sold via this route in Wales each year. Including these figures in the analysis would reduce the estimated loss of profit experienced by third party sellers following a ban to between £0.8m and £2.6million per annum. Similarly, the reduction in annual profit experienced by those breeders who opt to leave the market is estimated to fall to between £30,000 and £95,000 and the potential increase in annual profit for those breeders who remain and who sell direct to customers (rather than use a third party seller) is estimated to fall to between £0.6m and £1.8m.

Response of breeders following a ban on third party sales on a UK basis

- 7.44 Another area of uncertainty in the analysis is around how domestic breeders will respond to the ban on third party sales. It has been assumed in the analysis that (for reasons of location and security etc.) 20% of breeders will opt to give up breeding puppies and kittens rather than sell directly to customers. However, it has been suggested this is an over-estimate of the likely impact and there is emerging evidence which suggests no breeders in Wales have ceased operating following the ban on third party sales in England (although as noted above, markets may currently be distorted by the pandemic and lockdowns).
- 7.45 Given it is over a year since the English Regulations were brought forward, if the percentage of breeders who are assumed to exit the market was reduced to 10% then the estimate for the reduction in annual profit for those breeders who leave the market falls to between £35,000 and £65,000. Similarly, the potential increase in annual profit for UK breeders (if the remaining breeders are able to capture the profits previously made by third party sellers) increases to between £1.6m and £2.9m.
- 7.46 If no breeders were to leave the market then the potential increase in estimated annual profit for UK breeders rises to between £1.8m and £3.2m. It follows that since no breeders leave the market, the reduction in breeders profit in this scenario is zero.

Average price of a puppy

- 7.47 As noted above, the analysis is based on the average price for a puppy in 2019 (£810) rather than the 2020 average (£1,875). This is because the pandemic and lockdowns resulted in a significant increase in the demand for and price of puppies in 2020 and we do not believe the average price in 2020 is representative of the likely average going forward.

7.48 However, if we were to assume the current high prices were actually sustained and included an average price for a puppy of £1,875 in the calculations, then the estimated loss of profit experienced by third party sellers following a ban would be between £4.3m and £8.2m per annum. The loss of profit for those UK breeders who were to leave the market (assuming 20% leave) would be between £145,000 and £280,000 per annum. The increase in annual profits for those UK breeders who remain in the market is estimated to be between £3.1m and £5.8m.

Wider impacts

Impact on Welsh Government

7.49 Sections of the Welsh public and a number of third sector organisations have been lobbying for this practice to be banned and the Welsh Government has, for a number of years, received regular correspondence to that effect. Welsh Government officials have so far this year responded to 63 letters and provided a number of briefings for AQ and WQs. Lesley Griffiths AM, then Cabinet Secretary for Energy, Planning and Rural Affairs, consulted on a ban of commercial third party sales of puppies and kittens and announced her intention to explore opportunities to bring forward legislation to ban the third party sale of puppies and kittens in Wales in June 2018, going on to consult on the The Animal Welfare (Licensing of Activities Involving Animals) (Wales) Regulations 2021 later that year.

7.50 Responding to correspondence can be time consuming with each response, on average, taking half a day of an Executive Officer (EO) or Higher Executive Officer's (HEO) time, at a daily rate of £135 or £175 respectively. Assuming a 50/50 split between EO and HEO, responding to correspondence on this subject has cost the Welsh Government ranging between £9,200 and £12,000 for the last three years. Correspondence on this subject is expected to reduce significantly if the third party sale of puppies and kittens is banned. An increase in correspondence from those opposing a ban, or from those calling for a ban to be extended to other species, cannot be ruled out, however this is unlikely to be anywhere near the same scale. The costs associated with this are therefore unknown.

7.51 There will be a small implementation cost to the Welsh Government in developing guidance on the Animal Welfare (Licensing of Activities Involving Animals) (Wales) Regulations 2021. The development of guidance, based on an estimate of 5,000 words, including engaging stakeholders to ensure it is fit for purpose, is anticipated to take approximately four weeks over a period of three months of a Higher Executive Officer's time, equating to £3,500. The guidance will be available in English and Welsh. Translation and design would take up to two weeks to complete. Translation would take approximately a week

of a Higher Executive Officer's time, equating to £900. Design would require approximately a week of an Executive Officer's time, which would equate to £700. Guidance would be published on the Welsh Government website and shared electronically with Local Authorities. There would be no printing and distribution costs. All costs associated with producing guidance would be incurred in 2020-21. The total cost for preparing guidance would be approximately £5,100.

- 7.52 Costs to communicate a ban on commercial third party sales of puppies and kittens will also fall to Welsh Government. This will include publicising the change to the businesses affected, issuing Press Notices and the use of Welsh Government social media accounts. This is expected to take, at the most, the equivalent of a week of a Higher Executive Officer's time, equating to £900.

Impact on Justice System

- 7.53 The Animal Welfare (Licensing of Activities Involving Animals) (England) (Amendment) Regulations 2019 established the selling of puppies and kittens as an offence.
- 7.54 The Regulations introduce a new licensing scheme, and consequently provide a new means by which people will be held to account when selling animals as pets in Wales.
- 7.55 The Regulations do not provide for a change in the Court or Tribunals process, however there could be a minor increase in applications to the Court, should there be persons against whom action needs to be taken. As this is a new licensing scheme, it is not possible to determine the precise impact on the justice system although we anticipate this to be reasonably low as there are currently only 10 licensed third party sellers in Wales who are permitted to sell puppies or kittens.

Impact on Local Authorities

- 7.56 Local Authorities will be responsible for enforcement of the Regulations as they are for the Pet Animals Act 1951. Under section 30 of the 2006 Act, local authorities may prosecute for any offence under the Act.
- 7.57 Commercial third party sellers already need to apply for a licence and are subject to ongoing inspections. Therefore, it is anticipated there will be no additional costs. However, LAs will have the opportunity to allow for anticipated costs of registration, inspection and enforcement by charging a fee for the issue of a licence (regulation 14).
- 7.58 The fee charged for the consideration of an application for the grant, renewal or variation of a licence and for any inspection relating to that

consideration must not exceed the reasonable costs of that consideration and related inspection.

- 7.59 Licence fees across the 22 Local Authorities in Wales vary significantly due to the individual circumstances of each authority. If the 10 existing third party sellers were to stop trading the loss of income from license fees will be negligible.

Benefits

- 7.60 Existing legitimate commercial third party sales of puppies and kittens are presently undertaken by those who are licenced pet sellers: this could be a traditional pet shop type setting, dealers acting as middle men between breeders or breeders who sell puppies from litters they have not bred themselves. Currently in Wales, they are required to hold a licence under the Pet Animals Act 1951.
- 7.61 There are concerns commercial third party sales of puppies and kittens may be associated with poorer welfare conditions for the animals compared with direct purchase from the breeder. For example, the introduction to several new and unfamiliar environments, and the increased likelihood of multiple journeys the puppies or kittens have to undertake have the potential to contribute to an increased risk of disease and lack of socialisation and habituation for the puppies and kittens.
- 7.62 The Regulations are a first step towards ensuring the welfare of puppies and kittens in Wales, who are currently being bred and sold on to third parties, is improved significantly by being sold only by breeders directly to the new owner. Legislation which relates to the selling of pets should reflect best practice. Allowing commercial third parties to sell puppies and kittens means, in most cases, purchasers will not see the puppy or kitten interacting with the bitch/queen or the siblings. The ban would:
- Assist purchasers in making responsible buying decisions based on seeing a puppy or kitten with its dam/bitch and the conditions in which it has been bred.
 - Improve the welfare of puppies and kittens and dogs and cats used for breeding and reducing the sale of puppies which have not been bred to the recognised standards of welfare in Wales.
 - Incentivise welfare improvements in licenced dog breeding establishments by ensuring transparency, accountability and appropriate remuneration for breeders.
 - Align the licensing process with other Administrations. This is to ensure there are no inconsistencies between the Administrations where some breeders may cross the border to avoid being caught up in the legislation which applies to that region.
 - Provide a legislative mechanism for future changes to the Animal Welfare (Breeding of Dogs) (Wales) Regulations 2014 that will

align the licensing process more closely with the other Administrations.

- Provide a future opportunity to include other licensed animal welfare establishments including, but not exclusively, Horse Stables, Riding Schools and

7.63 The proposal on a ban on commercial third party sales of puppies and kittens, generally, has been well received and supported by the public, animal health and welfare organisations.

7.64 Lucy's Law campaign in England called for an immediate ban on the sale of puppies by pet shops and other commercial third party dealers. Lucy was a King Charles spaniel who was an ex-breeding bitch in very poor condition. Lucy was rescued and adopted in 2013 and became the mascot of anti-puppy farm campaign. She died in December 2016 and Lucy's Law was named in her honour.

7.65 The petition associated with the campaign gained over 100,000 signatures and was debated in Parliament on 21 May 2018. It called for an immediate ban on the sale of puppies by pet shops and other third party commercial sellers. The ban came into force on 6 April 2020.

7.66 Local Authorities across the UK were asked to sign up to the principles of Lucy's Law and there was widespread support from Local Authorities in Wales.

7.67 Both Welsh Government's consultations in 2019 and 2020 have shown widespread support for the ban. However this is seen as only the first necessary step to improve the welfare of dogs & puppies and cats & kittens. The combination of new regulations on pet sales and a three year, Welsh Government funded, project tackling barriers to enforcement; enhanced training; better guidance; and improved use of resources within local authorities for improvements to the enforcement and delivery of the existing Breeding Regulations will result in lasting improvements to the welfare standards of puppies bred in Wales.

7.68 Pet shops will continue to be welcome in Wales, provided they do not sell puppies and kittens through a third party. Following a period of transition, the 10 pet shops affected by the ban should be able to successfully continue to trade. The small and declining number of pet shops who hold licences to permit them to sell puppies and kittens suggests their presence is not a major factor in determining the popularity for the demand of puppies and kittens amongst breeders.

7.69 Clearly a ban on commercial third party sales of puppies and kittens will have an effect on breeders operating model, though this would be a desirable disruption. For larger, more commercial establishments it might impact on the speed in which they can sell their puppies. Whereas a third party seller may collect whole litters of puppies for onward re-sale, the overwhelming majority of the wider puppy buying

public will only buy one puppy at a time. This is likely to result in the licence holder (staff) having to spend more time conducting puppy sales, which may reduce the available time to look after the other puppies and dogs at the establishment. Should a ban come into place, a transition period will be provided for licence holders to make adjustments to their operating procedures to address this, in conjunction with their licensing authority.

- 7.70 The way we treat animals is an important reflection of the values of our society. It is increasingly difficult to justify breeding puppies and kittens, removing them from their mother at such a young age and kept in poor conditions. Responses to the consultation on the ban of commercial third party sales suggest there is overwhelming support for a ban. A ban will contribute to encouraging respectful and responsible attitudes, particularly the developing attitudes of children and young people, towards all species. It will also contribute to an improved perception of pet shops and how puppies and kittens are bred.
- 7.71 Breeders who currently sell puppies via third parties may need to improve their 'shop floor', as third party sellers will have less concerns regarding the upkeep and standards of the breeder's establishment, than someone looking for their next pet.
- 7.72 However, given the question is limited to licensed breeders, we must assume that these breeders should have nothing to fear from the public buying their puppies direct from their establishments. We know that the puppy buying public will travel significant distances to buy puppies, so a breeder who gains a good reputation will have no problem selling their puppies direct from their breeding establishment. The reduction in volumes of puppies being sold will be offset by the increased sales prices, as the third party seller will be a sizable cut of the eventual puppy sales price to cover their costs and generate their own revenue.
- 7.73 A puppy who is properly reared in their early weeks will be far more likely to grow up confident, calm, more open to learning new things, less likely to respond to new experiences fearfully or aggressively – in short, more likely to become a good family dog.
- 7.74 The critical puppy socialization period up to 12 weeks of age is a time of rapid learning. A puppy not exposed to sufficient experiences, people, other animals and noises during this time is unfortunately destined for a lifetime of fear and sometimes aggression problems.
- 7.75 Social exposure for a kitten should begin at 3-4 weeks of age. Kittens do best when worked with by 9 weeks of age, but earlier is better. Non-threatening, ideally positive, experiences with multiple animals of the same and other species, people, stimuli and common life experiences for pet animals such as handling and transportation. Social interactions should continue to be reinforced throughout the animal's life as

necessary to support good temperament and promote the wellbeing of the animal.

7.76 Puppies sold via commercial third party sellers are exposed to a number of inherently stressful, challenging events which fall within key periods of development and hence are likely to detrimentally impact on behaviour, health and welfare. These events include:

- Potential for abrupt/early separation of puppies from their mothers and littermates before 7-8 weeks of age which interrupts the natural process of weaning and may inflict acute and/or chronic stress.
- Likelihood of multiple journeys especially for those puppies who are imported from Ireland and the Continent e.g. from breeder to place of sale to buyer or breeder to broker to place of sale to buyer. Studies which have measured the impact of transportation on dog welfare have shown that transportation is stressful and multiple factors are likely to contribute to this stress including handling, containment, ventilation, and temperature, driving style, access to food and water and opportunities for exercise.
- Introduction to new and unfamiliar people as well as environments including vehicles, in some cases broker accommodation, place of sale and the subsequent buyer's residence which will likely result in behaviours associated with fear.
- Introduction and mixing of young and unfamiliar animals which may pose a disease risk especially within the premises of those sellers who also breed their own dogs. As puppies may be separated from their mother and littermates before 7-8 weeks and are typically vaccinated at eight and ten weeks, puppies are highly likely to be unprotected against diseases including canine parvovirus and distemper virus.

7.77 There is plenty of evidence to suggest that pets make great companions for children of all ages, particularly helping in reducing mental health problems and anxiety. For example, Bishop of Llandaff High School¹⁵, Cardiff brought a black Labrador puppy permanently into the school setting in 2019. The 'wellbeing dog' reduces the pupils' anxiety and helps 'children with their mental health'. There is evidence to suggest that children with disabilities, including autistic children, find even more joy in petting animals. Pets can offer formal therapy, but also everyday assistance.

7.78 The main conclusions of the research conducted by National Autism Team¹⁶ suggests the whole family, not just the autistic child, benefits from introducing a dog into the family home. It can often reduce stress, encourage socialising and bring about healthy routines, such as going out for a walk twice a day. However, it is clear that this is an area lacking

15 <https://www.itv.com/news/wales/2019-07-15/meet-georgie-the-therapy-dog-whos-delighting-pupils-at-a-welsh-high-school>

16 <https://www.autism.org.uk/advice-and-guidance/topics/strategies-and-interventions/strategies-and-interventions>

in scientific research and many of the findings are based on anecdotal evidence.

- 7.79 In 2010, Dogs for the Disabled ‘received a research grant from the Big Lottery Fund to investigate exactly how pet dogs can benefit and improve the wellbeing and development’ of autistic children and their families.

The study found that pet dogs can:

- have a profound impact on the wellbeing on the entire family,
- improve parent-child relationships,
- reduce parental stress levels,
- improve child behaviour,
- enable the child to stick to routines independently,
- Provide the child with a greater sense of responsibility.

- 7.80 In their research paper ‘What Factors Are Associated with Positive Effects of Dog Ownership in Families with Children with ASD?’ (2016)¹⁷, Sophie Susannah Hall, Hannah F Wright, and Daniel Simon Mills look at the benefits of introducing autistic children to an environment where there is a dog present.

- 7.81 It is therefore essential for any puppy who is purchased for any of these reasons is socialised in the right environment. A puppy who is properly reared in their early weeks will be far more likely to grow up confident, calm, more open to learning new things, less likely to respond to new experiences fearfully or aggressively – in short, more likely to become a good family dog.

- 7.82 Responsible ownership of a dog includes making sure your dog is walked daily. However there are many benefits to owner such as improved cardiovascular fitness, lower blood pressure, stronger muscles and bones (built up by walking regularly), and decreased stress. Therefore it is essential that the puppy is properly socialised at a young. Socialising teaches your dog how to react to the world around it in a healthy way, without unnecessary fear or aggression.

- 7.83 On 30th September 2019 BBC Wales broadcast a programme called BBC Investigates: Inside the UK’s Puppy Farm Capital. The BBC programme primarily looked at the conduct of licenced dog breeders under the Animal Welfare (Breeding of Dogs (Wales) Regulations 2014. The BBC had five examples of licenced breeders keeping dogs in conditions which expert independent vets have told them are completely unacceptable.

- 7.84 A ban on commercial third party sales of puppies and kittens will also go some way to rebuilding Wales’s damaged reputation in regard to

¹⁷ <https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0149736>

dog breeding. A view which is echoed in responses received through the consultation.

- 7.85 A ban on commercial third party sales of puppies and kittens may have an impact on rehoming shelters. With fewer animals available from others sources this could encourage people to purchase from an animal shelter instead. Rehoming shelters should also see a reduction in the number of animals who are abandoned due to health problems or an impulse buy. Unwanted puppies regularly take space in shelters across the UK. This peaks after Christmas and dogs/cats bred specifically for this purpose find themselves in shelters. The over production of puppies and kittens in the UK is constant throughout the year.

8. Consultation

- 8.1 The first public consultation on the Banning of Third Party Sales of Puppies and Kittens ran for twelve weeks 19 February 2019 -17 May 2019. The consultation was published on the Welsh Government website and publicised in newsletters and via various social media platforms. This consultation looked at evidence on what stage the government should intervene in large scale breeding premises and address concerns about animal welfare. There were 458 responses to the consultation.
- 8.2 Officials also attended the RSPCA Cymru's Big Walkies event on 18th May 2019 and the Royal Welsh Horticultural Show in July 2019 to engage with children and young people on the issue of responsible ownership and buying pets. These events provided officials the opportunity to conduct a data capture exercise with children and young persons through a questionnaire. The questions were not specific in regards to an opinion on the ban but the information gathered identified a gap in education concerning the conditions and welfare of the animals sold by commercial third party sellers.
- 8.3 A final eight week public consultation on the draft banning of commercial third party sales of puppies and kittens was published on 22 June 2020. Respondents were asked nine questions relating to the general policy, economic impacts, the provisions of the Regulations and impacts on the Welsh language. There were 226 responses to the consultation. Responses were received from the general public, third sector organisations, and the British Veterinary Association and enforcement bodies.
- 8.4 Alongside the full public consultation, Welsh Government worked with Children in Wales through its Young Wales initiative, to conduct a children and young person's consultation asking them to give their views on banning third parties sales of puppies and kittens.
- 8.5 There was a focus on four key questions with an aim to hear children and young people's voices and recommendations to further inform and

support the development of the new legislation; which is part of our children and young people's participation agenda.

- 8.6 During July and August Young Wales conducted an online consultation to seek the views of children and young people in relation to banning third party sales of puppies and kittens. Young Wales received 59 responses from children and young people across Wales with ages ranging from under 10 to 21 years old. 96% of respondents agreed with a ban, 2% disagreed and 2% were unsure.
- 8.7 All responses were analysed and a summary of the responses was published 5 October 2020 <https://gov.wales/ban-commercial-third-party-sales-puppies-and-kittens-young-peoples-consultation>
- 8.8 Following the responses to the consultation being fully reviewed and analysed, Welsh Government took into account all the evidence received from the public, animal welfare organisations and our stakeholders and could confirm a ban on commercial third party sales of puppies and kittens would be brought forward before the end of the Senedd.
- 8.9 Both Welsh Government's consultations responses (2019 and 2020) have shown widespread support for the ban. A small number of negative comments were recorded from our final consultation this year mainly from members of the public. They felt the existing Pet Animal Act 1951 is comprehensive enough for pet shop owners to keep animals in appropriate conditions. However it is worth highlighting the proposal to ban third party sales is considered to be only one of the steps necessary to improve the welfare of dogs and cats at breeding premises in Wales. Welsh Government are working closely with Local Authorities, with work underway in relation to tackling barriers to enforcement; enhanced training; better guidance; and improved use of resources within local authorities as part of a three year Welsh Government funded project.

9. Competition Assessment

- 9.1 A Competition Assessment has been undertaken to assess the potential impact of banning the commercial third party sales of puppies and kittens in Wales. This policy is not expected to have a significant detrimental effect on competition within the breeding industry. The policy does not discriminate between breeders, applying equally to all. The results of a filter test (consisting of nine yes/no questions) which support this conclusion are below, followed by evidence to support the answers.

9.2 Table: Filter test for banning the commercial third party sales of puppies and kittens in Wales.

The competition filter test	
Question	Answer yes or no
Q1: In the market(s) affected by the new regulation, does any firm have more than 10% market share?	NO
Q2: In the market(s) affected by the new regulation, does any firm have more than 20% market share?	NO
Q3: In the market(s) affected by the new regulation, do the largest three firms together have at least 50% market share?	NO
Q4: Would the costs of the regulation affect some firms substantially more than others?	NO
Q5: Is the regulation likely to affect the market structure, changing the number or size of firms?	NO
Q6: Would the regulation lead to higher set-up costs for new or potential suppliers that existing suppliers do not have to meet?	NO
Q7: Would the regulation lead to higher ongoing costs for new or potential suppliers that existing suppliers do not have to meet?	NO
Q8: Is the sector characterised by rapid technological change?	NO
Q9: Would the regulation restrict the ability of suppliers to choose the price, quality, range or location of their products?	NO

9.3 There would be a transition period to allow pet shop owners to consider a different operating model to mitigate any potential impact. Whilst the proposed legislation does not allow third parties to sell puppies and kittens under 6 months of age this will not be the case if you have bred the animal at the premises. Pet shops will also be permitted to sell dogs and cats over the age of 6 months.

9.4 The costs of adhering to the ban will affect the 10 licenced commercial third party sellers which currently sell puppies and kittens, but not those which do not, or new entrants. There may be an increase in costs to pet shops who choose to adapt their business model to breed puppies and kittens, in the short term at least, but the degree to which they will be affected will depend on a number of factors and there may be cost savings from not purchasing via a third party seller.

9.5 The incentives of complying with the ban will outweigh the incentives for non-compliance. An offence would be committed by the person who commercially sells puppies or kittens if they are not the owner of the mother/dam. A person guilty of such an offence is liable on summary conviction to a fine.

- 9.6 The Blue Cross started their research in February 2016 and produced the report: [Unpicking the Knots](#). It says buying a pet in the UK is a postcode lottery and the welfare of thousands of pets being bred and sold is at risk. They mention that under resourced local authorities are struggling to cope with enforcing welfare standards for pet shops and dog breeders and an ever growing unlicensed online pet trade means that animals are slipping under the radar entirely, with breeders making thousands of pounds while putting pets at risk.
- 9.7 A ban on commercial third party sales of puppies and kittens may have an impact on rehoming shelters. With fewer animals available from others sources this could encourage people to purchase from an animal shelter instead. Rehoming shelters should also see a reduction in the number of animals who are abandoned due to health problems or an impulse buy. Unwanted puppies regularly take space in shelters across the UK. This peaks after Christmas and dogs/cats bred specifically for this purpose find themselves in shelters. The over production of puppies and kittens in the UK is constant throughout the year.
- 9.8 Justification for the ban to meet the policy objective was evident from overwhelming support from respondents to the consultation. Consumers would, with confidence, be able to source a puppy and kitten safe in the knowledge they have been properly reared in their early weeks and will be far more likely to grow up confident, calm, more open to learning new things, less likely to respond to new experiences fearfully or aggressively – in short, more likely to become a good family dog.

10. Post implementation review

- 10.1 It is important to note the proposal to ban third party sales is considered to be only one of the steps necessary to improve the welfare of puppies and kittens at breeding premises in Wales. Welsh Government are working closely with Local Authorities, with work underway in relation to tackling barriers to enforcement; enhanced training; better guidance; and improved use of resources within local authorities as part of a three year Welsh Government funded project.
- 10.2 It would be appropriate to consider reviewing the legislation following completion of the Local Authority Enforcement Project on dog breeding. At that time, it may be appropriate to consider incorporating other licensable activities involving animals in to these Regulations. This would give an opportunity to:
- Align the licensing process with other Administrations. This is to ensure there are no inconsistencies between the Administrations where some breeders may cross the border to avoid being caught up in the legislation which applies to that region.

- Provide a future opportunity to include other licensed animal welfare establishments including, but not exclusively, horse stables and riding schools.
- Provide a legislative mechanism for future changes to the Animal Welfare (Breeding of Dogs)(Wales) Regulations 2014



Dr Edward Hayes
Head of Public Affairs
The Kennel Club
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London
W1J 8AB

Legislation, Justice and Constitution Committee
Welsh Parliament
Cardiff Bay
CF99 1SN

9 March 2021

Dear Chair,

We are writing with regard to The Animal Welfare (Licensing of Activities Involving Animals) (Wales) Regulations 2021. We are aware that the Regulations will be going back to the Committee on 22nd March and are very concerned by their potential unintended consequences.

The Kennel Club firmly believes that, due to the drafting of the regulations, their scope of impact will be much wider than the Government's stated aim to prohibit commercial third party sales of puppies and kittens in Wales and will introduce a new licensing threshold for one to two litter breeders. Legitimate low volume breeders who are explicitly out of scope of The Animal Welfare (Breeding of Dogs) (Wales) Regulations 2014 – i.e. breeders with one or two bitches, producing one or two litters in a 12 month period – could reasonably fall within the scope of the new regulations. If they are deemed to be selling their puppies as pets in the course of a business, as outlined in Schedule 1, (1) and (2), the regulations as drafted would surely necessitate the acquisition of a 'pet vending' licence. Since the introduction of an identically worded 'business test' licensing threshold in England in 2018, we have seen a number of one and two litter dog breeders being deemed to be operating a business by overzealous local authorities.

The Welsh Government did not consult on the introduction of a de facto new licensing threshold for dog breeders in either the 2019 or 2020 consultations, nor has this been taken into account in the legislation's accompanying explanatory memorandum or accompanying regulatory impact assessment. As such, we are highly concerned that the Regulations' implications – in terms of the general puppy buying public, breeders and licensing authorities – will not have been duly considered.

We believe that the implementation of a licensing regime whereby some dog breeders would need to adhere to the conditions set out within the 2014 breeding regulations, others by these new 'pet vending' conditions, and a third group of unlicensed breeders would introduce excessive and unnecessary complications for all relevant stakeholders.

Furthermore, we do not believe the implementation of this licensing threshold for dog breeders would be in line with the recommendations of the recent independent review of Welsh dog breeding regulations. The expert panel, commissioned by the Welsh Government, highlighted that the extension of 'full licensing' (i.e. inspections) to one and two litter dog breeders, as being introduced in practice by this legislation, would require a significant increase in local



authority resources to enable effective implementation, which was a major factor as to why they did not support such a measure.

The panel also highlighted the significant unintended and unwanted consequences that such a step could result in: “Many of the best welfare conditions for the breeding of dogs occur in low volume, home breeding situations with an owner who may wish to have one or two litters from a well looked after, well socialised, pet dog. There is therefore a legitimate argument that full licensing of all breeders, regardless of size, could deter the best small-scale breeders from continuing. This reduction of supply in the face of ongoing demand for puppies could inadvertently lead to an increase in the sourcing of dogs from lower welfare situations including large-scale licensed breeding establishments, illegally unlicensed establishments, or those imported from overseas.”

In the Welsh Government’s formal response to the Group’s recommendations, there was no indication that the Government felt that one and two litter dog breeders should come under the scope of a licensing regime. Whilst we clearly note that these new regulations do not amend the 2014 breeding regulations, we believe that they will have an equivalent effect in practice.

The Kennel Club fully supports the principle aim of the legislation to prohibit the commercial third party sale of puppies and kittens in Wales. However, we firmly believe that the draft regulations exceed what the Welsh Government has consulted upon and assessed within the accompanying explanatory memorandum and impact assessment. As such, we believe that the scope of the Regulations, in their current form, far exceeds what the Welsh Government stated they hoped to achieve by introducing a new licensing threshold for one and two litter breeders in Wales.

We urge you to consider these points when the Regulations come before your Committee and to seek further clarification from the Welsh Government on this matter.

Yours sincerely,

Dr Edward Hayes
Head of Public Affairs
The Kennel Club

Lesley Griffiths MS
Minister for Environment, Energy and Rural Affairs

15 March 2021

Dear Lesley

The Animal Welfare (Licensing of Activities Involving Animals) (Wales) Regulations 2021

At our meeting this morning we considered a letter from The Kennel Club in relation to The Animal Welfare (Licensing of Activities Involving Animals) (Wales) Regulations 2021 (letter enclosed).

We have not yet undertaken formal scrutiny of the Regulations, as per our role set out in Standing Orders. However, given that a motion to approve the Regulations is currently scheduled to be debated and decided on next Tuesday, the 23rd March, we agreed to draw the concerns of The Kennel Club to your attention at the earliest opportunity.

Our report on the Regulations will be shared with you in due course.

I am copying this letter to The Kennel Club.

Yours sincerely



Mick Antoniw MS

Chair of the Legislation, Justice and Constitution Committee

Croesewir gohebiaeth yn Gymraeg neu Saesneg
We welcome correspondence in Welsh or English



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Agenda Item 4.12

SL(5)790 – The Agricultural Support (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2021

Background and Purpose

These Regulations make amendments to retained EU law and domestic law governing the rural development programme to put in place a domestic framework to fund new rural development schemes in Wales following the end of the EU Implementation Period and to ensure that framework is efficient and effective.

In addition, these Regulations make minor, technical amendments to retained EU law in relation to direct payment schemes to address errors and ensure that the law functions efficiently and effectively.

These Regulations also incorporate references to the Well-being of Future Generations (Wales) Act 2015 and the Environment (Wales) Act 2016 into the aim of the support for rural development.

The Committee noted a previous version of these Regulations and a draft Report on those Regulations at its meeting on 15 March 2021. These Regulations address the technical scrutiny and merits scrutiny points raised in the Committee's draft Report.

Procedure

Draft Affirmative.

The Welsh Ministers have laid a draft of the Regulations before the Senedd. The Welsh Ministers cannot make the Regulations unless the Senedd approves the draft Regulations.

Technical Scrutiny

The following point is identified for reporting under Standing Order 21.2 in respect of this instrument.

1. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements.

Regulation 6(3)(h) omits the definition of "*accounting year*" from Article 2(29) of Regulation (EU) No. 1303/2013. Although regulation 6(32) amends Article 127(1) of Regulation (EU) No. 1303/2013 to omit "*for an accounting year*" and "*during an accounting year*", that definition remains in Article 127(4).

Merits Scrutiny

The following 2 points are identified for reporting under Standing Order 21.3 in respect of this instrument.



2. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy to be of interest to the Senedd.

In several places in retained EU law, these Regulations substitute “shall” for “may” and also use “must” in place of “shall” within substituted text. In other places these Regulations use “shall” within substituted text.

Specifically, regulation 7(7) uses “shall” when “must” is used on an earlier and later occasion within the same substituted text of Article 6 of Regulation (EU) No. 1305/2013.

It is noted that the Welsh Government’s response to this point, when raised on the previous version of these Regulations was:

“We note that there is inconsistency in the use of “shall” and “must”, but that this will not change the effect of the substituted text.”

3. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy to be of interest to the Senedd.

It is noted that the Explanatory Memorandum states that these Regulations are considered by Officials:

“to be routine technical amendments to the rural development legislative framework that, for example, remove requirements for the approval and amendment of rural development programmes by the European Commission as this will no longer be operable post the end of the EU Implementation Period. This aligns the administrative and governance process for rural development support with standard Welsh Government procedures and Senedd scrutiny. The Instrument will have no significant effect on public or private sectors, charity or voluntary sectors.”

However, the Explanatory Memorandum also explains that these Regulations “put in place a domestic framework to fund new rural development schemes in Wales following the end of the EU Implementation Period”, simplify “the governance and administration of support for rural development” and incorporate “references to the Well-being of Future Generations (Wales) Act 2015 and the Environment (Wales) Act 2016 into the current mission, objectives and priorities for rural development support as set out in the legislation”.

The Code of Practice on the carrying out of Regulatory Impact Assessments includes the following exception to carrying out a regulatory impact assessment:

“where routine technical amendments or factual amendments are required to update regulations, etc. that have no major policy impact”.

Although this exception appears to apply to some of the amendments made by these Regulations, other provisions, particularly given the explanation referenced above, appear to constitute more than routine or factual amendments. It is not clear that any of the other exceptions under the Code apply to these Regulations.



In the Committee's draft Report on the previous version of these Regulations, the Welsh Government was asked to confirm which exception under the Code applies to the decision not to produce a regulatory impact assessment.

It is noted that the Welsh Government's response to that point was:

"The Welsh Government considers the Regulations to be routine technical amendments or factual amendments that are required to update regulations as the result of leaving the European Union and have no major policy impact. The Regulations enable a domestic framework to be put in place but do not create any new financial implications, criminal sanctions or administrative burdens that would affect the public or private sectors, charity or voluntary sectors."

Welsh Government response

The Committee is thanked for its report. The following is the response in respect of the Technical Point raised in the report.

Technical Scrutiny

Point 1

We are grateful to the Committee for bringing this to our attention.

The Welsh Government agrees that references to "accounting year" remain in Article 127(4). The Welsh Government considers this to be of minor effect and will correct these references at the next suitable opportunity.

Legal Advisers

Legislation, Justice and Constitution Committee

17 March 2021



Regulations made by the Welsh Ministers, laid before Senedd Cymru under section 50(6)(c) and (8) of the Agriculture Act 2020 and paragraph 1(8) of Schedule 7 to the European Union (Withdrawal) Act 2018 for approval of Senedd Cymru.

DRAFT WELSH STATUTORY
INSTRUMENTS

2021 No. (W.)

**EXITING THE EUROPEAN
UNION, WALES**

AGRICULTURE, WALES

**The Agricultural Support
(Miscellaneous Amendments)
(Wales) (EU Exit) Regulations 2021**

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made in exercise of the powers conferred by section 46 of, and paragraphs 2(1), 4(1) and 6(1) of Schedule 5 to, the Agriculture Act 2020 (c. 21) and paragraph 1 of Schedule 2 to the European Union (Withdrawal) Act 2018 (c. 16), in order to address operability issues and deficiencies arising from the withdrawal of the United Kingdom from the European Union and to make provision in retained EU law governing rural development programmes for securing domestic support for rural development in Wales.

Regulations 2, 3, 4 and 5 modify Regulations (EU) No. 1306/2013, 640/2014, 809/2014, and 908/2014 to the extent necessary to provide for a framework to allow the creation of a new domestic rural development support scheme.

Regulations 6 to 12 modify Regulations (EU) No. 1303/2013, 1305/2013, 480/2014, 807/2014, 808/2014, 821/2014, and 964/2014 to the extent necessary for rural development support to function effectively and to address operability issues. Those EU Regulations contain some of the rules governing rural development support. These Regulations amend that body of law

insofar as it relates to domestic support for rural development programmes only.

Part 4 of these Regulations amends domestic legislation which relates to support for rural development. The changes ensure that the domestic legislation aligns with the changes made by Parts 2 and 3 of these Regulations to the retained EU law governing support for rural development.

Part 5 of these Regulations amends Regulations (EU) No. 1306/2013, 640/2014 and 809/2014, insofar as they relate to the direct payment schemes only. The amendments are minor and technical in nature and address errors to ensure that the legislation is accurate and functions effectively.

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, it was not considered necessary to carry out a regulatory impact assessment as to the likely costs and benefits of complying with these Regulations.

Regulations made by the Welsh Ministers, laid before Senedd Cymru under section 50(6)(c) and (8) of the Agriculture Act 2020 and paragraph 1(8) of Schedule 7 to the European Union (Withdrawal) Act 2018 for approval of Senedd Cymru.

DRAFT WELSH STATUTORY
INSTRUMENTS

2021 No. (W.)

**EXITING THE EUROPEAN
UNION, WALES**

AGRICULTURE, WALES

**The Agricultural Support
(Miscellaneous Amendments)
(Wales) (EU Exit) Regulations 2021**

Made

*Coming into force in accordance with
regulation 1(2)*

The Welsh Ministers make these Regulations in exercise of the powers conferred on them by section 46 of, and paragraphs 2(1), 4(1) and 6(1) of Schedule 5 to, the Agriculture Act 2020⁽¹⁾, and paragraph 1 of Schedule 2 to the European Union (Withdrawal) Act 2018⁽²⁾.

In accordance with section 50(6)(c) and (8) of the Agriculture Act 2020 and paragraph 1(8) of Schedule 7 to the European Union (Withdrawal) Act 2018, a draft of this instrument has been laid before, and approved by a resolution of Senedd Cymru.

⁽¹⁾ 2020 c. 21.

⁽²⁾ 2018 c. 16. See section 20(1) for the definition of “devolved authority”.

PART 1

Introductory

Title, commencement and application

- 1.—(1) The title of these Regulations is the Agricultural Support (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2021.
- (2) These Regulations come into force on the day after the day on which these Regulations are made.
- (3) These Regulations apply in relation to Wales.

PART 2

Rural Development: Horizontal Legislation

Amendment of Regulation (EU) No. 1306/2013

2.—(1) Regulation (EU) No. 1306/2013 of the European Parliament and of the Council on the financing, management and monitoring of the common agricultural policy⁽¹⁾, is amended, insofar as it relates to domestic support for rural development, as follows.

- (2) For the heading of Article 8 substitute “Powers”.
- (3) In Article 12—
- (a) in paragraph 1—
 - (i) for “must” substitute “may”;
 - (ii) for “shall”, in the second sentence, substitute “may”;
 - (b) in paragraph 2—
 - (i) after point (a) insert—

“(aa) maintenance of the agricultural area as referred to in point (c) of Article 4(1) Regulation (EU) No 1307/2013;”;
 - (ii) omit point (e);
 - (c) omit paragraph 3.
- (4) Omit Articles 13 to 15.
- (5) Omit Article 32.
- (6) Omit Article 46.
- (7) In Article 54—
- (a) in paragraph 1, omit “within 18 months”;
 - (b) in paragraph 3(a)—

(1) EUR 2013/1306, amended in relation to support for rural development by S.I. 2020/90 and 576. EUR 2013/1306 is amended by S.I. 2019/748 (as amended by S.I. 2019/831), 763 (as amended by S.I. 2019/812), 831 and 1402. However, by virtue of the amendments in S.I. 2020/1445, these amendments do not have effect in relation to rural development support.

- (i) in point (i), for “EUR 100” substitute “£100”;
- (ii) in point (ii)—
 - (aa) for “EUR 100” substitute “£100”;
 - (bb) for “EUR 250” substitute “£250”.
- (8) Omit Article 56.
- (9) In Article 59(4), for “retained direct EU legislation regarding agricultural aid and rural development support” substitute “sectoral agricultural legislation”.
- (10) In Article 67(4)(a), after “continuous area of land” insert “within Wales”.
- (11) In Article 69—
 - (a) omit the final sentence of paragraph 1;
 - (b) omit paragraph 2.
- (12) In Article 70(1)—
 - (a) omit “and, as from 2016, at a scale of 1:5 000,”;
 - (b) omit the second subparagraph.
- (13) In Article 72(5), for “By way of derogation from Council Regulation (EEC, Euratom) No 1182/71, the” substitute “The”.
- (14) In Article 84(6), for “EUR 40 000” substitute “£40 000”.
- (15) In Article 91(3)(a), for “the United Kingdom” substitute “Wales”.
- (16) In Article 97(3), for “EUR 100” substitute “£100”.
- (17) In Article 105(2), for the final sentence substitute “They shall be granted or collected in sterling.”
- (18) Omit Article 108.
- (19) Omit the final subparagraph of Article 111(1).
- (20) In Article 112, in the first paragraph, for “EUR 1250” substitute “£1250”.
- (21) In Article 114, for the heading substitute “Powers”.
- (22) Omit Annex I.
- (23) In Annex II, in the row “Landscape, minimum level of maintenance”, in the fourth column, after “measures for avoiding invasive plant species” insert—
 - “. Restrictions on converting, ploughing or reseeded environmentally sensitive permanent grassland.”

Amendment of Commission Delegated Regulation (EU) No. 640/2014

3.—(1) Commission Delegated Regulation (EU) No. 640/2014 supplementing Regulation (EU) No. 1306/2013 of the European Parliament and of the Council with regard to the integrated administration and control system and conditions for refusal or withdrawal of payments and administrative penalties applicable to direct payments, rural development support and cross compliance⁽¹⁾, is amended, insofar as it relates to domestic support for rural development, as follows.

(2) Omit Article 1(j).

(3) In Article 9—

- (a) in paragraph 1, omit the final subparagraph;
- (b) in paragraph 3, omit the final subparagraph.

(4) Omit Article 10.

(5) In Article 13—

- (a) in paragraph 1—
 - (i) omit the second subparagraph;
 - (ii) after the final subparagraph insert—

“All documents in support of an aid application or payment claim must be submitted by 31 December of that calendar year.”;
- (b) in paragraph 3, in the final subparagraph, for “third” substitute “second”.

(6) Omit the final subparagraph of Article 16(1).

(7) In Article 19a—

- (a) in the heading, after “of areas for” insert “agri-environment climate, organic farming,”;
- (b) in paragraph 1, after “Articles” insert “28, 29”;
- (c) for paragraph 2 substitute—

“2. The administrative penalty referred to in paragraph 1 shall be reduced by 50% if the difference between the area declared and the area determined does not exceed 10% of the area determined.”;
- (d) omit paragraphs 3 and 4.

(8) In Article 35—

- (a) in paragraph 1, for “shall” substitute “may”;
- (b) in paragraph 2—

(1) EUR 2014/640, amended in relation to rural support by S.I. 2020/90 and in relation to England by S.I. 2020/551. EUR 2014/640 is also amended by S.I. 2019/765. However, by virtue of the amendments in S.I. 2020/1445, these amendments do not have effect in relation to support for rural development.

- (i) for “shall” substitute “may”;
- (ii) omit “State aid”;
- (c) in paragraph 3—
 - (i) in the first subparagraph—
 - (aa) for “shall” substitute “may”;
 - (bb) for “extent, duration and reoccurrence” substitute “extent and duration”;
 - (ii) omit the final subparagraph;
- (d) in paragraph 5, omit the final sentence;
- (e) omit paragraph 7.
- (9) Omit Chapter I of Title IV.
- (10) Omit the final sentence of Article 38(1).
- (11) Omit Title V.

Amendment of Commission Implementing Regulation (EU) No. 809/2014

4.—(1) Commission Implementing Regulation (EU) No. 809/2014 laying down rules for the application of Regulation (EU) No. 1306/2013 of the European Parliament and of the Council with regard to the integrated administration and control system, rural development measures and cross compliance⁽¹⁾, is amended, in so far as it relates to domestic support for rural development, as follows.

- (2) In Article 4, omit the final paragraph.
- (3) In Article 6(2), in point (c), for “Articles 13 and 14” substitute “Article 13”.
- (4) In Article 15—
 - (a) omit paragraph 1b;
 - (b) omit paragraph 2b;
 - (c) in paragraph 3, omit the final subparagraph.
- (5) In Article 17—
 - (a) omit paragraph 2;
 - (b) omit paragraph 5;
 - (c) omit paragraph 6.
- (6) In Article 25, omit “and shall not exceed 14 days”.
- (7) In Article 26—
 - (a) omit paragraph 2;
 - (b) omit paragraph 4.

(1) EUR 2014/809, amended in relation to direct payment schemes by S.I. 2020/90 and 576. EUR 2014/809 is also amended in relation to rural development schemes in Wales by S.I. 2020/510 and 575. EUR 2014/809 is also amended by S.I. 2019/765. However, by virtue of the amendments in S.I. 2020/1445, these amendments do not have effect in relation to rural development support.

(8) In Article 27, omit the second and third paragraphs.

(9) In Article 32—

(a) in paragraph 1—

(i) in the first subparagraph, omit the last sentence;

(ii) omit the second subparagraph;

(b) omit paragraph 2;

(c) omit paragraph 2a;

(d) omit paragraph 4.

(10) After Article 32 insert—

“Article 32a

For animal aid schemes, the control sample for on-the-spot checks carried out each year shall for each of the aid schemes cover at least 5% of all beneficiaries applying for that respective aid scheme.”

(11) In Article 34—

(a) in paragraph 2, omit the final subparagraph;

(b) omit paragraphs 3, 4 and 4a;

(c) in paragraph 5—

(i) for “shall” substitute “may”;

(ii) in point (d), after “that” insert “may”.

(12) In Article 35, omit “or in a region or part of a region”.

(13) In Article 36(4), omit the second subparagraph.

(14) In Article 38—

(a) omit the final sentence in paragraph 5;

(b) omit paragraph 9;

(c) in paragraph 10, omit “or permanent pastures”.

(15) In Article 39, omit paragraph 4.

(16) Omit Article 40a.

(17) In Article 41—

(a) omit the final subparagraph of paragraph 1;

(b) in the final subparagraph of paragraph 2—

(i) omit “or by means of monitoring in accordance with Article 40a,”;

(ii) omit “or by monitoring” in both places that it occurs;

(iii) omit the final sentence.

(18) In Article 42(1), in the second subparagraph—

(a) omit “at least 50% of”;

(b) for “shall”, in both places it occurs, substitute “may”.

(19) In Article 43(2), for “shall” substitute “may” in the first place it occurs.

(20) In Article 46, omit “, Article 39b and Article 51(2)”.

(21) In Article 47(2), omit “and 19(1)(c),”.

(22) In Article 48—

(a) in paragraph 2—

(i) in the first subparagraph, omit “State aid”;

(ii) in point (e)—

(aa) for “EUR 5 000” substitute “£5 000”;

(bb) omit “ex ante”;

(b) in paragraph 5—

(i) at the end of the first subparagraph insert—

“Those checks shall, to the extent possible, be carried out before the final payment is made for an operation.”;

(ii) omit point (a).

(23) Omit Articles 49 to 51.

(24) In Article 52(3), for the final sentence substitute “A sample shall be selected randomly.”

(25) Omit Article 62.

(26) In Article 63—

(a) in paragraph 1, for “calculated” substitute “adjusted”;

(b) omit paragraph 2.

(27) In Article 68—

(a) in paragraph 1—

(i) in the first subparagraph, omit “and the other beneficiaries receiving direct payment support”;

(ii) omit the second and third subparagraphs;

(b) in paragraph 4, for “shall” substitute “may”.

(28) In Article 69(1), omit the final sentence of the first subparagraph.

(29) In Article 70—

(a) in paragraph 3, omit the words from “or by using” to the end;

(b) omit paragraph 4.

(30) Omit Articles 70a and 70b.

(31) In Article 72—

(a) in paragraph 1, omit the final subparagraph;

(b) in paragraph 2, omit “checked by monitoring in accordance with Article 70a,”;

- (c) in paragraph 3, omit the final sentence in the first subparagraph;
- (d) in paragraph 4, omit the second sentence of the first subparagraph.

Amendment of Commission Implementing Regulation (EU) No. 908/2014

5.—(1) Commission Implementing Regulation (EU) No. 908/2014 laying down rules for the application of Regulation (EU) No. 1306/2013 of the European Parliament and of the Council with regard to paying agencies and other bodies, financial management, clearance of accounts, rules on checks, securities and transparency⁽¹⁾ is amended, insofar as it relates to domestic support for rural development, as follows.

(2) In Article 4(1)—

- (a) omit point (i);
- (b) in point (ii), omit “on a single website”.

(3) In Article 27(1), for “EUR 5” substitute “£5.00”.

(4) For Article 41(1) substitute—

“1. The relevant authorities may decide to reduce the minimum level of on-the-spot checks in accordance with Article 59(5) of Regulation (EU) No 1306/2013. For the reduced control rate to apply, the paying agency must confirm that—

- (a) the internal control system is functioning correctly; and
- (b) the error rate for the population concerned was below the materiality threshold of 2.0%.”

(5) In Article 42—

- (a) in paragraph 1, for “EUR 150 000” substitute “£150 000”;
- (b) in paragraph 3, for “EUR 350 000” substitute “£350 000”.

(6) In Article 56(1), for “EUR 1 000” substitute “£1 000”.

(7) Omit Article 62.

(8) In Annex XI—

- (a) for “EUR 150, 000” substitute “£150,000”;
- (b) for “EUR 350 000” substitute “£350 000” in each place it occurs;
- (c) for “EUR 40 000” substitute “£40 000” in each place it occurs;
- (d) in the table at sheet B—

(1) EUR 2014/908, amended by S.I. 2020/90.

- (i) for “(EUR)” substitute “£” in each place it occurs;
- (ii) for “40 000 EUR” substitute “£40 000”.

PART 3

Rural Development: Retained Direct Legislation

Amendment of Regulation (EU) No. 1303/2013 of the European Parliament and of the Council of 17 December 2013

6.—(1) Regulation (EU) No. 1303/2013 of the European Parliament and of the Council of 17 December 2013 laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund and repealing Council Regulation (EU) No 1083/2006⁽¹⁾, is amended, insofar as it relates to domestic support for rural development, as follows.

(2) For Article 1 substitute—

“Article 1

Subject-matter

This Regulation lays down the common rules applicable to support for rural development.”

(3) In Article 2—

- (a) omit paragraph 4;
- (b) omit paragraph 5;
- (c) in paragraph 10—
 - (i) omit point (a);
 - (ii) in point (b), omit “or the fund of funds as appropriate”;
- (d) omit paragraph 13;
- (e) omit paragraph 15;
- (f) omit paragraph 21;
- (g) in paragraph 26, omit “point (c) of Article 42(1), Article 42(2), Article 42(3) and”;
- (h) omit paragraphs 27, 28, 29, 30 and 33;
- (i) omit paragraphs 38, 39 and 42.

(1) EUR 2013/1303, amended by 2019/785, 2018/1046, 2019/785, 2019/748, and 2019/1422.

- (4) In Article 4—
 - (a) in paragraph 1, omit “Fund-specific”;
 - (b) in paragraph 2—
 - (i) omit “, taking account of the specific context of each constituent nation,”;
 - (ii) omit “and direct payment support”;
 - (c) in paragraph 4—
 - (i) omit “, in partnership with the relevant partners referred to in Article 5,”;
 - (ii) omit “and the Fund-specific rules”;
 - (d) in paragraph 9, for “the relevant authority” substitute “The relevant authority”;
 - (e) in paragraph 10, for “the relevant authority” substitute “The relevant authority”.
- (5) Omit Article 5.
- (6) For Article 8(2) substitute—

“2. The relevant authority must ensure that the environmental protection requirements, resource efficiency, climate change mitigation and adaptation, biodiversity, disaster resilience, and risk prevention and management are promoted in the preparation and implementation of programmes.

The appropriate authority may make regulations setting out uniform conditions for support for rural development.”
- (7) Omit Title II.
- (8) Omit Chapter I of Title III.
- (9) In Article 32—
 - (a) for paragraph 1 substitute—

“1. Support for rural development must be provided by the relevant authority for community-led local development. For the purposes of this Chapter, “the support concerned” means support for rural development.”;
 - (b) in paragraph 5, omit “Fund-specific”.
- (10) In Article 34(3), omit “in accordance with the Fund-specific rules” in the final subparagraph.
- (11) In Article 35(2), omit “public”.
- (12) In Article 37—
 - (a) omit “ex ante” in each place it occurs;
 - (b) in paragraph 1—
 - (i) omit “, including when organised through fund of funds,”;
 - (ii) omit “, the bodies implementing funds of funds,”;

- (c) in paragraph 2, in point (a), omit “and thematic objectives”;
 - (d) in paragraph 3, omit the final subparagraph;
 - (e) in paragraph 4—
 - (i) in the first subparagraph—
 - (aa) omit “, including SMEs”;
 - (bb) omit “in accordance with the Fund-specific rules”;
 - (ii) in the second subparagraph, for “SMEs” substitute “businesses”;
 - (f) in paragraph 9, for “paragraphs 7 and 8” substitute “paragraph 7”;
 - (g) in paragraph 11, for “paragraphs 7 and 8” substitute “paragraph 7”.
- (13) In Article 38—
- (a) omit paragraph 5;
 - (b) in paragraph 7—
 - (i) omit point (a);
 - (ii) in point (b), omit “, or where applicable, the body that implements the fund of funds,”;
 - (c) omit paragraph 8;
 - (d) in paragraph 9—
 - (i) omit “fund of funds, at the level of the”;
 - (ii) omit “Fund-specific”;
 - (e) in paragraph 10, omit “and in Article 39a(5)”.
- (14) In Article 40—
- (a) in paragraph 1—
 - (i) in the first subparagraph—
 - (aa) for “authorities designated” substitute “designated authorities”;
 - (bb) omit “in accordance with Article 65 of the Regulation (EU) No 1305/2013”;
 - (ii) in the third subparagraph, omit “as set out in Article 46(1) and (2) of this Regulation”;
 - (iii) omit the fourth and fifth subparagraphs;
 - (b) in paragraph 2, for “Without prejudice to Article 127 of this Regulation and Article 9 of Regulation (EU) No 1306/2013, the” substitute “The”;
 - (c) omit paragraph 5A.
- (15) In Article 41—
- (a) in paragraph 1—

- (i) in the first subparagraph, omit “during the eligibility period laid down in Article 65(2) (the ‘eligibility period’)”;
- (ii) for point (a) substitute—
 - “(a) the amount of the programme contribution paid to the financial instrument included in each application for interim payment shall not exceed 25% of the total amount of programme contributions committed to the financial instrument under the relevant funding agreement;”;
- (iii) in point (b), omit the words from “, or at the level of final recipients” to the end;
- (iv) omit point (c);
- (v) in point (d), omit “and the amounts paid as eligible expenditure within the meaning of points (a), (b) and (d) of Article 42(1)”;
- (vi) omit the second subparagraph;
- (b) omit paragraph 2.
- (16) Omit Article 42.
- (17) In Article 43, for paragraph 2 substitute—

“2. Interest and other gains attributable to support for rural development paid to financial instruments shall be used for the same purposes, including the reimbursement of management costs incurred or payment of management fees of the financial instrument as the initial support for rural development either within the same financial instrument or, following the winding up of the financial instrument, in other financial instruments or forms of support in accordance with the specific objectives set out under a priority, until the end of the eligibility period.”
- (18) In Article 44, for the heading substitute “Re-use of resources attributable to the support for rural development”.
- (19) In Article 45—
 - (a) for the heading substitute “Re-use of resources”;
 - (b) omit “after the end of the eligibility period”;
 - (c) omit “or programmes”.
- (20) Omit Articles 46 to 59.
- (21) In Article 61—
 - (a) in paragraph 3, in the third subparagraph, omit “, including subsectors for sectors in Annex V, falling under the thematic objectives defined in the first paragraph of Article 9 and funded by support for rural development”;

- (b) omit paragraph 5;
- (c) in paragraph 6—
 - (i) for “paragraphs 3 or 5” substitute “paragraph 3”;
 - (ii) omit “, or by the deadline for the submission of documents for programme closure fixed in the Fund-Specific rules, whichever is the earlier,”;
- (d) in paragraph 7—
 - (i) in point (b), for “EUR 1000 000” substitute “£1,000,000”;
 - (ii) omit point (d);
 - (iii) omit point (h);
 - (iv) omit the final subparagraph.

(22) For the heading of Chapter II of Title VII substitute “Special rules on support to PPPs”.

(23) In Article 64(1), omit “, by way of derogation from Article 65(2),”.

(24) In Article 65—

- (a) in paragraph 1, for “Fund-specific” substitute “rural development”;
- (b) omit paragraph 2;
- (c) omit paragraph 4;
- (d) in paragraph 8—
 - (i) omit point (a);
 - (ii) in point (f), omit “ex ante”;
 - (iii) in point (g), omit “ex ante”;
 - (iv) omit point (h);
- (e) in paragraph 9, omit the final subparagraph;
- (f) in paragraph 10, omit the final subparagraph;
- (g) in paragraph 11, omit “or direct payment support”.

(25) In Article 66, omit “, or to another competent authority,”.

(26) In Article 67—

- (a) in paragraph 1, for the second subparagraph substitute—

“Rules may limit the forms of grants or repayable assistance applicable to certain operations.”;
- (b) omit paragraph 2;
- (c) in paragraph 5—
 - (i) in point (aa)—
 - (aa) omit “ex ante”;
 - (bb) for “EUR 100 000” substitute “£100 000”;

- (ii) in point (d), omit “or the Fund-specific rules”;
 - (iii) in point (e), omit “in accordance with Fund-specific rules”.
- (27) In Article 68a(1)—
 - (i) for “the relevant authority” substitute “The relevant authority”;
 - (ii) for “point (a) of Article 4 of Directive 2014/24/EU” substitute “regulation 5 of the Public Contracts Regulations 2015⁽¹⁾”.
- (28) In Article 70—
 - (a) in paragraph 1—
 - (i) omit “and the Fund-specific rules”;
 - (ii) omit the final subparagraph;
 - (b) in paragraph 2, omit point (c);
 - (c) in paragraph 3—
 - (i) omit “technical assistance or”;
 - (ii) omit “, and for operations concerning the thematic objective referred to in point (1) of the first paragraph of Article 9,”.
- (29) In Article 71—
 - (a) in paragraph 1—
 - (i) for the first subparagraph substitute—

“An operation comprising investment in infrastructure or productive investment shall repay the contribution from support for rural development if within five years of the final payment to the beneficiary it is subject to any of the following:”;
 - (ii) omit the final subparagraph;
 - (b) for paragraph 2 substitute—

“2. An operation comprising investment in infrastructure or productive investment shall repay the contribution from support for rural development if within 10 years of the final payment to the beneficiary the productive activity is subject to relocation outside the United Kingdom and its territorial sea.”;
 - (c) in paragraph 4, for “Paragraphs 1, 2 and 3” substitute “Paragraphs 1 and 2”.
- (30) Omit Chapters I and II of Title IX.
- (31) In Article 125(2), omit points (a) and (b).
- (32) In Article 127(1)—
 - (a) omit “for an accounting year”;

(1) S.I. 2015/102.

- (b) omit "during an accounting year" in each place it occurs.
- (33) In Article 132—
 - (a) in paragraph 1, omit “public”;
 - (b) omit paragraph 2(a).
- (34) Omit Article 154.
- (35) Omit Annex I.
- (36) In Annex IV—
 - (a) in paragraph 1—
 - (i) omit point (d);
 - (ii) in point (e), omit “(and at the level of the fund of funds where appropriate)”;
 - (iii) in point (k), omit “, including the fund of funds where applicable”;
 - (iv) omit the final subparagraph;
 - (b) omit paragraph 2.
- (37) Omit Annex XI.

Amendment of Regulation (EU) No. 1305/2013

7.—(1) Regulation (EU) No. 1305/2013 of the European Parliament and of the Council on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) and repealing Council Regulation (EC) No 1698/2005⁽¹⁾ is amended, insofar as it relates to domestic support for rural development, as follows.

(2) In Article 1(1), omit the final sentence.

(3) In Article 2—

- (a) in paragraph 1—
 - (i) in the first subparagraph, omit ““public expenditure”, “SMEs”, ”;
 - (ii) in point (f), omit “permanent pasture or”;
 - (iii) omit point (o);
 - (iv) omit point (p);
 - (v) for point (v) substitute—

““appropriate authority” means the relevant authority for the constituent nation in which the regulations apply.”;
- (b) omit paragraph 4.

(4) For Article 3 substitute—

“Article 3

Aim

Support for rural development shall contribute to the development of rural

(1) EUR 2013/1305, amended by S.I. 2019/748, S.I. 2019/764, and S.I. 2019/1422.

economies and sectors that are more resilient, competitive and innovative and which support the achievement of the well-being goals as set out in section 4 of the Well-being of Future Generations (Wales) Act 2015⁽¹⁾, the sustainable management of natural resources as set out in Part 1 of the Environment (Wales) Act 2016⁽²⁾ and climate resilience.”

(5) For Article 4 substitute—

“Article 4

Objectives

Support for rural development, must contribute to achieving the following objectives:

- (a) fostering the competitiveness of agriculture;
- (b) contributing towards the sustainable management of natural resources as set out in Part 1 of the Environment (Wales) Act 2016;
- (c) ensuring climate resilience;
- (d) achieving a balanced territorial development of rural economies and communities including the creation and maintenance of employment.”

(6) For Article 5 substitute—

“Article 5

Priorities for rural development

Support for rural development must support the following priorities:

- (1) fostering knowledge transfer and innovation in agriculture, forestry, and rural areas;
- (2) enhancing farm viability and competitiveness of all types of agriculture in all regions and promoting innovative farm technologies and the sustainable management of forests;
- (3) promoting food chain organisation, including processing and marketing of agricultural products, animal welfare and risk management in agriculture;
- (4) restoring, preserving and enhancing ecosystems dependent on agriculture and forestry;
- (5) promoting resource efficiency and supporting the shift towards a low carbon

(1) 2015 c. 2.

(2) 2016 c. 3.

and climate resilient economy in the agriculture, food and forestry sectors;

(6) promoting social inclusion, poverty reduction and economic development in rural areas.

Each of these priorities shall contribute to the cross-cutting objectives of innovation, environment and climate change mitigation and adaptation.”

(7) For Article 6 substitute—

“Article 6

The rural development programme

Support for rural development must be provided in accordance with the rural development programme. This programme shall implement a strategy to meet the priorities for rural development through a set of measures as defined in Title III. Support for rural development must be provided to further the objectives and the priorities of rural development.”

(8) Omit Articles 8 to 12.

(9) In Article 13, omit the final sentence.

(10) In Article 14(2)—

- (a) after “land managers” insert “, animal health and welfare sector”;
- (b) for “SMEs” substitute “businesses”.

(11) In Article 15—

- (a) in paragraph 1—
 - (i) in point (a), for “SMEs” substitute “businesses”;
 - (ii) in paragraph 1(b), for “Articles 12 to 14” substitute “Article 12”;
- (b) in paragraph 3, omit the final subparagraph;
- (c) omit paragraph 3a;
- (d) in paragraph 4—
 - (i) in point (b), omit “the agricultural practices beneficial for the climate and the environment as laid down in Chapter 3 of Title III of Regulation (EU) No 1307/2013 and”;
 - (ii) in the final subparagraph, omit “as laid down in Annex I to Regulation (EU) No 1306/2013”;
- (e) in paragraph 6, for “SMEs” substitute “businesses”;
- (f) in paragraph 8, omit the first sentence.

(12) In Article 16—

- (a) in paragraph 1—

- (i) for “shall” substitute “may”;
 - (ii) after “groups of farmers” insert “and food processors”;
 - (b) in paragraph 3, omit the final subparagraph;
 - (c) omit paragraph 4.
- (13) In Article 17—
- (a) in paragraph 1—
 - (i) for “shall” substitute “may”;
 - (ii) in point (a), after “holding” insert “, or those involved in food processing”;
 - (iii) in point (c), at the end, omit “or”;
 - (iv) after point (d) insert—
 - “; or
 - (e) are investments linked to activities to protect, conserve, promote and enhance the historic environment as a resource for the general well-being of present and future generations.”;
 - (b) in paragraph 2, after “groups of farmers” insert “or those involved in food processing”;
 - (c) omit paragraphs 3 and 4.
- (14) Omit Article 18(5).
- (15) In Article 19—
- (a) omit paragraph 1(c);
 - (b) in paragraph 2, omit the final subparagraph;
 - (c) in the third subparagraph of paragraph 4, omit “, as applicable in the relevant authority concerned,”;
 - (d) in paragraph 6, omit the first sentence;
 - (e) omit paragraph 7.
- (16) In Article 20—
- (a) in paragraph 1—
 - (i) in point (g), after “conversion” insert “and adaptive reuse”;
 - (ii) after point (g) insert—
 - “(h) investments in infrastructure or activities to protect, conserve, promote and enhance the historic environment as a resource for the general well-being of present and future generations.”;
 - (b) for paragraph 2 substitute—
 - “2. Support under this measure shall only concern small-scale infrastructure and services, as defined by each relevant authority. However, the rural development programme may provide for specific derogations from this rule for investments in broadband and renewable energy.”

(17) In Article 21(1)—

(a) for point (d) substitute—

“(d) investments in the sustainable management of woodlands;”;

(b) for point (e) substitute—

“(e) investments which contribute to the development of a National Forest in Wales;

(f) investments improving the resilience and environmental value as well as the mitigation potential of forest ecosystems;

(g) investments in forestry technologies and in the processing, the mobility and marketing of forest products;

(h) investments to protect, conserve, promote and enhance the historic environment within forest areas.”

(18) For Article 22(1) substitute—

“1. Support under point (a) of Article 21(1) shall be granted to public and private landholders and their associations and may cover the costs of establishments (including planning costs) and an annual premium per hectare to cover the costs of agricultural income foregone and maintenance, including early and late cleanings and/or payments for the public benefits derived from woodlands for a maximum period of twelve years. In the case of state owned land, support may only be granted if the body managing such land is a private body or municipality.”

(19) In Article 23—

(a) in paragraph 1—

(i) for “shall”, in the second place it occurs, substitute “may”;

(ii) for “for a maximum period of five years” substitute “and/or payments for the public benefits derived from the woodlands”;

(b) omit paragraph 3.

(20) In Article 25(2), after “enhancement of the” insert “historic environment and the”.

(21) In Article 26—

(a) in paragraph 1, omit “and to SMEs”;

(b) omit paragraphs 3 and 4.

(22) In Article 27—

(a) in paragraph 1—

(i) for “shall” substitute “may”;

- (ii) after “agriculture” insert “, food processing”;
 - (b) in paragraph 2, omit “It shall be limited to producer groups and organisations that are SMEs.”;
 - (c) omit paragraph 4.
- (23) In Article 28—
- (a) in paragraph 1—
 - (i) for “their territories” substitute “Wales”;
 - (ii) omit “their” in the second place it occurs;
 - (iii) for “rural development programmes” substitute “the rural development programme”;
 - (iv) omit “at national and/or regional level”;
 - (b) in paragraph 5—
 - (i) for “their rural development programmes” substitute “the rural development programme” in both places it occurs;
 - (ii) omit the third to fifth subparagraphs;
 - (c) in paragraph 6, omit the second subparagraph;
 - (d) in paragraph 8, omit the first sentence;
 - (e) omit paragraph 11.
- (24) In Article 29—
- (a) in paragraph 1, omit “and who are active farmers within the meaning of Article 9 of Regulation (EU) No 1307/2013, as applicable in the relevant authority concerned”;
 - (b) in paragraph 3, for “their rural development programmes” substitute “the rural development programme” in each place it occurs;
 - (c) in paragraph 4, omit the final subparagraph;
 - (d) omit paragraphs 5 and 6.
- (25) In Article 30—
- (a) in paragraph 1, omit the final subparagraph;
 - (b) in paragraph 4—
 - (i) in point (a), omit “as it applies in the constituent nation”;
 - (ii) in point (c), omit “as it applied in the constituent nation existing”;
 - (c) omit paragraphs 7 and 8.
- (26) In Article 31—
- (a) in paragraph 1, omit “, taking into account payments pursuant to Chapter 4 of Title III of Regulation (EU) No 1307/2013”;

- (b) in paragraph 2, omit “and are active farmers within the meaning of Article 9 of Regulation (EU) No 1307/2013”;
 - (c) omit paragraph 3;
 - (d) in paragraph 4—
 - (i) omit “, except if the grant covers only the minimum payment per hectare per year as laid down in Annex II”;
 - (ii) in point (a), omit “as it applies in the constituent nation”;
 - (e) omit paragraph 5.
- (27) In Article 32, in paragraph 4, omit the final subparagraph.
- (28) In Article 33—
- (a) for “animal welfare” substitute “animal health and welfare” in the heading and in each place it occurs;
 - (b) in paragraph 1, omit “and who are active farmers within the meaning of Article 9 of Regulation (EU) No 1307/2013,”;
 - (c) in paragraph 3, omit the final subparagraph.
- (29) In Article 34—
- (a) for the heading substitute “Forest-environmental, climate commitments and forest historic environment commitments”;
 - (b) in paragraph 1—
 - (i) for “forest environment and climate commitments” substitute “forest-environmental, climate commitments and forest historic environment commitments”;
 - (ii) for “their rural development programmes” substitute “the rural development programme”;
 - (c) in paragraph 3, in the first subparagraph, omit the final sentence.
- (30) In Article 35—
- (a) omit paragraph 1(c);
 - (b) in paragraph 5(b), omit “or a project to be carried out by an operational group of the EIP for Agricultural Productivity and Sustainability as referred to in Article 56”;
 - (c) in paragraph 6, omit “or support under Regulation 508/2014, CMO support or direct payment support”.
- (31) Omit Article 36(2) and (5).
- (32) Omit Article 37(5).
- (33) In Article 38—

- (a) in paragraph 3, for the second subparagraph substitute—

“Support under point (b) of Article 36(1) shall only be granted to cover for loss caused by the outbreak of adverse climatic events, an animal or plant disease, a pest infestation, or a measure adopted in accordance with Directive 2000/29/EC to eradicate or contain a plant disease or pest or an environmental incident, which destroy more than 30% of the average annual production of the farmer in the preceding three-year period or a three-year average based on the preceding five-year period, excluding the highest and lowest entry. Indexes may be used in order to calculate the annual production of the farmer. The calculation method used shall permit the determination of the actual loss of an individual farmer in a given year.”;

- (b) omit paragraph 5.

- (34) In Article 39—

- (a) for paragraph 1 substitute—

“1. Support under point (c) of Article 36(1) shall only be granted where the drop in income exceeds 30% of the average annual income of the individual farmer in the preceding three-year period or a three-year average based on the preceding five-year period excluding the highest and lowest entry. Income for the purposes of point (c) of Article 36(1) shall refer to the sum of revenues the farmer receives from the market, including any form of public support, deducting input costs. Payments by the mutual fund to farmers shall compensate for less than 70% of the income lost in the year the producer becomes eligible to receive this assistance. Indexes may be used to calculate the annual loss of income of the farmer.”;

- (b) in paragraph 5, omit the first sentence.

- (35) Omit Article 39b.

- (36) In Article 41(c), omit “other than those used in Annex II,”.

- (37) In Article 42, for paragraph 1 substitute—

“1. In addition to the tasks referred to in Article 34 of Regulation (EU) No 1303/2013 local action groups may also perform additional tasks delegated to them by the Managing Authority and/or the paying agency.”

- (38) Omit Article 43.

- (39) In Article 45(5), for “EUR 200 000” substitute “£200 000”.

- (40) In Article 46(2)—
 - (a) omit “in each of the constituent nations”;
 - (b) omit “, or, before IP completion day, to the Commission,”.
- (41) In Article 47(6), after “public money,” insert “the”.
- (42) In Article 48—
 - (a) omit the last sentence of the first subparagraph;
 - (b) omit the second subparagraph.
- (43) In Article 49—
 - (a) in paragraph 1, omit “following consultation with the Monitoring Committee” in both places that it occurs;
 - (b) in paragraph 2, for “39b” substitute “39a”.
- (44) Omit Articles 51 to 59.
- (45) In Article 60—
 - (a) in paragraph 2, omit “an” in the first subparagraph;
 - (b) omit paragraph 3.
- (46) In Article 63(1), in the first sentence, for “shall” substitute “may”.
- (47) Omit Articles 65 to 80.
- (48) In Article 82, omit “as provided for in paragraph 1(j) of Article 8”.
- (49) For the heading of Chapter I of Title IX substitute “Powers”.
- (50) In Article 86—
 - (a) in paragraph 1, omit “respective”;
 - (b) omit paragraph 2.
- (51) Omit Articles 88 to 90.
- (52) Omit Annexes I, Ia and II.
- (53) In Annex III, for “Member States” substitute “The relevant authority”.
- (54) Omit Annexes V and VI.

Amendment of Commission Delegated Regulation (EU) No. 480/2014

8.—(1) Commission Delegated Regulation (EU) No 480/2014 supplementing Regulation (EU) No 1303/2013 of the European Parliament and of the Council laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the

Cohesion Fund and the European Maritime and Fisheries Fund⁽¹⁾, is amended, insofar as it relates to domestic support for rural development, as follows.

(2) In Article 1(a), omit “and support under Regulation 508/2014”.

(3) In Article 1A, omit “and support under Regulation 508/2014”.

(4) In the Chapter II heading, omit “and support under Regulation 508/2014”.

(5) In Article 6(3)(a), omit the words from “or, in the case of a fund” to the end.

(6) Omit Article 7(3).

(7) In Article 8, omit “ex ante” in each place it occurs.

(8) In Article 9—

(a) for the heading substitute “Management and control of financial instruments set up at national or regional level”;

(b) in paragraph 1—

(i) for “national, regional transnational or cross border” substitute “national or regional”;

(ii) omit “referred to in Article 38(1)(b) of Regulation (EU) No 1303/2013”;

(iii) in point (c), omit the words from “in accordance with Article 125(4)” to “Regulation (EU) No 1305/2013”;

(iv) for point (d)(i) substitute—

“(i) kept for the operation by the managing authority or the financial intermediary in order to provide evidence of the use of the funds for the intended purposes, of compliance with applicable law and of compliance with the criteria and the conditions for funding under the relevant programmes;”;

(v) in point (e)—

(aa) in point (ii), omit “axis”;

(bb) in point (ii), omit “and support under Regulation 508/2014”;

(cc) omit point (ix);

(c) in paragraph 2, omit the first subparagraph.

(9) In the second subparagraph of Article 10, omit the final sentence.

(10) In Article 11—

(1) EUR 2014/480, amended by S.I. 2019/783, 2015/616 and 2019/625.

- (a) in paragraph 1, omit “referred to in Article 42(1)(c) of Regulation (EU) No 1303/2013”;
 - (b) omit paragraph 2.
- (11) In Article 12—
- (a) in paragraph 1, omit “pursuant to Article 42(1)(d) of Regulation (EU) No 1303/2013”;
 - (b) omit paragraph 2.
- (12) In Article 13—
- (a) omit paragraph 1;
 - (b) in paragraph 2—
 - (i) omit “pursuant to Article 42(1)(d) of that Regulation”;
 - (ii) in point (a)—
 - (aa) in point (i), omit “or to the fund of funds,”;
 - (bb) in point (ii), omit “, or to the fund of funds,”;
 - (iii) in point (b)—
 - (aa) in point (i), omit “within the meaning of Article 42(1)(a) of Regulation (EU) No 1303/2013”;
 - (bb) in point (ii), omit “within the meaning of Article 42(1)(a) of Regulation (EU) No 1303/2013”;
 - (cc) in point (iii), omit “within the meaning of Article 42(1)(b) of Regulation (EU) No 1303/2013”;
 - (dd) in point (iv), omit “within the meaning of Article 42(1)(a) of Regulation (EU) No 1303/2013”;
 - (ee) in point (v), omit “within the meaning of Article 42(1)(a) of that Regulation”;
 - (iv) omit the final subparagraph;
 - (c) in paragraph 3—
 - (i) omit “laid down in Article 65(2) of Regulation (EU) No 1303/2013”;
 - (ii) omit paragraph 3(a);
 - (d) omit paragraph 4;
 - (e) in paragraph 6—
 - (i) omit “1,”;
 - (ii) omit “, including, where applicable, when it implements the fund of funds,”.
- (13) In Article 14—
- (a) in paragraph 1—
 - (i) omit “in accordance with Article 42(2) of Regulation (EU) No 1303/2013”;

- (ii) omit “for the period laid down in Article 42(2) of that Regulation,”;
- (b) in paragraph 2—
 - (i) omit “within the meaning of Article 42(1)(a) of Regulation (EU) No 1303/2013”;
 - (ii) omit “or the period referred to in Article 42(2) of that Regulation,”;
- (c) in paragraph 3—
 - (i) omit “within the meaning of Article 42(1)(a) of Regulation (EU) No 1303/2013”;
 - (ii) for “the end of the recovery procedure in the case of defaults or the period referred to in Article 42(2) of that Regulation,” substitute “or the end of the recovery procedure in the case of defaults,”;
- (d) omit paragraph 4.
- (14) In Article 16(b), omit “or regional budgets or national public insurance”.
- (15) In Article 19(3), omit “or support under Regulation 508/2014”.
- (16) In Article 20—
 - (a) in point (c), omit the final sentence;
 - (b) omit point (d).
- (17) In Article 21—
 - (a) omit “(EU, Euratom)” in the heading and the first subparagraph;
 - (b) omit point (d).

Amendment of Commission Delegated Regulation (EU) No. 807/2014

9.—(1) Commission Delegated Regulation (EU) No 807/2014 of 11 March 2014 supplementing Regulation (EU) No 1305/2013 of the European Parliament and of the Council on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) and introducing transitional provisions⁽¹⁾, is amended, insofar as relates to domestic support for rural development, as follows.

- (2) In Article 1—
 - (a) in paragraph 1, in point (i), after “animal” insert “health and”;
 - (b) omit paragraph 2.

⁽¹⁾ EUR 2014/807, amended by S.I. 2019/770.

(3) In Article 3, for “in their rural development programmes” substitute “in the rural development programme”.

(4) Omit Article 9.

(5) In Article 10, for “animal welfare” substitute “animal health and welfare” in each place it occurs (including the heading).

(6) In Article 13(1)(c), omit “, where such standards exist at national level”.

(7) In Article 14(1)(a), for “animal welfare” substitute “animal health and welfare”.

(8) Omit Articles 16, 19 and 20.

(9) Omit Annexes I and II.

Amendment of Commission Implementing Regulation (EU) No. 808/2014 of the European Parliament and of the Council

10.—(1) Commission Implementing Regulation (EU) No. 808/2014 of the European Parliament and of the Council of 17 July 2014 laying down rules for the application of Regulation (EU) No 1305/2013 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) **(1)**, is amended, insofar as it relates to domestic support for rural development, as follows.

(2) Omit Articles 2 and 4.

(3) In Article 11(1), omit the final sentence.

(4) Omit Articles 12 and 14 to 17.

(5) Omit Annex I.

(6) Omit Annex IV, V and VII.

Amendment of Commission Implementing Regulation (EU) No. 821/2014

11.—(1) Commission Implementing Regulation (EU) No 821/2014 laying down rules for the application of Regulation (EU) No 1303/2013 of the European Parliament and of the Council as regards detailed arrangements for the transfer and management of programme contributions, the reporting on financial instruments, technical characteristics of information and communication measures for operations and the system to record and store data **(2)**, is amended, insofar as it relates to domestic support for rural development, as follows.

(2) In Article A1, omit “and support under Regulation 508/2014”.

(3) In Article 1—

(1) EUR 2014/808, amended by S.I. 2019/770.

(2) EUR 964/2014, amended by 2019/783 and 2016/1157.

- (a) in paragraph 1, omit “axis” in both places it occurs;
- (b) in paragraph 2—
 - (i) omit “Fund-specific”;
 - (ii) omit “constituting national co-financing and”;
- (c) in paragraph 3, omit “constituting national co-financing” in each place it occurs;
- (d) in paragraph 4, for “contributions from the programmes” substitute “contribution from the programme”;
- (e) in paragraph 5, omit “constituting national co-financing”;
- (f) in paragraph 6, omit “constituting national co-financing”.
- (4) Omit Article 2.
- (5) Omit Annex I.

Amendment of Commission Implementing Regulation (EU) No. 964/2014

12.—(1) Commission Implementing Regulation (EU) No. 964/2014 laying down rules for the application of Regulation (EU) No. 1303/2013 of the European Parliament and of the Council as regards standard terms and conditions for financial instruments, is amended, insofar as it relates to domestic support for rural development, as follows.

(2) In Article 1A, omit “and support under Regulation 508/2014”.

(3) In Article 3(1), omit the words from “or support under Regulation 508/2014” to the end.

(4) In Article 4—

- (a) in paragraph 1, omit “or, if applicable, the fund of funds manager”;
- (b) in paragraph 2, omit the final sentence;
- (c) in paragraph 4—
 - (i) omit “fund of funds manager and the”;
 - (ii) omit “fund of funds manager or of the”.

(5) In Article 5—

- (a) in paragraph 1, omit “which shall contain the terms and conditions in accordance with Annex I.”;
- (b) in paragraph 2, omit point (a).

(6) Omit Article 6(2).

(7) Omit Article 7(2).

(8) Omit Article 8(3).

(9) In Article 8a—

- (a) in paragraph 1—

- (i) for “small and medium-sized enterprises (SMEs)” substitute “businesses”;
- (ii) for “investments in SMEs” substitute “investments in businesses”;
- (b) omit paragraph 2.
- (10) Omit Annexes I to V.

PART 4

Rural Development: Domestic Legislation

Amendment of the Rural Development Programmes (Wales) Regulations 2014

13. Omit regulation 2(3) of the Rural Development Programmes (Wales) Regulations 2014⁽¹⁾.

Amendment of the Common Agricultural Policy (Integrated Administration and Control System and Enforcement and Cross Compliance) (Wales) Regulations 2014

14.—(1) The Common Agricultural Policy (Integrated Administration and Control System and Enforcement and Cross Compliance) (Wales) Regulations 2014⁽²⁾ are amended, in so far as they relate to domestic support for rural development, as follows.

(2) In Schedule 1, after paragraph 15 insert—

“Converting, ploughing or reseedling land designated as environmentally sensitive permanent grassland

16.—(1) A beneficiary may only convert, plough or reseed certain areas of environmentally sensitive permanent grassland if—

- (a) the site of special scientific interest notification requires or allows the beneficiary to plough or convert certain areas of the site of special scientific interest; or
- (b) consent to do so has been provided by Natural Resources Wales.

(2) In this paragraph—

(1) S.I. 2014/3222 (W. 327), amended by S.I. 2019/688 (W. 132).
 (2) S.I. 2014/3223 (W. 328), amended by S.I. 2016/217 (W. 86), S.I. 2016/1154, S.I. 2017/565 (W. 134), S.I. 2019/688 (W. 132), S.I. 2020/104 (W. 17) and S.I. 2020/1556 (W. 328).

“environmentally sensitive permanent grassland” (“*glaswelltir parhaol amgylcheddol-sensitif*”) means—

- (a) grassland located in a site of special scientific interest; and
- (b) grassland in relation to which written consent to plough is required in accordance with section 28E(1) of the Wildlife and Countryside Act 1981⁽¹⁾ but such consent has not been obtained;

“site of special scientific interest” (“*safle o ddiddordeb gwyddonol arbennig*”) has the meaning given in section 52(1) of the Wildlife and Countryside Act 1981.”

PART 5

Direct Payments: Horizontal Legislation

Amendment of Regulation (EU) No. 1306/2013

15.—(1) Regulation (EU) No. 1306/2013, is amended, insofar as it relates to direct payments, as follows.

(2) In Article 63(5)(b), after “as well as” insert “in respect of unduly allocated payment entitlements and”.

(3) After Article 76(2)(a) insert—

“(aa) the basic features, technical rules and quality requirements of the system for the identification and registration of payment entitlements provided for in Article 71;”.

(4) In Article 78(b), after “Article 72,” insert “and applications for payment entitlements,”.

Amendment of Commission Delegated Regulation (EU) No. 640/2014

16.—(1) Commission Delegated Regulation (EU) No. 640/2014, insofar as it relates to direct payments, is amended as follows.

(2) Omit the final subparagraph of Article 9(1).

(3) In Article 12(b), for “third of” substitute “second subparagraph of”.

(1) 1981 c. 69.

Amendment of Commission Implementing Regulation (EU) No. 809/2014

17.—(1) Commission Implementing Regulation (EU) No. 809/2014 is amended, insofar as it relates to direct payments, as follows.

(2) In the second subparagraph of Article 36(2), omit the words from “in accordance” to the end.

Name

Minister for Environment, Energy and Rural Affairs,
one of the Welsh Ministers

Date

The Agricultural Support (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2021

Explanatory Memorandum

This Explanatory Memorandum has been prepared by Rural Economy and Legislation division within the Department for Environment, Skills and Natural Resources and is laid before the Senedd 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 Agricultural Support (Miscellaneous Amendments)(Wales) (EU Exit) Regulations 2021.

Lesley Griffiths MS

Minister for Environment, Energy and Rural Affairs

12 March 2021

1. Description

The Agricultural Support (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2021 (“the Instrument”) make amendments to retained EU law and domestic law governing the rural development programme to put in place a domestic framework to fund new rural development schemes in Wales following the end of the EU Implementation Period and to ensure that framework is efficient and effective.

In addition, the Instrument makes minor, technical amendments to retained EU law in relation to direct payments schemes to address errors and ensure that it functions efficiently and effectively.

The Instrument has five Parts. Part 1 makes introductory provisions for the Instrument. Parts 2 to 5 contain the substantive amendments, detailed below.

Rural Development: Horizontal Legislation

Part 2 of the Instrument amends the following, insofar as they relate to domestic support for rural development:

- Regulation (EU) No. 1306/2013 of the European Parliament and of the Council on the financing, management and monitoring of the common agricultural policy (“the Horizontal Regulations”);
- Commission Delegated Regulation (EU) No. 640/2014 supplementing Regulation (EU) No. 1306/2013 of the European Parliament and of the Council with regard to the integrated administration and control system and conditions for refusal or withdrawal of payments and administrative penalties applicable to direct payments, rural development support and cross compliance;
- Commission Implementing Regulation (EU) No. 809/2014 laying down rules for the application of Regulation (EU) No. 1306/2013 of the European Parliament and of the Council with regard to the integrated administration and control system, rural development measures and cross compliance; and
- Commission Implementing Regulation (EU) No. 908/2014 laying down rules for the application of Regulation (EU) No. 1306/2013 of the European Parliament and of the Council with regard to paying agencies

and other bodies, financial management, clearance of accounts, rules on checks, securities and transparency.

Rural Support: Retained Direct Legislation

Part 3 of the Instrument amends:

- Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013 laying down common provisions on the European Regional Development Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund and repealing Council Regulation (EU) No 1083/2006;
- Regulation (EU) No. 1305/2013 of the European Parliament and of the Council on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) and repealing Council Regulation (EC) No 1698/2005;
- Commission Delegated Regulation (EU) No 480/2014 supplementing Regulation (EU) No 1303/2013 of the European Parliament and of the Council laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund;
- Commission Delegated Regulation (EU) No. 807/2014 of 11 March 2014 supplementing Regulation (EU) No 1305/2013 of the European Parliament and of the Council on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) and introducing transitional provisions;
- Commission Implementing Regulation (EU) No. 808/2014 of the European Parliament and of the Council of 17 July 2014 laying down rules for the application of Regulation (EU) No 1305/2013 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD);
- Commission Implementing Regulation (EU) No 821/2014 laying down rules for the application of Regulation (EU) No 1303/2013 of the European Parliament and of the Council as regards detailed arrangements for the transfer and management of programme contributions, the reporting on financial instruments, technical characteristics of information and communication measures for operations and the system to record and store data; and

- Commission Implementing Regulation (EU) No 964/2014 laying down rules for the application of Regulation (EU) No 1303/2013 of the European Parliament and of the Council as regards standard terms and conditions for financial instruments.

Rural Development: Domestic Legislation

Part 4 of the Instrument amends the following, insofar as they relate to rural development:

- the Rural Development Programmes (Wales) Regulations 2014; and
- the Common Agricultural Policy (Integrated Administration and Control System and Enforcement and Cross Compliance) (Wales) Regulations 2014.

Direct Payments: Horizontal Legislation

Part 5 of the Instrument amends the following, insofar as they relate to Direct Payments only:

- the Horizontal Regulations;
- Commission Delegated Regulation (EU) No. 640/2014; and
- Commission Implementing Regulation (EU) No. 809/2014.

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

The Instrument comes into force on the day after the day on which the Instrument is made.

The Instrument is made in exercise of the powers conferred by section 46 of, and paragraphs 2(1), 4(1) and 6(1) of Schedule 5 to, the Agriculture Act 2020 (c.21), and paragraph 1 of Schedule 2 to the European Union (Withdrawal) Act 2018 (c.16).

In accordance with section 50(6)(c) and (8) of the Agriculture Act 2020 and paragraph 1(9) of Schedule 7 to the European Union (Withdrawal) Act 2018, a draft of the Instrument has been laid before, and is subject to approval by a resolution of Senedd Cymru.

The draft Statutory Instrument was originally laid before the Senedd on 23 February. Subsequently a number of technical issues have been identified which have been addressed in this revised version

3. Legislative background

Section 46 and Schedule 5 of the Agriculture Act 2020 provide the Welsh Ministers with powers to modify retained direct EU legislation relating to support for rural development and direct payments and subordinate legislation relating to that legislation so far as it has effect in relation to Wales.

The Instrument is subject to the affirmative procedure pursuant to section 50(6)(c) and (8) of the 2020 Act, and paragraph 1(9) of Schedule 7 to the European Union (Withdrawal) Act 2018.

In accordance with the requirements of the European Union (Withdrawal) Act 2018 the Minister for Environment, Energy and Rural Affairs has made the relevant statements as detailed in Part 2 of the Annex to this Explanatory Memorandum.

4. Purpose and intended effect of the legislation

This Instrument provides a legislative framework to enable the provision of financial support for new domestic rural development schemes from 2021.

Support for rural development was previously provided through the European Agricultural Fund for Rural Development (EAFRD) and delivered through the second pillar of the Common Agricultural Policy. Following the end of the Implementation Period, support for new rural development schemes will be domestically funded and will not be subject to EU law. Existing and ongoing activities delivered through the Welsh Government Rural Communities - Rural Development Programme 2014-20 will continue to operate under EU law.

The purpose of the legislation being amended by the Instrument is as follows:

Part 2 – Rural Development: Horizontal Legislation

- Regulation (EU) No. 1306/2013 of the European Parliament and of the Council on the financing, management and monitoring of the common agricultural policy (“the Horizontal Regulations”) lays down the rules on: the financing of expenditure under the Common Agricultural Policy (CAP), including expenditure on rural development; the farm advisory system; the management and control systems to be put in place by the Member States; the cross-compliance system; clearance of accounts.
- Commission Delegated Regulation (EU) No. 640/2014 supplementing Regulation (EU) No. 1306/2013 of the European Parliament and of the Council lays down provisions supplementing certain non-essential elements of Regulation (EU) No 1306/2013 in relation to: refusal or withdrawal of aid or support; administrative penalties; rules for submission of applications or amendments on a public holiday, a Saturday or a Sunday; specific definitions to ensure a harmonised implementation of the integrated system; basic features and technical rules and quality requirements; the basis for the

calculation of aid; additional rules for intermediates involved in the procedure for granting the aid or support; cross-compliance.

- Commission Implementing Regulation (EU) No. 809/2014 laying down rules for the application of Regulation (EU) No. 1306/2013 of the European Parliament and of the Council lays down rules for the application of Regulation (EU) No 1306/2013 in relation to: notifications to the Commission to protect the financial interests of the Union; administrative and on-the-spot checks; control measures and methods for determining tetrahydrocannabinol levels in hemp; inter-branch organisations for the purposes of the crop-specific payment for cotton; aid applications and payment claims; administrative penalties; non-compliance; the transfer of holdings; the payment of advances.
- Commission Implementing Regulation (EU) No. 908/2014 lays down rules for the application of Regulation (EU) No 1306/2013 of the European Parliament and of the Council with regard to paying agencies and other bodies, financial management, clearance of accounts, rules on checks, securities and transparency.

Part 3 – Rural Development: Retained Direct Legislation

- Regulation (EU) No. 1303/2013 of the European Parliament and of the Council of 17 December 2013 lays down the common rules applicable to the European Regional Development Fund (ERDF), the European Social Fund (ESF), the Cohesion Fund, the European Agricultural Fund for Rural Development (EAFRD) and the European Maritime and Fisheries Fund (EMFF), which operate under a common framework (the 'European Structural and Investment' - 'ESI Funds'). It also lays down the provisions necessary to ensure the effectiveness of the ESI Funds and their coordination with one another and with other Union instruments;
- Regulation (EU) No. 1305/2013 of the European Parliament and of the Council of 17 December 2013 lays down general rules governing Union support for rural development, financed by the European Agricultural Fund for Rural Development ("the EAFRD") and established by Regulation (EU) No 1306/2013. It sets out the objectives to which rural development policy is to contribute and the relevant Union priorities for rural development; outlines the strategic context for rural development policy; defines the measures to be adopted in order to implement rural development policy; lays down rules on programming, networking, management, monitoring and evaluation on the basis of responsibilities shared between the Member States and the Commission and rules to ensure coordination of the EAFRD with other Union instruments.
- In terms of support for rural development, Commission Delegated Regulation (EU) No 480/2014 of 3 March 2014 supplementing Regulation (EU) No 1303/2013 of the European Parliament and of the Council sets out: provisions as regards the criteria for determining the level of financial correction to be

applied under the performance framework; rules in relation to financial instruments; the method for calculating the discounted net revenue of operations generating net revenue after completion; and the flat rate for indirect costs and the related methods applicable in other Union policies.

- Commission Delegated Regulation (EU) No 807/2014 of 11 March 2014 lays down provisions supplementing Regulation (EU) No 1305/2013 as regards: young farmers; farm and forest exchange schemes and visits; quality schemes — promotion; farm and business development; afforestation and creation of woodland; agri-environment-climate; conservation of genetic resources in agriculture and in forestry; exclusion of double-funding; animal welfare; cooperation; commercial loans to mutual funds; investments; conversion or adjustment of commitments; extended or new commitments.
- Commission Implementing Regulation (EU) No 808/2014 of 17 July 2014 lays down rules for the implementation of Regulation (EU) No 1305/2013 as regards the presentation of rural development programmes, procedures and timetables for approval and amendment of rural development programmes and national frameworks, the content of national frameworks, information and publicity for rural development programmes, implementation of certain rural development measures, monitoring and evaluation and reporting.
- Commission Implementing Regulation (EU) No 821/2014 of 28 July 2014 lays down rules for the application of Regulation (EU) No 1303/2013 of the European Parliament and of the Council as regards detailed arrangements for the transfer and management of programme contributions, the reporting on financial instruments, technical characteristics of information, communication and visibility measures for operations and the system to record and store data.
- Commission Implementing Regulation (EU) No 964/2014 of 11 September 2014 lays down rules for the application of Regulation (EU) No 1303/2013 of the European Parliament and of the Council as regards standard terms and conditions for financial instruments.

Part 4 – Rural Development: Domestic Legislation

- The Rural Development Programmes (Wales) Regulations 2014 regulate new programmes administered by the Welsh Ministers and provide a domestic legal framework for the operation of the EU legislation in Wales.
- The Common Agricultural Policy (Integrated Administration and Control System and Enforcement and Cross Compliance) (Wales) Regulations 2014 make provision in relation to Wales, for the implementation of European Regulations (including the Horizontal Regulations and Direct Payments Regulations and the accompanying Delegated and Implementing Regulations) relating to the administration of the EU CAP. These Regulations

include provisions on control and enforcement in relation to payments granted directly to farmers under Direct Payments, eligible dates for applications, minimum holding size, procedures for debts, powers of entry, offences and penalties and rules on cross-compliance.

Part 5 - Direct Payments: Horizontal Legislation

- Regulation (EU) No. 1306/2013 of the European Parliament and of the Council on the financing, management and monitoring of the common agricultural policy (“the Horizontal Regulations”) is amended, insofar as it relates to direct payments.
- Commission Delegated Regulation (EU) No.640/2014 supplementing Regulation (EU) No. 1306/2013 of the European Parliament and of the Council is amended insofar as it relates to direct payments.
- Commission Implementing Regulation (EU) No. 809/2014 laying down rules for the application of Regulation (EU) No. 1306/2013 of the European Parliament and of the Council is amended, insofar as it relates to direct payments.

Why is it being changed?

This Instrument allows the continuation of support for new rural development schemes in Wales beyond the end of the EU Implementation Period.

This Instrument simplifies the governance and administration of support for rural development as well as removing from the retained EU law provisions that are not applicable in Wales post the end of the EU Implementation Period. For example, the Instrument removes rules concerning the content and amendment of rural development programmes which were previously approved and monitored by the European Commission. This aligns the requirements for approving and monitoring the content and amendment of rural development programmes with standard Welsh Government procedures and Senedd scrutiny.

This Instrument also incorporates references to the Well-being of Future Generations (Wales) Act 2015 and the Environment (Wales) Act 2016 into the current mission, objectives and priorities for rural development support as set out in the legislation.

In addition, the Instrument makes amendments to legislation governing the direct payments scheme in Wales to address errors and to ensure it continues to operate effectively and efficiently.

5. Consultation

The amendments in Parts 2 – 4 of the Instrument have been subject to formal public consultation. ‘Sustainable Farming and Our Land: Proposals to continue and simplify Agricultural Support for Farmers and the Rural Economy’ was open between 31 July and 23 October 2020.

6. Regulatory Impact Assessment (RIA)

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments has been considered in relation to these Regulations. Officials consider these amendments to be routine technical amendments to the rural development legislative framework that, for example, remove requirements for the approval and amendment of rural development programmes by the European Commission as this will no longer be operable post the end of the EU Implementation Period. This aligns the administrative and governance process for rural development support with standard Welsh Government procedures and Senedd scrutiny. The Instrument will have no significant effect on public or private sectors, charity or voluntary sectors.

As a result, it was not considered necessary to carry out a regulatory impact assessment as to the likely costs and benefits of complying with these Regulations.

Annex
Statements under the European Union (Withdrawal) Act 2018
Part 1

Table of Statements under the 2018 Act

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraphs 3(3), 3(7) and 17(3) and 17(7) of Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) to make a Negative SI	An RIA must be completed for proposed legislation that could affect the public or private sectors, charities and the voluntary sector.
Appropriateness	Sub-paragraph (2) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2.	A statement that the SI does no more than is appropriate.
Good Reasons	Sub-paragraph (3) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2.	Explain the good reasons for making the instrument and that what is being done is a reasonable course of action.
Equalities	Sub-paragraphs (4) and (5) of paragraph	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising	Explain what, if any, amendment, repeals or revocations are being made to the Equalities Acts 2006 and 2010 and legislation made under them. State that the

	28, Schedule 7	powers in Schedule 2.	Minister has had due regard to the need to eliminate discrimination and other conduct prohibited under the Equality Act 2020.
Explanations	Sub-paragraph (6) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2 In addition to the statutory obligation the Government has made a political commitment to include these statements alongside all EUWA 2018 SIs.	Explain the instrument, identify the relevant law before exit day, explain the instrument's effect on retained EU law and give information about the purpose of the instrument, e.g., whether minor or technical changes only are intended to the EU retained law.
Criminal Offences	Sub-paragraphs (3) and (7) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9, and 23(1) or jointly exercising powers in Schedule 2 to create a criminal offence.	Set out the 'good reasons' for creating a criminal offence, and the penalty attached.
Sub-delegation	Paragraph 30, Schedule 7	Ministers of the Crown exercising sections 10(1), 12 and part 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved	State why it is appropriate to create such a sub-delegated power.

		Authority by Statutory Instrument.	
Urgency	Paragraph 34, Schedule 7	Ministers of the Crown using the urgent procedure in paragraphs 4 or 14, Schedule 7.	Statement of the reasons for the Minister's opinion that the SI is urgent.
Explanation where amending regulations under s. 2(2) ECA 1972	Paragraph 13, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA 1972	Statement explaining the good reasons for modifying the instrument made under s. 2(2) ECA 1972, identifying the relevant law before exit day, and explaining the instrument's effect on retained EU law.
Scrutiny statement where amending regulations under s.2(2) ECA 1972	Paragraph 16, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA 1972.	Statement setting out: a) the steps which the relevant authority has taken to make the draft instrument published in accordance with paragraph 16(2), Schedule 8 available to each House of Parliament, b) containing information about the relevant authority's response to— (i) any recommendations made by a committee of either House of Parliament about the published draft instrument, and (ii) any other representations made to the relevant authority about the published draft instrument, and c) containing any other information that the relevant authority considers appropriate in relation to the scrutiny of the

			instrument or draft instrument which is to be laid.

Part 2

Statements required when using enabling powers under the European Union (Withdrawal) Act 2018

1. Sifting statement(s)

Not applicable.

2. Appropriateness statement

The Minister for Environment, Energy and Rural Affairs has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view, the Agricultural Support (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2021 do no more than is appropriate.”

This is the case because the Instrument corrects deficiencies, which arise from withdrawal, and ensures there is a legislative framework in place to fund new rural development schemes effectively in Wales following the end of the Implementation Period. The Instrument makes small but impactful changes allowing a tailored approach to the delivery of new rural development funding in Wales after the end of the Implementation Period. It ensures that the legislation remains up to date and continues to operate effectively in Wales following the end of the Implementation Period. This is in line with government policy.

3. Good reasons

The Minister for Environment, Energy and Rural Affairs has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view there are good reasons for the provisions in this Instrument, and I have concluded they are a reasonable course of action.”

This is because the provisions ensure the legislation amended by this Instrument will allow for a smooth transition out of the Implementation Period and until the future reform of agricultural and rural development support.

4. Equalities

The Minister for Environment, Energy and Rural Affairs has made the following statement:

“The Instrument does not amend, repeal or revoke a provision or provisions in the Equality Act 2006 or the Equality Act 2010 or subordinate legislation made under those Acts.”

The Minister for Environment, Energy and Rural Affairs has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In relation to the Instrument, I, Lesley Griffiths, have had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct which is prohibited by or under the Equality Act 2010.”

5. Explanations

The explanations statement has been made in paragraph 4 (Purpose and intended effect of the legislation) of the main body of this Explanatory Memorandum.

6. Criminal offences

Not applicable/required.

7. Legislative sub-delegation

Not applicable/required.

8. Urgency

Not applicable/required.

Agenda Item 4.13

SL(5)792 – The Health Protection (Coronavirus Restrictions) (No. 5) (Wales) (Amendment) (No. 5) Regulations 2021

Background and Purpose

These Regulations amend the Health Protection (Coronavirus Restrictions) (No. 5) (Wales) Regulations 2020 (“the principal Regulations”).

The amendments—

- (a) extend the expiry date of the principal Regulations to 28 May 2021;
- (b) revoke restrictions on pupils and students attending schools and further education colleges;
- (c) provide that premises closed to the public (such as theatres) may be used to rehearse;
- (d) provide that a sporting event, at which the only people present are elite athletes and persons working or providing voluntary services at the event, is not prohibited under the restrictions that apply at Alert Level 3;
- (e) make minor technical changes to the provisions relating to the process for people agreeing to form extended households, to reflect the fact that not all households include a person aged 18 or over;
- (f) replicate changes previously made to the Alert Level 4 restrictions, that enabled under 18s who live alone to form an extended household, for Alert Levels 1, 2 and 3;
- (g) make temporary modifications to the restrictions and requirements applying to an Alert Level 4 area under Schedule 4 to the principal Regulations, which—
 - (i) extend the duration of the temporary modifications (previously made) to the end of the day on 26 March 2021;
 - (ii) from 13 March 2021, change the prohibition in paragraph 1 of Schedule 4 on leaving the place where a person is living (without a reasonable excuse) so that it becomes a prohibition on leaving (without a reasonable excuse) the area local to the place where the person is living;
 - (iii) from 13 March 2021, provide that a person has a reasonable excuse to leave the area local to the place where they are living, and to gather, when visiting a friend or relative in a care home, as long as they have the permission of the person responsible for the care home;
 - (iv) from 13 March 2021, provide that up to 4 people (not including children under 11 or carers) from no more than 2 households may gather outdoors, including in private gardens;



(v) from 13 March 2021, provide that a sporting event at which the only people present are elite athletes and persons working or providing voluntary services at the event is not prohibited;

(vi) from 15 March 2021, allow hair salons and barbers to open for the purposes of cutting, styling or colouring hair (by appointment);

(vii) from 13 March 2021, allow outdoor sports and exercise facilities to open;

(viii) from 22 March 2021, provide that supermarkets and other shops that sell multiple types of goods, which are already open to the public and which mainly sell the goods allowed to be sold in accordance with the Alert Level 4 restrictions, may sell other goods on their premises; and

(ix) from 22 March 2021, allow garden centres and plant nurseries to open.

Provision has also been made to prohibit gathering for the purposes of political campaigning such as canvassing. Most other activities relating to an election, for instance, voting or distributing campaign material, are allowed.

The Regulations also amend the Health Protection (Coronavirus Restrictions) (Functions of Local Authorities etc.) (Wales) Regulations 2020 to change their expiry date to 28 May 2021 and to make a temporary modification which is consequential on the other amendments made by these Regulations.

Procedure

Made Affirmative.

The Regulations were made by the Welsh Ministers before they were laid before the Senedd. The Senedd must approve the Regulations within 28 days (excluding any days when the Senedd is dissolved or in recess for more than four days) of the date they were made for them to continue to have effect.

Technical Scrutiny

The following points are identified for reporting under Standing Order 21.2 in respect of this instrument.

1. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements

Regulation 2(6)(c) revokes paragraph 5 of Schedule 3 to the principal Regulations. However, a cross-reference to paragraph 5 remains in paragraph 4(2) of Schedule 3.

2. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements

Regulation 2(8)(d) adds a new paragraph (ba) to Schedule 5 to the principal Regulations. New paragraph (ba) requires Schedule 4 to the principal Regulations to be read as if, among other



things, a new sub-paragraph (6) were added to paragraph 1 of Schedule 4. However, there is already an existing sub-paragraph 6 to paragraph 1 of Schedule 4.

3. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements

Regulation 2(8)(e) adds a new sub-paragraph (cb) to Schedule 5 to the principal Regulations. That provision requires that paragraph 5 of Schedule 4 to the principal Regulations is treated as if it were omitted. However, a cross-reference to paragraph 5 remains at paragraph 4(2) of Schedule 4 and is not treated as though it were omitted.

Merits Scrutiny

The following points are identified for reporting under Standing Order 21.3 in respect of this instrument:

4. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues or public policy likely to be of interest to the Senedd

We note the Welsh Government's justification for any potential interference with human rights. In particular, we note the following paragraphs in the Explanatory Memorandum:

"Whilst the principal Regulations, as amended by these Regulations, engage individual rights under the Human Rights Act 1998 and the European Convention on Human Rights, the Government considers that they are justified for the purpose of preventing the spreading of infectious diseases and/or the interference is permitted on the basis that it is in pursuit of a legitimate aim, namely of protecting public health and are proportionate.

Article 5 (right to liberty), Article 8 (right to respect for private and family life), Article 9 (freedom of thought, conscience and religion), Article 11 (freedom of assembly and association) and Article 1 of the First Protocol (protection of property) are engaged by the principal Regulations.

Each of these is a qualified right, which permits the Welsh Ministers to interfere with the exercise of the rights if necessary in a democratic society in the interests of public safety or for the protection of health. All such restrictions and requirements must be justified on the basis that they are in pursuit of a legitimate aim, namely of protecting public health and are proportionate. Any interference with these rights also needs to be balanced with the State's positive obligations under Article 2 (right to life). The adjustment of the restrictions and requirements under the principal Regulations by these Regulations is a proportionate response to the spread of the coronavirus. It balances the need to maintain an appropriate response to the threat posed by the coronavirus against the rights of individuals and businesses, in a manner which remains proportionate to the need to reduce the rate of transmission of the coronavirus, taking into account the scientific evidence.



These amending Regulations reduce the extent in which the restrictions and requirements under the principal Regulations interfere with those individual rights. "

5. Standing Order 21.3 (ii) - that it is of political or legal importance or gives rise to issues or public policy likely to be of interest to the Senedd

We note that there has been no formal consultation on these Regulations. In particular, we note the following paragraph in the Explanatory Memorandum:

"Given the serious and imminent threat arising from coronavirus and the need for an urgent public health response, there has been no public consultation in relation to these Regulations."

6. Standing Order 21.3 (ii) - that it is of political or legal importance or gives rise to issues or public policy likely to be of interest to the Senedd

The Explanatory Memorandum provides that a regulatory impact assessment has not been carried out in relation to these Regulations due to the need to put them in place urgently to deal with a serious and imminent threat to public health.

7. Standing Order 21.3 (ii) - that it is of political or legal importance or gives rise to issues or public policy likely to be of interest to the Senedd

We note that the changes brought into force by the Regulations are given effect, in large part, by requiring the reader of the Regulations to read various provisions in a particular way. Notably, readers are invited to read Schedule 4 to the principal Regulations as if the wording of that Schedule is different from the actual wording which appears in it. This method has been used instead of simply amending the principal Regulations.

We recognise that the reason for this may be because the changes are time-limited. We also recognise the pressures currently faced by the Government. However, these provisions are of paramount importance to all those who live in Wales. The use of this complex mechanism means that only skilled and experienced readers of legislation will be able to find the true effect of these Regulations. As a result, the law in this important area lacks transparency.

We further note that a similar mechanism was used in the Health Protection (Coronavirus Restrictions) (No. 5) (Wales) (Amendment) (No. 4) Regulations 2021. We did not report on the use of the mechanism on that occasion as the changes were far less extensive. In this instance, the changes are far-reaching. This makes it all the more notable that such a complex mechanism was used.

8. Standing Order 21.3 (ii) - that it is of political or legal importance or gives rise to issues or public policy likely to be of interest to the Senedd

Following on from the previous point, Regulation 3 provides that Regulation 6(2)(d) of the Health Protection (Coronavirus Restrictions) (Functions of Local Authorities etc.) (Wales) Regulations 2020 is to be read as though it directs the reader to paragraph 2A of Schedule 4



to the principal Regulations (rather than to paragraph 2 of that Schedule). However, there is no paragraph 2A to Schedule 4.

Instead, Regulation 8(d) of these Regulations adds new sub-paragraph (ba) to paragraph 2 of Schedule 5 to the principal Regulations. That new sub-paragraph requires Schedule 4 to the principal Regulations to be read as though a new paragraph 2 and 2A are added to Schedule 4.

Again, this lacks transparency as the reader will not find paragraph 2A in Schedule 4 to the principal Regulations.

Welsh Government response

Technical Scrutiny points 1 - 3: that drafting appears to be defective or fails to fulfil statutory requirements

The Government is grateful for the notice of the issues raised.

In relation to points 1 and 3, the Government agrees that the cross-references to paragraph 5 of Schedule 3 and paragraph 5 of Schedule 4 should have been omitted or treated as having been omitted respectively.

In relation to point 2, the Government agrees that the new sub-paragraph that is to be read as being included in paragraph 1 of Schedule 4 should be numbered (7), not (6).

The Government will make the necessary corrections at the earliest opportunity.

Merits Scrutiny point 7: drafting approach of making non-textual modifications to Schedule 4 requirements and restrictions

As the Committee's draft report identifies, some of the Regulations' changes are made by temporary (non-textual) modification of the Alert Level 4 restrictions and requirements set out in Schedule 4. The modifications are set out in Schedule 5.

The Government confirms that part of the rationale for making the changes in this way is that they are time-limited because of the desire to retain the Alert Levels as they were originally proposed (subject to minor, permanent, amendment). So at the expiry of the relevant period, the modifications will cease to apply and the Alert Level 4 restrictions and requirements will revert to those which are provided for in Schedule 4. On balance, the Government considers that this is the most appropriate way of making the required changes whilst also maintaining the principal requirements and core structure of Schedule 4 intact. Although the Government hopes that this will not be necessary the system provided for in the Regulations would enable a return to stricter restrictions quickly, either for the whole of Wales or a part of Wales.



The Government also agrees that these provisions are of great importance to the general public, and is committed to making the law as accessible as possible. To that end, we have published an illustrative document showing the Alert Level 4 restrictions and requirements as they have been temporarily modified by Schedule 5. The document is published alongside the main illustrative document showing the principal restrictions Regulations as amended, on the 'coronavirus and the law' pages of GOV.wales. The Government will also consider ways of drawing the public's attention to this document should this drafting approach continue to be used in future amendment regulations (e.g. by means of footnotes to the relevant regulations, or in the Explanatory Memorandum). This supplements numerous other explanatory documents already provided by the Government.

Merits Scrutiny point 8: cross-reference to paragraph 2A of Schedule 4 to the principal Regulations in the modification of regulation 6 of the Functions of Local Authorities etc. Regulations

The Committee's draft report queries the accessibility of the change made by regulation 3(2) of the (Amendment) (No. 5) Regulations. That regulation provides that until the end of the day on 26 March 2021, regulation 6(2)(d) of the Functions of Local Authorities etc. Regulations is to be read as if for "paragraph 2" (of Schedule 4 to the principal restrictions Regulations) there were substituted "paragraph 2A". Schedule 4 of the principal restrictions Regulations is required to be read as if including paragraph 2A by virtue of regulation 2(8)(d) of the (Amendment) (No. 5) Regulations.

The drafting of the (Amendment) (No. 5) Regulations is such that regulation 3(2) follows closely after regulation 2(8)(d) (the provision which requires Schedule 4 to be read as including paragraph 2A). The Government therefore considers that it is sufficiently clear from the context of regulation 3(2) that the cross-reference is to the paragraph 2A that is required to be read into Schedule 4 of the principal restrictions Regulations.

However, the Government will consider additional ways of ensuring the accessibility of such provisions, should it be necessary to make similar consequential modifications in any future amendments of the principal restrictions Regulations.

Legal Advisers

Legislation, Justice and Constitution Committee

16 March 2021



Regulations made by the Welsh Ministers, laid before Senedd Cymru under section 45R of the Public Health (Control of Disease) Act 1984 (c. 22), for approval by resolution of Senedd Cymru within twenty-eight days beginning with the day on which the instrument is made, subject to extension for periods of dissolution or recess for more than four days.

W E L S H S T A T U T O R Y
I N S T R U M E N T S

2021 No. 307 (W. 79)

PUBLIC HEALTH, WALES

**The Health Protection (Coronavirus
Restrictions) (No. 5) (Wales)
(Amendment) (No. 5) Regulations
2021**

EXPLANATORY NOTE

(This note is not part of the Regulations)

Part 2A of the Public Health (Control of Disease) Act 1984 enables the Welsh Ministers, by regulations, to make provision for the purpose of preventing, protecting against, controlling or providing a public health response to the incidence or spread of infection or contamination in Wales.

These Regulations are made in response to the serious and imminent threat to public health which is posed by the incidence and spread of severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) in Wales.

These Regulations amend the Health Protection (Coronavirus Restrictions) (No. 5) (Wales) Regulations 2020 (S.I. 2020/1609 (W. 335)) (“the principal Regulations”). The amendments—

- (a) extend the expiry date of the principal Regulations to 28 May 2021;
- (b) revoke restrictions on pupils and students attending schools and further education colleges;
- (c) clarify that premises that are closed to the public, such as theatres, may be used to rehearse for a performance;

- (d) provide that a sporting event at which the only people present are elite athletes and persons working or providing voluntary services at the event, is not prohibited under the restrictions that apply at Alert Level 3;
- (e) make minor technical changes to the provisions relating to the process for people agreeing to form extended households, to reflect the fact that not all households contain a person aged 18 or over;
- (f) replicates changes previously made to the Alert Level 4 restrictions, that enabled under 18s who live alone to form an extended household, for Alert Levels 1, 2 and 3;
- (g) make temporary modifications to the restrictions and requirements applying to an Alert Level 4 area under Schedule 4 to the principal Regulations, which—
 - (i) extend the duration of the temporary modifications previously made to the end of the day on 26 March 2021;
 - (ii) from 13 March 2021, change the prohibition in paragraph 1 of Schedule 4 on leaving the place where a person is living (without a reasonable excuse) so that it becomes a prohibition on leaving the area local to the place where the person is living (without a reasonable excuse);
 - (iii) from 13 March 2021, provide that a person has a reasonable excuse to leave the area local to the place where they are living, and to gather, when visiting a friend or relative in a care home, as long as they have the permission of the person responsible for the care home;
 - (iv) from 13 March 2021, provide that up to 4 people (not including children under 11 or carers) from no more than 2 households may gather outdoors, including in private gardens, for any purpose;
 - (v) from 13 March 2021, provide that a sporting event at which the only people present are elite athletes and persons working or providing voluntary services at the event is not prohibited;
 - (vi) from 15 March 2021, allowing hair salons and barbers to open for the purposes of cutting, styling or colouring hair (only), by appointment;
 - (vii) from 13 March 2021, allowing outdoor sports and exercise facilities to open;

(viii) from 22 March 2021, provide that supermarkets and other shops that sell multiple types of goods, which are already open to the public and which mainly sell the goods allowed to be sold in accordance with the Alert Level 4 restrictions, may sell other goods on their premises;

(ix) from 22 March 2021, allowing garden centres and plant nurseries to open;

(h) make other minor and consequential changes.

Despite the reasonable excuse to gather for work or to provide voluntary services, and despite the temporary modification to Schedule 4 that allows 4 people from no more than 2 households to gather outdoors for any purposes, provision has been made to prohibit gathering for the purposes of political campaigning (for example, canvassing door to door). Most other activities relating to an election are allowed (for example, going to vote or distributing campaign material).

The Regulations also amend the Health Protection (Coronavirus Restrictions) (Functions of Local Authorities etc.) (Wales) Regulations 2020 (S.I. 2020/1011 (W. 235)) to change their expiry date to 28 May 2021 (and make a temporary modification to regulation 6 of those Regulations that is consequential on amendments made to the principal Regulations).

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, a regulatory impact assessment has not been prepared as to the likely cost and benefit of complying with these Regulations.

Regulations made by the Welsh Ministers, laid before Senedd Cymru under section 45R of the Public Health (Control of Disease) Act 1984 (c. 22), for approval by resolution of Senedd Cymru within twenty-eight days beginning with the day on which the instrument is made, subject to extension for periods of dissolution or recess for more than four days.

W E L S H S T A T U T O R Y
I N S T R U M E N T S

2021 No. 307 (W. 79)

PUBLIC HEALTH, WALES

**The Health Protection (Coronavirus
Restrictions) (No. 5) (Wales)
(Amendment) (No. 5) Regulations
2021**

Made at 2.56 p.m. on 12 March 2021

*Laid before Senedd
Cymru at 6.00 p.m. on 12 March 2021*

*Coming into force in accordance with
regulation 1(2) to (4)*

The Welsh Ministers make the following Regulations in exercise of the powers conferred by sections 45C(1) and (3)(c), 45F(2) and 45P(2) of the Public Health (Control of Disease) Act 1984(1).

These Regulations are made in response to the serious and imminent threat to public health which is posed by the incidence and spread of severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) in Wales.

The Welsh Ministers consider that restrictions and requirements imposed by these Regulations are

(1) 1984 c. 22. Sections 45C, 45F and 45P were inserted by section 129 of the Health and Social Care Act 2008 (c. 14). The functions under these sections are conferred on “the appropriate Minister”. Under section 45T(6) of the 1984 Act the appropriate Minister, as respects Wales, is the Welsh Ministers.

proportionate to what they seek to achieve, which is a public health response to that threat.

In accordance with section 45R of that Act the Welsh Ministers are of the opinion that, by reason of urgency, it is necessary to make this instrument without a draft having been laid before, and approved by a resolution of, Senedd Cymru.

Title and coming into force

1.—(1) The title of these Regulations is the Health Protection (Coronavirus Restrictions) (No. 5) (Wales) (Amendment) (No. 5) Regulations 2021.

(2) These Regulations, apart from sub-paragraphs (f) and (h) of regulation 2(8), come into force immediately before the start of the day on 13 March 2021.

(3) Sub-paragraph (f) of regulation 2(8) comes into force on 15 March 2021.

(4) Sub-paragraph (h) of regulation 2(8) comes into force on 22 March 2021.

Amendment of the Health Protection (Coronavirus Restrictions) (No. 5) (Wales) Regulations 2020

2.—(1) The Health Protection (Coronavirus Restrictions) (No. 5) (Wales) Regulations 2020⁽¹⁾ are amended as follows.

(2) In regulation 3, for “31 March” substitute “28 May”.

(3) In regulation 31(3)⁽²⁾, omit “, paragraph 5 of Schedule 3”.

(4) In Schedule 1—

(a) in paragraph 3—

(i) in sub-paragraph (2), for “single adult” substitute “well-being needs”;

(ii) in sub-paragraph (3), omit “of the adult”;

(iii) in sub-paragraph (6), omit “adult”;

(iv) after sub-paragraph (6) insert—

“(6A) Sub-paragraph (6B) applies where—

(a) a person who would be, or is, a member of an extended household is a child, and

(1) S.I. 2020/1609 (W. 335) as amended by S.I. 2020/1610 (W. 336), S.I. 2020/1623 (W. 340), S.I. 2020/1645 (W. 345), S.I. 2021/20 (W. 7), S.I. 2021/46 (W. 10), S.I. 2021/57 (W. 13), S.I. 2021/66 (W. 15), S.I. 2021/95 (W. 26), S.I. 2021/103 (W. 28), S.I. 2021/172 (W. 40) and S.I. 2021/210 (W. 52).

(2) As amended by regulation 2(3) of these Regulations.

- (b) a person who has parental responsibility for the child (“P”) is a member of the child’s household.

(6B) Where this sub-paragraph applies—

- (a) the agreement required by sub-paragraph (3) is to be given by P (and not the child), and
- (b) a household ceases to be treated as part of an extended household in accordance with sub-paragraph (6) if P ceases to agree to be treated as part of the extended household (whether or not the child also ceases to agree).”;

(v) after sub-paragraph (8) insert—

“(9) In this paragraph, “well-being needs household” means—

- (a) a single adult household;
- (b) a household comprising of 1 or more children and no adults.”;

- (b) in paragraph 7(2)(c), omit “for such a broadcast”.

(5) In Schedule 2—

(a) in paragraph 3—

- (i) in sub-paragraph (2), for “single adult” substitute “well-being needs”;
- (ii) in sub-paragraph (3), for “of the adult members of the 2 households” substitute “members of the households”;
- (iii) in sub-paragraph (7), omit “adult”;

(iv) after sub-paragraph (7) insert—

“(7A) Sub-paragraph (7B) applies where—

- (a) a person who would be, or is, a member of an extended household is a child, and
- (b) a person who has parental responsibility for the child (“P”) is a member of the child’s household.

(7B) Where this sub-paragraph applies—

- (a) the agreement required by sub-paragraph (3) is to be given by P (and not the child), and
- (b) a household ceases to be treated as part of an extended household in accordance with sub-paragraph (7) if P ceases to agree to be treated as part of the extended household (whether or not the child also ceases to agree).”;

(v) after sub-paragraph (9) insert—

“(10) In this paragraph, “well-being needs household” means—

- (a) a single adult household;
 - (b) a household comprising of 1 or more children and no adults.”;
 - (b) in paragraph 7(2)(c), omit “for such a broadcast”.
 - (6) In Schedule 3—
 - (a) in paragraph 3—
 - (i) in sub-paragraph (2), for “single adult” substitute “well-being needs”;
 - (ii) in sub-paragraph (3), for “of the adult members of the 2 households” substitute “members of the households”;
 - (iii) in sub-paragraph (7), omit “adult”;
 - (iv) after sub-paragraph (7) insert—

“(7A) Sub-paragraph (7B) applies where—

 - (a) a person who would be, or is, a member of an extended household is a child, and
 - (b) a person who has parental responsibility for the child (“P”) is a member of the child’s household.
 - (7B) Where this sub-paragraph applies—
 - (a) the agreement required by sub-paragraph (3) is to be given by P (and not the child), and
 - (b) a household ceases to be treated as part of an extended household in accordance with sub-paragraph (7) if P ceases to agree to be treated as part of the extended household (whether or not the child also ceases to agree).”;
 - (v) after sub-paragraph (9) insert—

“(10) In this paragraph, “well-being needs household” means—

 - (a) a single adult household;
 - (b) a household comprising of 1 or more children and no adults.”;
 - (b) in paragraph 4(3)(c), after sub-paragraph (iv) insert—

“(v) an elite sporting event at which the only people present are elite athletes and persons working or providing voluntary services at the event.”;
 - (c) omit paragraph 5;
 - (d) in paragraph 7(2)(c), omit “for such a broadcast”.
- (7) In Schedule 4—
 - (a) in paragraph 3—

- (i) in sub-paragraph (2), for “of the adult members of the 2 households” substitute “members of the households”;
 - (ii) in sub-paragraph (5), omit “adult”;
 - (iii) after sub-paragraph (5) insert—
 - “(5A) Sub-paragraph (5B) applies where—
 - (a) a person who would be, or is, a member of an extended household is a child, and
 - (b) a person who has parental responsibility for the child (“P”) is a member of the child’s household.
 - (5B) Where this sub-paragraph applies—
 - (a) the agreement required by sub-paragraph (2) is to be given by P (and not the child), and
 - (b) a household ceases to be treated as part of an extended household in accordance with sub-paragraph (5) if P ceases to agree to be treated as part of the extended household (whether or not the child also ceases to agree).”;
 - (b) omit Part 3A.
- (8) In paragraph 2 of Schedule 5—
- (a) for “from the start of the day on 20 February 2021 to the end of the day on 12 March 2021” substitute “ending at the end of the day on 26 March 2021”;
 - (b) before paragraph (a) insert—
 - “(za) regulation 28 is to be read as if—
 - (i) in paragraph (3)(d), for “2(1)” there were substituted “2A(1)”;
 - (ii) in paragraph (5), after “from the” there were inserted “area local to the”;
 - (iii) in paragraph (5)(a), after “return to the” there were inserted “area local to the”;
 - (iv) in paragraph (5)(b), for “place” there were substituted “area”;
 - (zb) regulation 31(3) is to be read as if for “, paragraph 5 of Schedule 2 or paragraph 5 of Schedule 4” there were substituted “or paragraph 5 of Schedule 2”;
 - (zc) regulation 37(1)(d) is to be read as if for “or 2(1)” there were substituted “, 2(1) or 2A(1)”;
 - (c) omit paragraphs (a) and (b);
 - (d) before paragraph (c) insert—

“(ba) paragraph 1 of Schedule 4 is to be read as if—

- (i) for the heading there were substituted “Requirement to stay local”;
- (ii) in sub-paragraph (1), for “place where they are living or remain away from that place” there were substituted “area local to the place where they are living or remain away from that area”;
- (ii) in sub-paragraph (2)(a), after “from the” there were inserted “area local to the”;
- (iii) in sub-paragraph (3)—

(aa) in the words before paragraph (a), after “from the” there were inserted “area local to the”;

(bb) after paragraph (1) there were inserted—

“(m)visiting a person who is resident in a care home, with the permission of the service provider.”;

- (iv) sub-paragraph (4)(b) were omitted;
- (v) for sub-paragraph (4)(f) there were substituted—

“(f) exercising, where the exercise starts and finishes at the place where the person is living or where a member of the person’s extended household is living;”;

(vi) sub-paragraph (5) were omitted;

(vii) at the end there were inserted—

“(6) In this paragraph and in paragraph 2A—

- (a) “care home” means premises at which a “care home service” within the meaning given by paragraph 1 of Schedule 1 to the Regulation and Inspection of Social Care (Wales) Act 2016⁽¹⁾ is provided;
- (b) “service provider” has the meaning given by section 3(1)(c) of the Regulation and

(1) 2016 anaw 2, as amended by S.I. 2017/1326 (W. 299) and S.I. 2018/195 (W. 44).

Inspection of Social Care
(Wales) Act 2016.”;

(bb) paragraph 2 of Schedule 4 is to be treated as if it were replaced by the following—

“Restriction on gatherings in private dwellings

2.—(1) No person may, without a reasonable excuse, participate in a gathering in a private dwelling unless all the persons participating in the gathering are members of the same household or extended household.

(2) But a person may participate in such a gathering outdoors if the gathering consists of no more than 4 persons from no more than 2 households.

(3) In determining, for the purposes of sub-paragraph (2), the number of persons participating in a gathering no account is to be taken of—

- (a) any children under the age of 11, or
- (b) the carer of a person who is participating in the gathering.

(4) For the purposes of sub-paragraph (1), a person has a reasonable excuse if—

- (a) the person is participating in the gathering for a purpose that is reasonably necessary and there is no reasonably practicable alternative, or
- (b) one of the circumstances in sub-paragraph (6) applies.

(5) Examples of purposes for which it may be reasonably necessary for a person to participate in a gathering include—

- (a) obtaining or providing medical assistance, or accessing veterinary services;
- (b) working or providing voluntary or charitable services;
- (c) meeting a legal obligation;
- (d) providing, receiving or accessing care or assistance, including childcare or relevant personal care within the meaning of paragraph 7(3B) of Schedule 4 to the Safeguarding

of Vulnerable Groups Act 2006⁽¹⁾, where the person receiving the care is a vulnerable person;

- (e) in relation to children who do not live in the same household as their parents, or one of their parents, continuing existing arrangements for access to, and contact between, parents and children, and for the purposes of this paragraph, “parent” includes a person who is not a parent of the child, but who has parental responsibility for, or who has care of, the child;
- (f) moving home;
- (g) undertaking activities in connection with the purchase, sale, letting, or rental of residential property;
- (h) accessing or receiving educational services.

(6) The circumstances referred to in sub-paragraph (4)(b) are that the person is—

- (a) providing or receiving emergency assistance;
- (b) avoiding illness, injury or other risk of harm;
- (c) participating in a gathering of no more than 4 people where all the persons in the gathering—
 - (i) live in the same premises, and
 - (ii) share toilet, washing, dining or cooking facilities with each other.

(7) Despite sub-paragraphs (2) and (5)(b), no person may participate in a gathering in a private dwelling for the purposes of persuading or dissuading a person to vote in a particular manner in an election.

(8) This paragraph does not apply to a person who is homeless.

(1) 2006 c. 47. Paragraph 7(3B) was inserted by section 66(2) of the Protection of Freedoms Act 2012 (c. 9).

Restriction on gatherings in public places

2A.—(1) No person may, without a reasonable excuse, participate in a gathering which takes place anywhere other than in a private dwelling unless all the persons participating in the gathering are members of the same household.

(2) But a person may participate in such a gathering outdoors if—

- (a) all the persons participating in the gathering are members of the same extended household, or
- (b) the gathering consists of no more than 4 persons from no more than 2 households.

(3) In determining, for the purposes of sub-paragraph (2)(b), the number of persons participating in a gathering no account is to be taken of—

- (a) any children under the age of 11, or
- (b) the carer of a person who is participating in the gathering.

(4) For the purposes of sub-paragraph (1), a person has a reasonable excuse if—

- (a) the person is participating in the gathering for a purpose that is reasonably necessary and there is no reasonably practicable alternative, or
- (b) one of the circumstances in sub-paragraph (6) applies.

(5) Examples of purposes for which it may be reasonably necessary for a person to participate in a gathering include—

- (a) obtaining or providing medical assistance, or accessing veterinary services;
- (b) working or providing voluntary or charitable services;
- (c) meeting a legal obligation, including attending court or satisfying bail conditions, or to participate in legal proceedings;
- (d) providing, receiving or accessing care or assistance, including childcare or relevant personal care within the meaning of paragraph 7(3B) of Schedule 4 to the Safeguarding of Vulnerable Groups Act 2006,

where the person receiving the care is a vulnerable person;

- (e) in relation to children who do not live in the same household as their parents, or one of their parents, continuing existing arrangements for access to, and contact between, parents and children, and for the purposes of this paragraph, “parent” includes a person who is not a parent of the child, but who has parental responsibility for, or who has care of, the child;
- (f) moving home;
- (g) undertaking activities in connection with the purchase, sale, letting, or rental of residential property;
- (h) accessing or receiving public services;
- (i) accessing or receiving educational services;
- (j) visiting a person who is resident in a care home, with the permission of the service provider.

(6) The circumstances referred to in sub-paragraph (4)(b) are that the person is—

- (a) providing or receiving emergency assistance;
- (b) avoiding illness, injury or other risk of harm;
- (c) attending a solemnisation of a marriage, formation of a civil partnership or alternative wedding ceremony—
 - (i) as a party to the marriage, civil partnership or alternative wedding,
 - (ii) if invited to attend, or
 - (iii) as the carer of a person attending;
- (d) attending a funeral—
 - (i) as a person responsible for arranging the funeral,
 - (ii) if invited by a person responsible for arranging the funeral, or
 - (iii) as the carer of a person attending;

- (e) attending a place of worship;
- (f) an elite athlete and is training or competing;
- (g) providing coaching or other support to an elite athlete, or providing support at an elite sporting event.

(7) Despite sub-paragraphs (2)(b) and (5)(b), no person may participate in a gathering for the purposes of persuading or dissuading a person to vote in a particular manner in an election unless the person is participating in a broadcast without an audience (whether over the internet or as part of a radio or television broadcast).

(8) This paragraph does not apply to a person who is homeless.”;

(e) after paragraph (c) insert—

“(ca) paragraph 4 of Schedule 4 is to be read as if, after sub-paragraph (3)(c)(ii), there were inserted—

“(iii) an elite sporting event at which the only people present are elite athletes and persons working or providing voluntary services at the event.”;

(cb) paragraph 5 of Schedule 4 is to be treated as if it were omitted;

(cc) paragraph 10 of Schedule 4 is to be read as if in sub-paragraph (2)(c), the words “for such a broadcast” were omitted;”;

(f) for paragraph (cc) (as inserted above) substitute—

“(cc) paragraph 10 of Schedule 4 is to be read as if—

(i) in sub-paragraph (2)(c), the words “for such a broadcast” were omitted;

(ii) after sub-paragraph (2) there were inserted—

“(2A) Despite sub-paragraph (1), a person responsible for carrying on a business or providing a service listed in paragraph 22 (hair salons and barbers) may open its premises to the public, but only for the purposes of cutting, styling or colouring hair, by appointment.””;

(g) after paragraph (d) insert—

“(e) paragraph 39 of Schedule 4 is to be read as if for “Enclosed or indoor” there were substituted “Indoor”;

(f) paragraph 43 of Schedule 4 is to be read as if for “Sports” there were substituted “Indoor sports”;

(g) paragraph 45 of Schedule 4 is to be treated as if it were replaced by the following—

“**45.** Indoor sports courts, indoor bowling greens and other indoor sports grounds or pitches.”;

(h) after paragraph (g) insert—

“(h) paragraph 56 of Schedule 4 is to be read as if for “and petrol stations” there were substituted “, petrol stations, garden centres and plant nurseries”;

(i) in relation to a supermarket or other shop that sells multiple types of goods—

(i) which was open to the public on 11 March 2021, and

(ii) which uses its premises, in the ordinary course of its business, mainly to sell—

(aa) goods listed in paragraph 55 of Schedule 4, or

(bb) goods of a type ordinarily sold by any of the businesses listed in paragraph 56 of Schedule 4;

paragraph 57 of Schedule 4 is to be read as if the words “but only for the purposes of” to the end were omitted.”

Amendment and temporary modification of the Health Protection (Coronavirus Restrictions) (Functions of Local Authorities etc.) (Wales) Regulations 2020

3.—(1) In regulation 3(1) of the Health Protection (Coronavirus Restrictions) (Functions of Local Authorities etc.) (Wales) Regulations 2020⁽¹⁾, for “31 March” substitute “28 May”.

(2) For the period until the end of the day on 26 March 2021, regulation 6(2)(d) of those Regulations is to be read as if for “paragraph 2” there were substituted “paragraph 2A”.

(1) S.I. 2020/1011 (W. 225) as amended by S.I. 2020/1100 (W. 250), S.I. 2020/1149 (W. 261), S.I. 2020/1219 (W. 276), S.I. 2020/1409 (W. 311), S.I. 2020/1609 (W. 335) and S.I. 2021/57 (W. 13).

Mark Drakeford

First Minister, one of the Welsh Ministers

At 2.56 p.m. on 12 March 2021

Explanatory Memorandum to the Health Protection (Coronavirus Restrictions) (No. 5) (Wales) (Amendment) (No. 5) Regulations 2021

This Explanatory Memorandum has been prepared by 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 Health Protection (Coronavirus Restrictions) (No. 5) (Wales) (Amendment) (No. 5) Regulations 2021.

Mark Drakeford
First Minister

12 March 2021

1. Description

The Regulations amend the Health Protection (Coronavirus Restrictions) (No. 5) (Wales) Regulations 2020 (“the principal Regulations”).

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

These Regulations are made under the emergency procedure set out in section 45R of the Public Health (Control of Disease) Act 1984 (c. 22) (“the 1984 Act”). The Regulations are made without a draft having been laid and approved by the Senedd. It is the opinion of the Welsh Ministers that, by reason of urgency, it is necessary to make the Regulations without a draft being so laid and approved so that public health measures can be taken in order to quickly respond to the threat to human health from coronavirus. The Welsh Ministers are of the opinion that the restrictions and requirements as set out in the principal Regulations, as amended by these Regulations, are necessary and proportionate as a public health response to the current threat posed by coronavirus.

European Convention on Human Rights

Whilst the principal Regulations, as amended by these Regulations, engage individual rights under the Human Rights Act 1998 and the European Convention on Human Rights, the Government considers that they are justified for the purpose of preventing the spreading of infectious diseases and/or the interference is permitted on the basis that it is in pursuit of a legitimate aim, namely of protecting public health and are proportionate.

Article 5 (right to liberty), Article 8 (right to respect for private and family life), Article 9 (freedom of thought, conscience and religion), Article 11 (freedom of assembly and association) and Article 1 of the First Protocol (protection of property) are engaged by the principal Regulations.

Each of these is a qualified right, which permits the Welsh Ministers to interfere with the exercise of the rights if necessary in a democratic society in the interests of public safety or for the protection of health. All such restrictions and requirements must be justified on the basis that they are in pursuit of a legitimate aim, namely of protecting public health and are proportionate. Any interference with these rights also needs to be balanced with the State’s positive obligations under Article 2 (right to life). The adjustment of the restrictions and requirements under the principal Regulations by these Regulations is a proportionate response to the spread of the coronavirus. It balances the need to maintain an appropriate response to the threat posed by the coronavirus against the rights of individuals and businesses, in a manner which remains proportionate to the need to reduce the rate of transmission of the coronavirus, taking into account the scientific evidence.

These amending Regulations reduce the extent in which the restrictions and requirements under the principal Regulations interfere with those individual rights.

3. Legislative background

The 1984 Act, and regulations made under it, provide a legislative framework for health protection in England and Wales. These Regulations are made under sections 45C(1) and (3), 45F(2) and 45P(2) of the 1984 Act. Further information on these powers is set out in the Explanatory Memorandum to the principal Regulations.

4. Purpose and intended effect of the legislation

These Regulations are made in response to the serious and imminent threat to public health which is posed by the incidence and spread of severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) which causes the disease known as COVID-19.

The principal Regulations made on 18 December 2020 set out restrictions and requirements which will apply to four different Alert Levels with the determination of applicable Alert Levels as set out in the updated [Coronavirus Control Plan](#). Wales has been in Alert Level 4 since the beginning of the day on 20 December 2020.

The principal Regulations were reviewed on 11 March 2021, in accordance with regulation 2(b) of those Regulations, and the Welsh Ministers agreed that Wales should continue in Alert Level 4. However amendments and temporary modifications are now being made to the principal Regulations' Alert Level 4 restrictions and requirements, and the expiry date of the current temporary modifications in paragraph 2 of Schedule 5 to the principal Regulations is being amended so that they, and the new modifications set out below, continue to apply until the end of the day on 26 March 2021"

The following changes comes into force on 13 March 2021:

- replace 'stay at home' restrictions with 'stay local' rules

Currently, at Alert Level 4, the whole of Wales is subject to 'stay at home' restrictions. This restriction is temporarily modified, the effect of which will mean that people will be prohibited from leaving the area local to the place where they are living, without reasonable excuse.

- allow for up to four people from two different households to meet outside, effectively including in gardens and private outdoor spaces

Currently, at Alert Level 4, the principal Regulations allow groups of up to four people from two different households to exercise together outdoors (though the exercise must continue to start and finish from the place where the people are living). Such a group may include any children under the age of 11 from those households.

This is now being modified on a temporary basis so as to allow groups of up to four people from two different households to meet outdoors, which would include private gardens and other outdoor spaces, for any reason. Such a group may

include any children under the age of 11 from those households without counting towards the limit of four people.

Express provision is made to provide that persons cannot gather for the purposes of persuading or dissuading a person to vote in a particular manner in an election (for example, canvassing), unless the person is participating in a broadcast without an audience.

- outdoor sporting and exercise facilities to be permitted to reopen

In Alert Level 4, outdoor sporting and exercise facilities (such as tennis courts, bowling greens, golf courses, outdoor gyms) are required to remain closed. This is now being modified on a temporary basis so as to permit these facilities to open.

- include visits to residents of care homes (adults and children) as a reasonable excuse for gathering indoors with someone outside of a person's household or extended household

Currently, at Alert Level 4 the principal Regulations do not specifically provide for visits between members of different households as a reasonable excuse to gather. This is now being modified on a temporary basis to broaden the reasonable excuses for which a person can travel and to gather indoors to include visits to friends or relatives in care homes, provided they have the permission of the person responsible for the care home.

- remove the need for Ministers to specifically authorise individual elite sporting events

At Alert Levels 3 and 4 the principal Regulations require Ministers to authorise individual elite sporting events in order to enable them to take place. This is now being modified on a temporary basis for Alert Level 4 and amended permanently in Alert Level 3 to remove the requirement for such an authorisation, provided that the only persons present at the event are elite athletes and persons working, or providing voluntary services, at the event.

- allow the use of theatres and other premises for the purposes of rehearsals, irrespective of whether they are linked to a broadcast

The principal Regulations allow for premises otherwise closed to be used for the purposes of broadcast or rehearsal for such a broadcast only. This is now being temporarily modified in Alert Level 4, and permanently amended for the other Alert Levels, to allow any rehearsals to take place in premises, not simply rehearsals for the purpose of such a broadcast.

- "support bubbles" in all Alert Levels to include "a household comprising of 1 or more children and no adults"

Currently, at Alert Level 4, single adult households (defined at regulation 57(1)(u) of the principal Regulations) and a household comprising of 1 or more children

and no adults can form an extended household with another household. However there is no equivalent provision for children (for example those aged 16 or 17 years) who live alone or in a household with others of the same age without an adult at Alert Levels 1, 2 and 3. This was an unintentional gap in the provision and meant such individuals would not have the same access to support as adults would. Alert Levels 1, 2 and 3 are now amended to allow such households to form an extended household.

The following changes come into force at the beginning of 15 March 2021:

- remove the restrictions providing for school premises closures;

In Alert Level 4, all school and college premises are closed to children and young people, apart from children of critical workers or vulnerable children. From 20 February 2021 face to face learning for foundation phase children (those aged three to seven) has been permitted, along with enabling some older learners on vocational courses to attend college.

All restrictions in relation to school and education premises are now being lifted.

- provide for hairdressers and barbers to reopen

At Alert Level 4, the principal Regulations require hair salons and barbers to close. This is now being modified on a temporary basis to allow barbers and hair salons to reopen for the purposes of cutting, styling and colouring hair, by appointment only.

The following amendment will come into force at the beginning of 22 March 2021.

- provide for supermarkets and mixed retailers to sell non-essential items and to allow garden centres and plant nurseries to reopen

At Alert Level 4, the principal Regulation permit supermarkets and mixed retailers to remain open for the sale of essential items only. This is being modified to permit supermarkets and mixed retailers which are currently open (and which mainly sell the goods currently allowed to be sold under Alert Level 4) to sell any other items. The temporary modifications will also permit garden centres and plant nurseries to re-open.

The Regulations also extend the current expiry date of the principal Regulations and the Health Protection (Coronavirus, Functions of Local Authorities etc.) (Wales) Regulations 2020 to 28 May 2021, and make a temporary modification to those Regulations which is consequential on the modifications to the principal Regulations.

5. Consultation

Given the serious and imminent threat arising from coronavirus and the need for an urgent public health response, there has been no public consultation in relation to these Regulations.

6. Regulatory and other impact assessments

A regulatory impact assessment has not been prepared in relation to these Regulations due to the need to put them in place urgently to deal with a serious and imminent threat to public health.



Elin Jones, MS
Llywydd
Senedd Cymru
Cardiff Bay
CF99 1SN

12 March 2021

Dear Elin

The Health Protection (Coronavirus Restrictions) (No. 5) (Wales) (Amendment) (No. 5) Regulations 2021

I have today made these Regulations under sections 45C(1) and (3)(c), 45F(2) and 45P(2) of the Public Health (Control of Disease) Act 1984. These Regulations come into force in part on 13 March, and for all remaining purposes on 15 and 22 March 2021. I attach a copy of the statutory instrument and I intend to lay this and an accompanying Explanatory Memorandum once the statutory instrument has been registered.

In accordance with the emergency procedure set out in section 45R of the Public Health (Control of Disease) Act 1984, this instrument must be approved by the Senedd within 28 days of it being made, not including days when the Senedd is in recess of four days or more or dissolved, in order for it to remain in effect. In these circumstances I understand Standing Order 21.4A is relevant and the Business Committee may establish and publish a timetable for the responsible committee or committees to report. I intend to schedule these Regulations for debate in Plenary on 23 March 2021.

I am copying this letter to the Minister for Finance and Trefnydd, Mick Antoniw MS as Chair of the Legislation, Justice and Constitution Committee, Siwan Davies, Director of Senedd Business, Sian Wilkins, Head of Chamber and Committee Services and Julian Luke, Head of Policy and Legislation Committee Service.

Yours sincerely

MARK DRAKEFORD

Bae Caerdydd • Cardiff Bay
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CF99 1SN

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.



Llywodraeth Cymru
Welsh Government

WRITTEN STATEMENT BY THE WELSH GOVERNMENT

TITLE **Review of the Health Protection (Coronavirus Restriction) (No.5) (Wales) Regulations 2020**

DATE **12 March 2021**

BY **Mark Drakeford MS, First Minister**

The Health Protection (Coronavirus Restrictions) (No. 5) (Wales) Regulations 2020 require a review of the coronavirus restrictions is undertaken every three weeks. The most recent review was completed on 11 March.

Cases of coronavirus in our communities continue to fall, pressure on our NHS is steadily easing and our vaccine programme continues to go from strength to strength. Thanks to the efforts of everyone in Wales during the stay-at-home period, we are in a position to make cautious, step-by-step changes to the current restrictions.

We have been clear that our top priority is to enable as many children and students can return to face-to-face learning as possible. Building on the return of Foundation Phase learners and some vocational students in February, from Monday, all primary pupils and those in qualifications years will return.

Schools will have the flexibility to bring learners in years 10 and 12 back, to support them to progress to the next stage of their learning and more learners will also return to colleges. There will also be flexibility for in-school check-ins for all other pupils.

All learners will return to on-site learning after the Easter holiday on 12 April. Schools, colleges and other learning providers should plan on that basis.

Following the review of the coronavirus regulations, I can also announce, that from Saturday 13 March:

- The overarching stay-at-home restriction will be replaced with a new, interim stay local rule in Wales. This will mean people can leave their homes and travel within their local area – usually within five miles – but this will be flexible, particularly for people who live in rural areas and for those whose nearest shops and public services are further away.

- No more than four people from two different households will be able to meet in their local area outdoors, including in gardens. Children under 11 and carers do not count towards this limit. There must be no indoors mixing and social distancing should be followed.
- Outdoor sports facilities can reopen, including tennis courts, golf courses and bowling greens. A maximum of four people from two households can take part in activities using local sports facilities.
- Indoor care home visits can resume for one designated visitor, with the permission of the care home. Some care home providers will need a little time to put the necessary arrangements in place to support indoor visits as safely as possible.

From Monday 15 March:

- Hairdressers and barbers can reopen by appointment only to cut hair. Subject to the public health position, remaining favourable, all close contact services will be able to open from 12 April.

From Monday 22 March:

- The first steps towards reopening non-essential retail will begin. Restrictions on the sale of non-essential items will be lifted for those shops, which are currently open. Garden centres can also reopen. Subject to the public health position remaining favourable, all shops will be able to open from 12 April –as they are likely to be in England.

During the third week of the review period, we will take stock of the latest evidence before confirming changes for the Easter holidays. If public health conditions continue to be favourable, from 27 March:

- The stay local restrictions will be lifted to allow people to travel within Wales.
- Self-contained holiday accommodation will re-open to allow one household to stay overnight.
- Organised children's activities outdoors will restart.
- Libraries will reopen.

A number of other changes are being made, including:

- The need for Ministers to specifically authorise individual elite sporting events will be removed.
- Theatres and concert halls can be used for the purposes of rehearsals by professional performers, irrespective of whether they are linked to a broadcast.
- The expiry date of these regulations will be amended to 31 May 2021.

The review this week concluded the criteria for postponing the Senedd election have not been met. Full preparations for 6 May will therefore continue. Guidance for election campaigning will be published on Friday and elements will be reflected in the regulations. The move to 'stay local' will mean leafletting will be able to resume on a local basis, but regulations will still prohibit door-to-door canvassing.

The public health situation has undoubtedly improved over the last few months, thanks to the support of everyone across Wales, but coronavirus has not gone away.

This package of measures marks the first significant step towards unlocking the alert level four restrictions we have lived with since mid-December. We need to work together and do everything we can to keep cases of coronavirus low as we begin to restore personal freedoms and enable people to mix once again.

Government cannot do that alone. We need the help of everyone in Wales to keep coronavirus under control.

Agenda Item 4.14

SL(5)795 – The Public Health (Protection from Eviction) (No.2) (Wales) (Coronavirus) Regulations 2021

Background and Purpose

These Regulations are made by the Welsh Ministers under sections 45C(1), (2), (3)(c) and 45P(2) of the Public Health (Control of Disease) Act 1984.

These Regulations re-enact the Public Health (Protection from Eviction) (Wales) (Coronavirus) Regulations 2021 which expire on 31 March 2021.

These Regulations come into force on 1 April 2021 and expire at the end of the day on 30 June 2021. Regulation 3 provides that the Regulations must be reviewed regularly to ensure the restrictions and requirements imposed remain proportionate.

These Regulations prevent, except in specified circumstances, attendance at a dwelling-house for the purpose of executing a writ or warrant of possession, executing a writ or warrant of restitution or delivering a notice of eviction.

The specified circumstances are where the court is satisfied that: the claim is against trespassers who are persons unknown; or where it was made wholly or partly on the grounds of domestic violence, serious offences, anti-social behaviour, or nuisance; or, in cases where the person attending is satisfied that the dwelling-house is unoccupied at the time of attendance and the possession order was made wholly or partly on the grounds of the death of the occupant.

In a statement dated 17th March 2021, the Minister for Housing and Local Government said:

"These regulations replicate in substance the Public Health (Protection from Eviction) (Wales) (Coronavirus) Regulations 2021, and will extend the current restrictions on evictions, which are due to expire on 31 March, to the end of June 2021 – although the restrictions will, as with other coronavirus restrictions, be subject to regular review during that time.

As with the current protection from eviction arrangements, the No.2 Regulations will be made using powers under section 45C of the Public Health (Control of Diseases) Act, and will prevent, except in specified circumstances, attendance at a dwelling-house for the purpose of executing a writ or warrant of possession, executing a writ or warrant of restitution, or delivering a notice of eviction.

It is also my intention for Regulations to be made separately to extend until the end of June 2021 the application of the requirements set out in Schedule 29 to the Coronavirus Act 2020. This means that landlords will remain under a statutory obligation to provide



a six-month notice period to tenants before making a possession claim (except in relation to anti-social behaviour and domestic violence).

Taken together, these two sets of Regulations will support the Welsh Government's continuing public health response to coronavirus by helping to reduce the number of people evicted, or at risk of being evicted, into homelessness, and particularly street homelessness, where their potential vulnerability to the virus, and the likelihood of them spreading it, is increased. This will be particularly important in the context of new variants of the virus increasing its transmissibility or the severity of its impact, or a potential third wave or local spikes occurring during the period where restrictions are being relaxed.

The Welsh Government recognises that extending these temporary protections for a further period of time may cause difficulties for some landlords in the private rented sector. However, our overriding priority must be the protection of public health at this time.

Throughout the period they are in force, the No.2 Regulations will be subject to the ongoing review cycle to ensure that the arrangements remain proportionate and necessary. These reviews will be aligned with the review timings in the Health Protection (Coronavirus Restrictions) (No. 5) (Wales) Regulations 2020."

Procedure

Made Affirmative.

The Regulations were made by the Welsh Ministers before they were laid before the Senedd.

In accordance with the emergency procedure set out in section 45R of the Public Health (Control of Disease) Act 1984, this instrument must be approved by the Senedd by 3 February 2021 in order for it to remain in effect.

Technical Scrutiny

No points are identified for reporting under Standing Order 21.2 in respect of this instrument.

Merits Scrutiny

The following points are identified for reporting under Standing Order 21.3 in respect of this instrument.

1. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues or public policy likely to be of interest to the Senedd.

These Regulations engage a landlord's rights under Article 1 Protocol 1 of the European Convention on Human Rights ("A1P1"). The Committee note that exceptions are included in the Regulations that allow for evictions in certain circumstances, that the regulations are



made only for a specified period, that they are to be reviewed on a regular 3-week cycle and are made in the context of the current health emergency.

The committee further note the government's consideration of the proportionality of these regulations in the Explanatory Memorandum.

"The purpose of the Regulations is to ensure a continuation of appropriate public health responses to the Covid-19 virus by extending the prevention of the enforcement of evictions in Wales, except in the most serious circumstances. The Regulations will come into force on 1 April 2021, following the expiry of the Public Health (Protection from Eviction) (Wales) (Coronavirus) Regulations 2021, and expire on 30 June 2021. The continuing need for, and proportionality of, the regulations must be reviewed every three weeks. These three-weekly reviews are aligned with the review periods for the Health Protection (Coronavirus Restrictions) (No. 5) (Wales) Regulations 2020, as the relevant Alert Level will be a key consideration in determining whether these measures remain proportionate."

2. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues or public policy likely to be of interest to the Senedd.

We note that there has been no formal consultation on these Regulations. In particular, we note the following paragraph in the Explanatory Memorandum:

"Given the public health emergency, it has not been possible to conduct any consultation on these Regulations and there is no statutory requirement to do so. However, the Welsh Government has strong relationships with stakeholders from across the housing sector; bodies representing landlords have been informally engaged on these Regulations."

3. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues or public policy likely to be of interest to the Senedd.

The Committee note that no regulatory impact assessment has been prepared for these Regulations and the Explanatory Memorandum states:

"The COVID-19 emergency and the urgency of making these Regulations means it has not been possible to prepare a quantified Regulatory Impact Assessment."

The Committee notes that paragraph 6 of the Explanatory Memorandum attempts to set out a summary of the potential impact of these Regulations which does provide some qualitative assessment of their impact.

4. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues or public policy likely to be of interest to the Senedd.

These Regulations extend the period of time by approximately 12 weeks by which a landlord will be prevented from seeking possession of their property for unpaid rent. In combination with previous Regulations passed in January 2021 and December 2020, landlords will have been prevented from recovering possession due to unpaid rent for a significant period of



time. The arrears of rent for some landlords may have a significant adverse economic impact on them.

The Committee note the following assessment of this risk by the government in the Explanatory Memorandum:

“ Extending these protections for a further period of time may potentially mean that some tenants accrue greater levels of rent arrears than might otherwise be the case were the regulations not to be made, and this in turn may lead to financial difficulties for some landlords in the private rented sector – particularly small-scale landlords who may rely on their rental income to cover mortgage payments or as their only source of income. The Welsh Government’s Early Alert Scheme for rent arrears and other household debt in the private rented sector has been put in place to help tenants agree affordable repayment plans with their landlord or letting agent to address rent arrears and reduce the risk of them losing their home, while the Tenancy Saver Loans Scheme enables tenants in the private sector to apply for a loan, which will be paid directly to the landlord or agent, and made available to tenants at 1% APR interest, repayable over up to five years. Work is being undertaken to increase awareness amongst landlords and tenants of the schemes. However, any financial difficulties which landlords may incur necessarily have to be balanced against the cost to public health, and the knock-on effects for the health service, local authorities and other organisations, of permitting evictions to occur where there is significant risk that this contributes to the incidence and spread of the virus.”

Welsh Government response

A Welsh Government response is not required.

Legal Advisers

Legislation, Justice and Constitution Committee

18 March 2021



Regulations made by the Welsh Ministers, laid before Senedd Cymru under section 45R of the Public Health (Control of Disease) Act 1984 (c. 22), for approval by resolution of Senedd Cymru within twenty-eight days beginning with the day on which the instrument is made, subject to extension for periods of dissolution or recess for more than four days.

W E L S H S T A T U T O R Y
I N S T R U M E N T S

2021 No. 325 (W. 84)

PUBLIC HEALTH, WALES

**The Public Health (Protection from
Eviction) (No. 2) (Wales)
(Coronavirus) Regulations 2021**

EXPLANATORY NOTE

(This note is not part of the Regulations)

Section 45C of the Public Health (Control of Disease) Act 1984 enables the Welsh Ministers as “the appropriate Minister”, by regulations, to make provision for the purpose of preventing, protecting against, controlling or providing a public health response to the incidence or spread of infection or contamination in Wales.

These Regulations are made in response to the serious and imminent threat to public health which is posed by the incidence and spread of severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) in Wales.

These Regulations re-enact the Public Health (Protection from Eviction) (Wales) (Coronavirus) Regulations 2021 which expire on 31 March 2021.

These Regulations come into force on 1 April 2021 and expire at the end of the day on 30 June 2021. Regulation 3 provides that the Regulations must be reviewed regularly to ensure the restrictions and requirements imposed remain proportionate.

These Regulations prevent, except in specified circumstances, attendance at a dwelling-house for the purpose of executing a writ or warrant of possession, executing a writ or warrant of restitution or delivering a notice of eviction.

The specified circumstances are where the court is satisfied that: the claim is against trespassers who are persons unknown; or where it was made wholly or partly on the grounds of domestic violence, serious offences, anti-social behaviour, or nuisance; or, in cases where the person attending is satisfied that the dwelling-house is unoccupied at the time of attendance and the possession order was made wholly or partly on the grounds of the death of the occupant.

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, a regulatory impact assessment has not been prepared as to the likely cost and benefit of complying with these Regulations.

Regulations made by the Welsh Ministers, laid before Senedd Cymru under section 45R of the Public Health (Control of Disease) Act 1984 (c. 22), for approval by resolution of Senedd Cymru within twenty-eight days beginning with the day on which the instrument is made, subject to extension for periods of dissolution or recess for more than four days.

W E L S H S T A T U T O R Y
I N S T R U M E N T S

2021 No. 325 (W. 84)

PUBLIC HEALTH, WALES

**The Public Health (Protection from
Eviction) (No. 2) (Wales)
(Coronavirus) Regulations 2021**

Made 16 March 2021

Laid before Senedd Cymru 17 March 2021

Coming into force 1 April 2021

The Welsh Ministers make the following Regulations in exercise of the powers conferred on them by sections 45C(1), (2), (3)(c) and 45P(2) of the Public Health (Control of Disease) Act 1984(1).

These Regulations are made in response to the serious and imminent threat to public health which is posed by the incidence and spread of severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) in Wales.

The Welsh Ministers consider that the restrictions and requirements imposed by these Regulations are proportionate to what they seek to achieve, which is a public health response to that threat.

(1) 1984 c. 22. Sections 45C and 45P were inserted by section 129 of the Health and Social Care Act 2008 (c. 14) (“the 2008 Act”). The functions under these sections are conferred on “the appropriate Minister”. Under section 45T(6) of the Public Health (Control of Disease) Act 1984 “the appropriate Minister” as respects Wales, is the Welsh Ministers.

In accordance with section 45R of that Act⁽¹⁾, the Welsh Ministers are of the opinion that, by reason of urgency, it is necessary to make this instrument without a draft having been laid before, and approved by a resolution of, Senedd Cymru.

Title, commencement, application and interpretation

1.—(1) The title of these Regulations is the Public Health (Protection from Eviction) (No. 2) (Wales) (Coronavirus) Regulations 2021.

(2) These Regulations come into force on 1 April 2021.

(3) These Regulations apply in relation to Wales.

(4) In these Regulations, “dwelling-house” has the same meaning as in the Housing Act 1985⁽²⁾, the Housing Act 1988⁽³⁾ or the Rent Act 1977⁽⁴⁾, as the case may be.

Residential tenancies (protection from eviction)

2.—(1) Subject to paragraphs (2) and (3), no person may attend at a dwelling-house for the purpose of—

- (a) executing a writ or warrant of possession,
- (b) executing a writ or warrant of restitution, or
- (c) delivering a notice of eviction.

(2) Paragraph (1) does not apply where the court is satisfied that the writ, warrant or notice relates to an order for possession made—

- (a) against trespassers pursuant to a claim to which rule 55.6 (service of claims against trespassers) of the Civil Procedure Rules 1998⁽⁵⁾ applies,
- (b) wholly or partly under section 84A (absolute ground for possession for anti-social behaviour) of the Housing Act 1985⁽⁶⁾,

(1) Section 45R was inserted by section 129 of the 2008 Act.

(2) 1985 c. 68.

(3) 1988 c. 50.

(4) 1977 c. 42.

(5) S.I. 1998/3132 (L. 17). Rule 55.6 was inserted by Schedule 1 to S.I. 2001/256 (L. 7).

(6) Section 84A was inserted by section 94(1) of the Anti-social Behaviour, Crime and Policing Act 2014 (c. 12) (“the 2014 Act”) and was amended by paragraph 84 of Schedule 24 to the Sentencing Act 2020 (c. 17) (“the 2020 Act”).

- (c) wholly or partly on Ground 2 or Ground 2A in Schedule 2 (grounds for possession of dwelling-houses let under secure tenancies) to the Housing Act 1985(1),
- (d) wholly or partly on Ground 7A, Ground 14 or Ground 14A in Schedule 2 (grounds for possession of dwelling-houses let on assured tenancies) to the Housing Act 1988(2),
- (e) wholly or partly on Ground 7 (ground for possession where tenant dies and no right of succession) in Schedule 2 to the Housing Act 1988(3), or
- (f) wholly or partly under Case 2 of Schedule 15 (ground for possession of dwelling-houses let on or subject to protected or statutory tenancies) to the Rent Act 1977.

(3) Where paragraph (2)(e) applies, the person attending at the dwelling-house must take reasonable steps to satisfy themselves that the dwelling-house is unoccupied before carrying out those matters set out in paragraph (1)(a), (b) or (c).

Review and expiry

3.—(1) The Welsh Ministers must review the need for the restrictions and requirements imposed by these Regulations, and whether those restrictions are proportionate to what the Welsh Ministers seek to achieve by them—

- (a) at least once in the period from 1 April 2021 to 23 April 2021;
- (b) at least once in each subsequent period of 21 days.

(2) These Regulations expire at the end of the day on 30 June 2021.

(1) Ground 2 was substituted by section 144 of the Housing Act 1996 (c. 52) (“the 1996 Act”) and amended by paragraph 45 of Schedule 7 to the Serious Organised Crime and Police Act 2005 (c. 15) (“the 2005 Act”) and section 98(1) of the 2014 Act. Ground 2A was inserted by section 145 of the 1996 Act and amended by paragraph 33 of Schedule 8 to the Civil Partnership Act 2004 (c. 33) (“the 2004 Act”) and by S.I. 2019/1458.

(2) Ground 7A was inserted by section 97(1) of the 2014 Act and amended by paragraph 97 of Schedule 24 to the 2020 Act. Ground 14 was substituted by section 148 of the 1996 Act and amended by paragraph 46 of Schedule 7 to the 2005 Act and section 98(2) of the 2014 Act. Ground 14A was inserted by section 149 of the 1996 Act and amended by paragraph 43(3) of Schedule 8 to the 2004 Act, S.I. 2010/866, S.I. 2011/1396 and S.I. 2019/1458.

(3) There are amendments to Ground 7 which are not relevant to these Regulations.

Julie James

Minister for Housing and Local Government, one of
the Welsh Ministers

16 March 2021

Explanatory Memorandum to the Public Health (Protection from Eviction) (No.2) (Wales) (Coronavirus) Regulations 2021

This Explanatory Memorandum has been prepared by the Education and Public Services Group 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 Public Health (Protection from Eviction) (No.2) (Wales) (Coronavirus) Regulations 2021. I am satisfied that the benefits justify the likely costs.

Julie James MS
Minister for Housing and Local Government

17 March 2021

1. Description

- 1.1 These Regulations will extend from 1 April 2021 until 30 June 2021, the restrictions introduced in January 2021 by the Public Health (Protection from Eviction) (Wales) (Coronavirus) Regulations 2021 ('the 2021 regulations'), namely to prevent, except in specified circumstances, attendance at a dwelling-house for the purpose of executing a writ or warrant of possession, executing a writ or warrant of restitution or delivering a notice of eviction. The specified circumstances are where the court is satisfied that the claim is against trespassers who are persons unknown or where it was made wholly or partly on the grounds of anti-social behaviour, serious offences, nuisance, domestic violence or, in cases where the person attending is satisfied that the dwelling-house is unoccupied at the time of attendance, the death of the occupant. These Regulations will expire on 30 June 2021, but the continuing need for, and proportionality of, the regulations must be reviewed every three weeks. They replicate in substance the Public Health (Protection from Eviction) (Wales) (Coronavirus) Regulations 2021 which expire on 31 March.

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

- 2.1 The 2021 Regulations were introduced at a time when the virus rate was very high in Wales. Despite levels of infection and transmission continuing to reduce, and the vaccine programme now being well underway, keeping these protections in place for the coming months – although subject to the regular review cycle – will support the Welsh Government's continuing public health response to coronavirus by helping to reduce the number of people evicted, or at risk of being evicted, into homelessness (particularly street homelessness) where their potential vulnerability to the virus, and the likelihood of them spreading it, is increased. This will be particularly important in the context of new variants of the virus increasing its transmissibility or the severity of its impact, or a potential third wave or local spikes occurring during the period where restrictions are being relaxed.
- 2.2 In light of this, these Regulations are being made under the emergency procedure set out in section 45R of the Public Health (Control of Disease) Act 1984 ("the 1984 Act") and have been made without a draft having been first laid and approved by a resolution of the Senedd, as would usually be required under section 45Q of the Act. It is the opinion of the Welsh Ministers that, by reason of urgency, it is necessary to make these Regulations without a draft being so laid and approved so that public health measures can be taken in response to the serious and imminent threat to public health posed by the incidence and spread of Covid-19. The Regulations will come into force on 1 April 2021. Since they are made under the emergency procedure they will cease to have effect at the end of 28 days from the day on which they are made unless, during that period, they are approved by a resolution of Senedd Cymru.

3. Legislative background

- 3.1 These Regulations are made under section 45C of the Public Health (Control of Disease) Act 1984 to enable public health measures to be taken for the purpose of reducing the public health risks posed by the incidence and spread of Covid-19. Section 45C of that Act enables the Welsh Ministers (as “The appropriate Minister”), by regulations, to make provision for the purpose of preventing, protecting against, controlling or providing a public health response to the incidence or spread of infection or contamination in Wales. The Regulations will prevent the eviction of residential tenants during this critical stage of the pandemic. In accordance with section 45R of the 1984 Act, the Welsh Ministers are of the opinion that, by reason of urgency, it is necessary to make these Regulations without a draft having been laid before, and approved by the Senedd.
- 3.2 Legislative measures have previously been put in place for the purpose of protecting tenants from eviction during the coronavirus pandemic. Schedule 29 to the Coronavirus Act 2020 (“the 2020 Act”) provides protection from eviction in respect of most residential tenancies and notices¹ served during the ‘relevant period’ (which was initially defined as ending on 30 September 2020, and was subsequently extended to 31 March 2021). It does this by increasing, in most cases, the period of the notice that must be served before possession proceedings can be commenced in the courts.
- 3.3 In addition, a temporary stay on court proceedings in Wales and England was initiated in March 2020 that came to an end on 20 September 2020. It subsequently became possible to commence possession proceedings through the courts where the required notice period had elapsed, and, if an order was made, for the landlord to seek to enforce that order by applying to the court for a writ or warrant of possession, which could lead to eviction by County Court bailiffs or High Court enforcement officers.
- 3.4 The UK Government has sought to prevent evictions taking place (on an England and Wales basis) where these have been deemed incompatible with public health measures, through guidance to County Court bailiffs and the Lord Chancellor writing to High Court Enforcement Officers.
- 3.5 On 16 November 2020, the UK Government laid regulations before Parliament - The Public Health (Coronavirus) (Protection from Eviction and Taking Control of Goods) (England) Regulations 2020. Amongst other things, those regulations prevented in England, most evictions taking place during the period up to 11 January 2021.
- 3.6 To ensure that the enforcement of evictions in Wales over the Christmas and New Year period received the same statutory underpinning as in England, the Public Health (Protection from Eviction) (Wales) (Coronavirus) Regulations 2020 were brought into force on 11 December, with an expiry date of 11

¹ The relevant notices are those served under the Protection from Eviction Act 1977, the Rent Act 1977, the Housing Act 1985, the Housing Act 1988 and the Housing Act 1996

January 2021. However, in view of continuing concerns, not least in respect of new variants and excessive pressures on public services, further regulations were made covering the period from 11 January to 31 March 2021. The current regulations prevent, except in specified circumstances, attendance at a dwelling-house for the purpose of executing a writ or warrant of possession, executing a writ or warrant of restitution or delivering a notice of eviction. The specified circumstances are where the court is satisfied that the claim is against trespassers who are persons unknown or where it was made wholly or partly on the grounds of anti-social behaviour, serious offences, nuisance, domestic violence or, in cases where the person attending is satisfied that the dwelling-house is unoccupied at the time of attendance, the death of the occupant. The current Regulations expire on 31 March 2021.

- 3.7 The UK Government has recently announced that the stay on evictions in England will be extended until the end of May, whilst the Scottish Government has announced that in Scotland the arrangements will be extended until the end of September.

4. Purpose & intended effect of the legislation

- 4.1 The purpose of the Regulations is to ensure a continuation of appropriate public health responses to the Covid-19 virus by extending the prevention of the enforcement of evictions in Wales, except in the most serious circumstances. The Regulations will come into force on 1 April 2021, following the expiry of the Public Health (Protection from Eviction) (Wales) (Coronavirus) Regulations 2021, and expire on 30 June 2021. The continuing need for, and proportionality of, the regulations must be reviewed every three weeks. These three-weekly reviews are aligned with the review periods for the Health Protection (Coronavirus Restrictions) (No. 5) (Wales) Regulations 2020, as the relevant Alert Level will be a key consideration in determining whether these measures remain proportionate.
- 4.2 Up until 20 September 2020, and thus throughout the first wave of the pandemic, evictions were prevented from going ahead through amendments to the Civil Procedure Rules which stayed possession proceedings. Given the stay, there was no need to consider taking action to prevent the enforcement of evictions during that period using the powers set out in the 1984 Act at that time. However, the lifting of the stay, and the continuing increased pressures on health and other services has changed that situation.
- 4.3 During the Christmas and mid-winter period, at a time when risk of transmission of the virus was very high, and access to services and alternative accommodation limited, Regulations were put in place to ensure people were not evicted. In view of continuing concerns regarding the virus and pressures on health and wider public service, further Regulations were put in place to prevent evictions in January 2021. Those Regulations expire on 31 March 2021.
- 4.4 The impact on public health, specifically on the incidence and spread of Covid-19, of evictions and homelessness remains of concern, as do the capacity

issues services are continuing to face as a result of the pandemic, which mean that there continues to be an increased likelihood that evictions will result in homelessness, particularly street homelessness.

- 4.5 Homelessness places people in situations where they are at greater risk of both contracting the virus and transmitting it to others. They are less likely to be able to practice social distancing, even where alternative, temporary accommodation is secured, and they are likely to come into contact with many more people, whether they be those providing homelessness support services or other homeless people. If evictions were to resume at the current time, there is a risk that this would lead to increased levels of transmission, thereby undermining national efforts to continue to reduce the prevalence of the virus.
- 4.6 The current Alert Level 4 restrictions may make it more difficult for those facing eviction to access services, including advice and support services as organisations may be closed or running at a reduced capacity. Securing alternative accommodation may also present increased practical difficulties if families and friends are reluctant to offer temporary accommodation; the pandemic has shone a light on the extent of 'sofa surfing' and the number of those presenting as homeless because of the breakdown of family and friend relationships given the pandemic and restriction-related pressures on households. In a situation where there is ongoing concern about widespread community transmission of the virus, and with the pressures placed on public services generally, including through restrictions designed to reduce transmission, the likelihood that evictions will result in homelessness is raised. This is particularly the case given the significant pressure on the availability of temporary and move-on accommodation to local authorities as numbers presenting as homeless or threatened with homelessness remain high.
- 4.7 To ensure that the measures remain proportionate to the increased public health risk, the Welsh Ministers consider that some exceptions are needed to the ban on enforcement of possession orders. These are the same as those included in the previous 2021 Regulations. These are, first and foremost, instances where it is considered that the interests of preventing harm to third parties and taking action against egregious behaviour are sufficient to outweigh the public health risks posed by evictions but also where there is no obvious risk to public health. Specifically, these are:
- cases where the court is satisfied that the order for possession was made wholly or partly on the grounds of anti-social behaviour; nuisance; and/or domestic violence in social tenancies; or
 - cases where the court is satisfied that the claim is against trespassers who are persons unknown; or
 - cases where the person attending the property is satisfied that the dwelling house is unoccupied at the time of attendance, where the court is satisfied that order for possession was made wholly or partly on the grounds of death of the occupant.
- 4.8 In applying these particular specified circumstances where enforcement is possible, the Welsh Ministers note that anti-social behaviour will often result in

a significant negative impact on the mental-health and well-being of neighbours. If eviction is not possible on grounds of anti-social behaviour/nuisance and annoyance, landlords may find themselves having to rehouse those neighbours whose well-being is worst affected, or neighbouring residents may take steps of their own to find and move to new accommodation. In extreme circumstances, vulnerable individuals may even choose to become homeless rather than remain the victims of anti-social behaviour. Rehousing neighbours because of anti-social behaviour, and the steps taken by neighbours themselves to find and move to a new home, will potentially expose those individuals to situations where they are at greater risk of catching and transmitting the virus. In the case of those who choose to become homeless, those risks are likely to be even greater. In many instances, cases involving trespassers may also be associated with anti-social behaviour.

- 4.9 In these cases, permitting enforcement of possession orders may result in less risk of the virus being caught and spread than allowing the perpetrators of anti-social behaviour to remain in their homes. Although this means that some people will be evicted, preventing the enforcement of evictions except in the most egregious of cases will substantially decrease enforcement proceedings overall.
- 4.10 The other specified circumstance where enforcement is possible is where the tenant has died and there is no right of succession. In this case the person attending at the dwelling-house must take reasonable steps to satisfy themselves that the dwelling-house is unoccupied before executing a writ or warrant of possession or restitution or delivering a notice of eviction. This reflects the fact that taking possession of an unoccupied property poses no risk to public health.

5. Consultation

- 5.1 It has not been possible to conduct a consultation on these Regulations and there is no statutory requirement to do so. However, the Welsh Government has strong relationships with stakeholders from across the housing sector; bodies representing landlords have been informally engaged on these Regulations.

6. Regulatory Impact Assessment

- 6.1 The emergency nature of these regulations mean that it has not been possible to prepare a quantified Regulatory Impact Assessment. However, the following section provides a qualitative description of the likely impacts.

Options

- 6.2 Two options have been considered:

Option A – Do nothing

Option B – legislate to prevent most evictions taking place between 11 January 2021 and 1 April 2021, subject to periodic review.

Costs and Benefits

Option A – Do nothing – take no further action following expiry of the current Regulations on 1 April 2021.

- 6.3 Although there are no immediate additional costs associated with this option, it will not achieve the benefit to public health and the control of the virus that would arise from preventing evictions during this period. As a result of the latter, there will be a potentially significant medium to longer term cost, both in terms of potential harm to public health and the impact on services of having to deal with those facing eviction and homelessness.

Option B – renew the regulations so that most evictions continue to be prevented from taking place between 1 April 2021 and 30 June 2021, subject to periodic review.

- 6.4 Under this option, regulations would continue to prevent enforcement of possession orders, unless the ground for possession fell within one of the specified circumstances where an order may be enforced. Consequently, the public health benefits of preventing an upsurge in homelessness and any associated upsurge in the incidence and transmission of the virus will be realised. There would also be a saving to local authorities and organisations providing support to individuals faced with eviction, with the temporary reduction in their caseload potentially allowing them to redirect resources elsewhere.
- 6.5 There are no obvious administrative and transitional costs of preventing evictions for this temporary period. However, extending these protections for a further period of time may potentially mean that some tenants accrue greater levels of rent arrears than might otherwise be the case were the regulations not to be made, and this in turn may lead to financial difficulties for some landlords in the private rented sector – particularly small-scale landlords who may rely on their rental income to cover mortgage payments or as their only source of income. The Welsh Government's Early Alert Scheme for rent arrears and other household debt in the private rented sector has been put in place to help tenants agree affordable repayment plans with their landlord or letting agent to address rent arrears and reduce the risk of them losing their home, while the Tenancy Saver Loans Scheme enables tenants in the private sector to apply for a loan, which will be paid directly to the landlord or agent, and made available to tenants at 1% APR interest, repayable over up to five years. Work is being undertaken to increase awareness amongst landlords and tenants of the schemes. However, any financial difficulties which landlords may incur necessarily have to be balanced against the cost to public health, and the knock-on effects for the health service, local authorities and other organisations, of permitting evictions to occur where there is significant risk that this contributes to the incidence and spread of the virus.

Competition Assessment

- 6.6 It has not been possible to undertake a full competition assessment in relation to these Regulations. However, given their time limited application, it is unlikely that they will have any detrimental impact on competition.

Specific Impact Tests

Equal opportunities

- 6.7 These Regulations do not discriminate against persons sharing any of the protected characteristics as set out in the Equality Act 2010. On the contrary, the provisions included in the regulations may be particularly beneficial to vulnerable individuals who might otherwise find themselves facing eviction and forced to find alternative accommodation during a period when finding such accommodation may be especially challenging. Those with certain protected characteristics under the Equality Act 2010 are likely to be disproportionately represented amongst those living in the rented sector and therefore more vulnerable to eviction. Whilst robust data on the protected characteristics of landlords in Wales is limited², we are unaware of any negative implications of the Regulations which would disproportionately affect people with protected characteristics.

Children's rights

- 6.8 No conflict with UNCRC has been identified and no negative impacts on children and young people are expected to arise as a result of these Regulations. For families with dependent children, continuing the pause on evictions may help reduce the disruption caused to children by a home move by providing more time for parents to find suitable alternative accommodation nearby, or sufficient time to make arrangements for a move further afield where that is necessary or desirable.

Welsh Language

- 6.9 These Regulations should not give rise to any negative impacts in relation to the cultural wellbeing or the Welsh language.

Local Government

- 6.10 These Regulations may have a limited, positive, impact on local authorities, due to reduced demand on crisis homelessness services as a result of fewer evictions.

Economic effects

² Rent Smart Wales collect data on the protected characteristics of registered landlords but the significant number of those who "prefer not to say" in a number of categories, means that the data is not wholly reliable. For that reason, we have been unable to carry out an Equality Impact assessment in respect of landlords.

6.11 As set out above, whilst landlords would still be able to recover possession if a tenant fails to pay rent, or otherwise breach the terms of their tenancy, and lenders may still be able to recover possession in the event of the landlord defaulting on the mortgage, there is a potential additional cost to them arising from the delay caused by the pause in evictions. However, the temporary nature of the regulations, and the support mechanisms Welsh Government has established, means that any negative economic impact caused should be limited to the time that the pause remains in force.

Impact on Privacy

6.12 The Regulations do not produce any new requirements relating to privacy on the sharing of information.

Rural proofing

6.13 These Regulations will apply equally to people living in rural and urban areas. As such, the impacts – and benefits – should be no different between the two.

Health and Wellbeing

6.14 In addition to the specific public health benefits that would result from a reduction in the number of people evicted into homelessness, the Regulations should also support the health and wellbeing of individuals liable to be evicted by providing reassurance that they will not face eviction during each review period.

Wellbeing of Future Generations

6.15 The temporary protection from eviction through the extension of these Regulations helps to contribute to the achievement of well-being goals, in particular a more equal Wales and a healthier Wales. The five ways of working are embedded in terms of this action being preventative; taking into account the long-term impact on those likely otherwise to be evicted; acting in collaboration with third sector partners, such as Shelter Cymru; taking an integrated approach to health and housing and other areas; and involving stakeholders through stakeholder meetings.

Impact on the Justice System

6.16 The Regulations will impact on the justice system in that they will prevent the carrying out of court orders. Any long-lasting effect will be dependent on how long the pause remains in place and whether a backlog of Possession Orders builds up.



Elin Jones, MS
Llywydd
Senedd Cymru
Cardiff Bay
CF99 1SN

16 March 2021

Dear Elin,

The Public Health (Protection from Eviction) (No.2) (Wales) (Coronavirus) Regulations 2021

I have today made the Public Health (Protection from Eviction) (No.2) (Wales) (Coronavirus) Regulations 2021 under sections 45C(1), (2), (3)(c) and 45P(2) of the Public Health (Control of Disease) Act 1984 which come into force on 1 April 2021. I attach a copy of the statutory instrument and I intend to lay this and an accompanying Explanatory Memorandum once the statutory instrument has been registered.

In accordance with the emergency procedure set out in section 45R of the Public Health (Control of Disease) Act 1984, this instrument must be approved by the Senedd by 21 May 2021 in order for it to remain in effect. In these circumstances I understand Standing Order 21.4A is relevant and the Business Committee may establish and publish a timetable for the responsible committee or committees to report. It may be helpful to know that I intend to hold the plenary debate for this item of subordinate legislation on 24 March 2021.

I am copying this letter to the Minister for Finance and Trefnydd, Mick Antoniw MS as Chair of the Legislation, Justice and Constitution Committee, Siwan Davies, Director of Senedd Business, Sian Wilkins, Head of Chamber and Committee Services and Julian Luke, Head of Policy and Legislation Committee Service.

Yours sincerely

Julie James AS/MS
Y Gweinidog Tai a Llywodraeth Leol
Minister for Housing and Local Government

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.



Llywodraeth Cymru
Welsh Government

WRITTEN STATEMENT BY THE WELSH GOVERNMENT

TITLE COVID-19: laying of the Public Health (Protection from Eviction) (No. 2) (Wales) (Coronavirus) Regulations 2021, and proposed further extension of Schedule 29 to the Coronavirus Act 2020 (increasing tenancy notice periods to six months) until June 2021

DATE 17 March 2021

BY Julie James, Minister for Housing and Local Government

I have today laid the Public Health (Protection from Eviction) (No.2) (Wales) (Coronavirus) Regulations 2021 ('the No.2 Regulations'). These regulations replicate in substance the Public Health (Protection from Eviction) (Wales) (Coronavirus) Regulations 2021, and will extend the current restrictions on evictions, which are due to expire on 31 March, to the end of June 2021 – although the restrictions will, as with other coronavirus restrictions, be subject to regular review during that time.

As with the current protection from eviction arrangements, the No.2 Regulations will be made using powers under section 45C of the Public Health (Control of Diseases) Act, and will prevent, except in specified circumstances¹, attendance at a dwelling-house for the purpose of executing a writ or warrant of possession, executing a writ or warrant of restitution, or delivering a notice of eviction.

It is also my intention for Regulations to be made separately to extend until the end of June 2021 the application of the requirements set out in Schedule 29 to the Coronavirus Act 2020. This means that landlords will remain under a statutory obligation to provide a six-month notice period to tenants before making a possession claim (except in relation to anti-social behaviour and domestic violence).

Taken together, these two sets of Regulations will support the Welsh Government's continuing public health response to coronavirus by helping to reduce the number of people

¹ The specified circumstances are where the court is satisfied that: the claim is against trespassers who are persons unknown; or where the order for possession was made wholly or partly on the grounds of anti-social behaviour, serious offences, nuisance, domestic violence; or, in cases where the person attending is satisfied that the dwelling-house is unoccupied at the time of attendance, and the possession order was made wholly or partly on the grounds of the death of the occupant

evicted, or at risk of being evicted, into homelessness, and particularly street homelessness, where their potential vulnerability to the virus, and the likelihood of them spreading it, is increased. This will be particularly important in the context of new variants of the virus increasing its transmissibility or the severity of its impact, or a potential third wave or local spikes occurring during the period where restrictions are being relaxed.

The Welsh Government recognises that extending these temporary protections for a further period of time may cause difficulties for some landlords in the private rented sector. However, our overriding priority must be the protection of public health at this time. Throughout the period they are in force, the No.2 Regulations will be subject to the ongoing review cycle to ensure that the arrangements remain proportionate and necessary. These reviews will be aligned with the review timings in the Health Protection (Coronavirus Restrictions) (No. 5) (Wales) Regulations 2020.

A Plenary debate on the No.2 Regulations has been scheduled for 24 March 2021, and the regulations and accompanying Explanatory Memorandum are available [here](#) and [here](#).

Agenda Item 4.15

SL(5)796 – The Senedd Cymru (Representation of the People) (Amendment) Order 2021

Background and Purpose

The Senedd Cymru (Representation of the People) (Amendment) Order 2021 ("the Order") amends the National Assembly for Wales (Representation of the People) Order 2007 ("the 2007 Order"). The amendments made by the Order only apply for the purpose of the ordinary Senedd election due to take place in 2021.

The 2007 Order sets out the detailed rules for the conduct of elections to Senedd Cymru. The Welsh Elections (Coronavirus) Act 2021 ("the Act") made modifications to the 2007 Order to respond to the potential risks to the ordinary general election for membership of Senedd Cymru arising from the coronavirus pandemic. The provisions in the Act apply only for the 2021 ordinary Senedd election.

Time of closure for receipt of nominations for the 2021 Senedd election

For the purposes of the 2021 Senedd election, section 14(5)(a) of the Act extended the time for delivery of nomination papers, from 10:00am to 4:00pm on each day that nominations can be delivered, to 9:00am to 5:00pm. The last day for delivery of nominations is the nineteenth day before the day of the election. The last day for the withdrawal of nominations is also the nineteenth day before the election, but the time of the deadline to withdraw a nomination was not changed by the Act and therefore remains at 4:00pm. The Order reverts the time for closure of receipt of nominations to 4:00pm on the nineteenth day before the day of the poll to align the times for receipt and withdrawal of nominations.

Prescribed "Home Address Form" for the Senedd elections

The Senedd Cymru (Representation of the People) (Amendment) Order 2020 inserted the home address form into the 2007 Order. The form allows candidates to request that their home address not be made public on nomination papers. The form asks a candidate to insert the name of the Senedd Cymru constituency within which the candidate resides.

The Order makes amendments so that any candidates living outside Wales but within the UK can refer to the UK Parliament constituency in which they reside on the home address form. Separate provision is already made on the form for candidates who live outside the UK.

Procedure

Made Affirmative.

The Order was made by the Welsh Ministers before it was laid before the Senedd.



The Senedd must approve the Order within 28 days (excluding any days when the Senedd is: (i) dissolved, or (ii) in recess for more than four days) of the date it was made for it to continue to have effect.

Technical Scrutiny

No points are identified for reporting under Standing Order 21.2 in respect of this instrument.

Merits Scrutiny

The following two points are identified for reporting under Standing Order 21.3 in respect of this instrument.

1. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Senedd.

The Order amends the home address form which allows candidates to request that their home address not be made public on nomination forms. Where this is used, the candidate must provide the name of the Senedd constituency within which they reside. The amendments made by the Order allow candidates who reside outside of Wales but within the UK to provide the name of the UK Parliamentary constituency within which they reside. This change applies to the 2021 Senedd election only, but the Explanatory Memorandum notes that it will need to be incorporated into a revised or new order for subsequent Senedd elections.

2. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Senedd.

With regard to consultation, the Explanatory Memorandum notes:

"The Electoral Commission have been consulted throughout the process of producing the Senedd Cymru (Representation of the People) (Amendment) Order 2021. This is in line with Section 7 of the Political Parties, Elections and Referendums Act 2000 which requires consultation with the Electoral Commission before an Order under Section 13 of the Government of Wales Act 2006 can be made.

The Electoral Commission's response when consulted on the draft Order was that they are content with both the provisions relating to the time of closure of receipt of nominations and the home address form.

The changes included in the 2021 Order have also been discussed with the electoral community, including with the five Regional Returning Officers ("RROs"). It was agreed with the RROs to include the provision to revert the time for closure of receipt of nominations to 4:00pm on the nineteenth day before the day of the poll to align the times for receipt and withdrawal of nominations."



The Committee welcomes the fact that consultation has been carried out before this Order was made. However, it is noted that although the Explanatory Memorandum refers to discussions with Regional Returning Officers, it does not mention discussions with Constituency Returning Officers. The Welsh Government is therefore asked to confirm whether it had any discussions with Constituency Returning Officers – if so, what was the outcome of such discussions or, if not, why were no such discussions held?

Welsh Government response

Regional Returning Officers (“RROs”) are responsible for liaising with the returning officers for the Senedd constituencies in their region to ensure a consistent approach to the administration of the Senedd election throughout their region. The Welsh Government therefore consulted them on this basis. In addition, one of the RROs is the Chair of the Wales Electoral Coordination Board which has the role of ensuring consistent electoral administration and practice across Wales. The Welsh Government also consulted the Wales Branch of the Association of Electoral Administrators, which represents election professionals across Wales. The views expressed during these discussions were considered before the Order was made.

Legal Advisers

Legislation, Justice and Constitution Committee

18 March 2021



An Order laid before Senedd Cymru under section 12(3) of the Welsh Elections (Coronavirus) Act 2021, for approval by resolution of Senedd Cymru within twenty-eight days beginning with the day on which the Order was made, disregarding any periods of dissolution or recess of more than four days.

W E L S H S T A T U T O R Y
I N S T R U M E N T S

2021 No. 335 (W. 90)

CONSTITUTIONAL LAW

**REPRESENTATION OF THE
PEOPLE, WALES**

**The Senedd Cymru (Representation
of the People) (Amendment) Order
2021**

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the National Assembly for Wales (Representation of the People) Order 2007 (“the 2007 Order”).

The 2007 Order was made by the Secretary of State, but the enabling powers were transferred to the Welsh Ministers by the Wales Act 2017. The Welsh Ministers made their first Order in relation to the conduct of Senedd Cymru elections in 2020, namely the Senedd Cymru (Representation of the People) (Amendment) Order 2020 (“the 2020 Order”).

Article 3 of this Order amends the 2007 Order to change the time for delivery of nomination papers to 4 p.m. on the 19th day before the day of the election.

Articles 4, 5 and 6 of this Order amend paragraphs 4, 6 and 7 of Schedule 5, and Part 2 of form CZ (Home address form) in Schedule 10, to the 2007 Order. The amendments require a candidate, who does not want their home address made public, to provide either their Senedd Cymru constituency, or if they reside outside Wales, their UK Parliamentary constituency where their home address is located. Form CZ is amended to reflect this change also.

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to this Order. As a result, it was not considered necessary to carry out a regulatory impact assessment as to the likely costs and benefits of complying with this Order.

An Order laid before Senedd Cymru under section 12(3) of the Welsh Elections (Coronavirus) Act 2021, for approval by resolution of Senedd Cymru within twenty-eight days beginning with the day on which the Order was made, disregarding any periods of dissolution or recess of more than four days.

W E L S H S T A T U T O R Y
I N S T R U M E N T S

2021 No. 335 (W. 90)

CONSTITUTIONAL LAW

**REPRESENTATION OF THE
PEOPLE, WALES**

**The Senedd Cymru (Representation
of the People) (Amendment) Order
2021**

Made at 4.13 p.m. on 17 March 2021

Laid before Senedd
Cymru at 5.55 p.m. on 17 March 2021

Coming into force 18 March 2021

The Welsh Ministers make this Order in exercise of the powers conferred on them by sections 13(1) and (2) and 157(2)(c) of the Government of Wales Act 2006⁽¹⁾ as extended by section 26(3) of the Welsh Language Act 1993⁽²⁾.

In accordance with section 12(3) of the Welsh Elections (Coronavirus) Act 2021⁽³⁾, this instrument has been laid before and approved by a resolution of Senedd Cymru within 28 days of it being made.

In accordance with section 7(1) and (2)(f) of the Political Parties, Elections and Referendums Act

⁽¹⁾ 2006 c. 32. Section 13 was substituted by section 5(1) of the Wales Act 2017 (c. 4) and subsequently amended by the Senedd and Elections (Wales) Act 2020 (anaw 1).

⁽²⁾ 1993 c. 38.

⁽³⁾ 2021 asc 2.

2000(1), the Welsh Ministers have consulted with the Electoral Commission prior to it being made.

PART 1

General

Title, commencement, interpretation and application

1.—(1) The title of this Order is the Senedd Cymru (Representation of the People) (Amendment) Order 2021.

(2) This Order comes into force the day after the day on which it is made.

(3) This Order only applies to an ordinary general election for membership of Senedd Cymru which takes place in 2021.

(4) In this Order—

“the 2007 Order” (“*Gorchymyn 2007*”) means the National Assembly for Wales (Representation of the People) Order 2007(2);

“the 2021 election” (“*etholiad 2021*”) means an ordinary general election for membership of Senedd Cymru the poll of which is due to be held in 2021.

Amendment of the 2007 Order

2. The 2007 Order is amended in accordance with Parts 2 and 3.

PART 2

Delivery of nomination papers

3. In rule 1(1) (timetable for conduct of proceedings at a Senedd election) of Schedule 5, in the column of the table headed “Time”, in the entry corresponding to the entry “Delivery of nomination papers.”, in the first sentence of that column, after “notice of election but not later than” insert “4 in the afternoon on”.

(1) 2000 c. 41; subsection (2)(f) was substituted by S.I. 2007/1388.

(2) S.I. 2007/236. This Order has been amended by S.I. 2009/1182; S.I. 2010/1142 (W. 101); S.I. 2010/2931; S.I. 2011/1441; S.I. 2011/2085; S.I. 2012/1479; S.I. 2013/388; S.I. 2013/591; S.I. 2015/664; S.I. 2016/272; S.I. 2016/292; S.I. 2020/1558 (W. 329); section 3 of the Wales Act 2014 (c. 29), section 27 of the Senedd and Elections (Wales) Act 2020 (anaw 1) and section 12 of the Welsh Elections (Coronavirus) Act 2021 (asc 2).

PART 3

Home address form

4. In article 2(1) (interpretation), in the appropriate place insert—

““UK Parliamentary constituency” means a constituency specified in an Order in Council made under section 4 of the Parliamentary Constituencies Act 1986⁽¹⁾.”

5.—(1) Schedule 5 (Senedd Election Rules) is amended as follows.

(2) In rule 4(4B)(b)(i), after “state the” insert “Senedd Cymru or, if the candidate resides outside Wales, UK Parliamentary”.

(3) In rule 6(4B)(b)(i), after “state the” insert “Senedd Cymru or, if the candidate resides outside Wales, UK Parliamentary”.

(4) In rule 7(6B)(b)(i), after “state the” insert “Senedd Cymru or, if the candidate resides outside Wales, UK Parliamentary”.

6. In Schedule 10 (Appendix of forms), in Part 2 of form CZ, after “name of Senedd Cymru” insert “or, if the candidate resides outside Wales, UK Parliamentary”.

Mark Drakeford

First Minister of Wales, one of the Welsh Ministers
At 4.13 p.m. on 17 March 2021

⁽¹⁾ 1986 c. 56.

Explanatory Memorandum to the Senedd Cymru (Representation of the People) (Amendment) Order 2021

This Explanatory Memorandum has been prepared by the Office of the First Minister 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 Senedd Cymru (Representation of the People) (Amendment) Order 2021.

Mark Drakeford MS
First Minister of Wales

17 March 2021

PART 1

Description

1. The National Assembly for Wales (Representation of the People) Order 2007 (S.I. 2007/236) (“the Conduct Order”)¹, which sets out the detailed rules for the conduct of elections to the Senedd is reviewed, and has generally been amended, before each general election to the Senedd.
2. Following the Welsh Elections (Coronavirus) Act 2021 (“the Act”) gaining Royal Assent, further amendments to the National Assembly for Wales (Representation of the People) Order 2007 are required through an amending Order ahead of the Senedd ordinary general election on 6 May 2021.

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

3. None

Legislative background

4. The Conduct Order was originally made under Section 11 of the Government of Wales Act 1998 (the predecessor to Section 13 of the Government of Wales Act 2006 “GOWA”)² but as a result of paragraph 8 to Schedule 11 to GOWA is treated as if having been made under Section 13 of that Act.
5. Section 13 was amended by the Wales Act 2017 and was previously a power of the Secretary of State. These powers are now vested in the Welsh Ministers. The Welsh Ministers therefore have the power to make an Order as to the conduct of the 2021 Senedd election under Section 13 GOWA.
6. Any amending Order to the Conduct Order is usually made under the draft affirmative procedure in accordance with Section 13(7) of GOWA.
7. Section 12 of the Welsh Elections (Coronavirus) Act 2021 changes the Senedd Cymru procedure applicable to regulations making temporary changes to the rules for Senedd elections taking place before 6 November 2021.
8. The effect of Section 12 of the Act is that regulations made under Section 13 of the Government of Wales Act 2006 in relation to elections taking place before 6 November 2021 will be subject to the made affirmative procedure.
9. Under the made affirmative procedure, the statutory instrument may come into force from the day it is made by the Minister. However, unless the Senedd agrees a motion to approve the statutory instrument within the timeframe specified in the

¹ The National Assembly for Wales (Representation of the People) Order 2007
<http://www.legislation.gov.uk/ukxi/2007/236/contents/made>

² Section 13 of the Government of Wales Act 2006
<https://www.legislation.gov.uk/ukpga/2006/32/section/13/2018-04-01>

parent Act, the instrument will cease to have effect. In relation to this Order, the Order must be approved by resolution of the Senedd within 28 days from the day that is made, discounting periods of dissolution or when the Senedd is in recess for more than 4 days.

10. Section 12(3) of the Act states:

“(3) A statutory instrument to which this subsection applies must be laid before Senedd Cymru and ceases to have effect on the expiry of 28 days beginning with the day it is made unless, before the expiry of that period, it is approved by resolution of Senedd Cymru.”

Purpose and intended effect of the legislation

11. The National Assembly for Wales (Representation of the People) Order 2007 sets out the detailed rules for the conduct of elections to Senedd Cymru. It sets out the way in which the election and the election campaign are conducted, and includes provisions for legal challenge to an election. It also includes provisions concerning the collection and retention of personal identifiers for postal and proxy voters and requirements in connection with the application for and dealing with absent votes.
12. The Conduct Order is reviewed and has generally been amended before each Senedd general election. Amendments to the Conduct Order are typically made to reflect any relevant policy or legislative changes, or any relevant technical and/or minor updates which have taken place since the previous election.
13. The Senedd Cymru (Representation of the People) (Amendment) Order 2020 which outlined amendments to the Conduct Order in readiness for the 2021 Senedd general election was made on 16 December 2020 and came into force on 17 December 2020.
14. The Welsh Elections (Coronavirus) Act 2021 also made modifications to the National Assembly for Wales (Representation of the People) Order 2007 to respond to the potential risks to the ordinary general election for membership of Senedd Cymru arising from the coronavirus pandemic.
15. The provisions in the Act apply only for the 2021 ordinary general election, which is currently due to take place on the 6th May 2021 or may be postponed under the Act to a date no later than 5th November 2021. The provisions of the Act do not apply to any subsequent elections.
16. Following the Welsh Elections (Coronavirus) Act 2021 gaining Royal Assent, further amendments to the National Assembly for Wales (Representation of the People) Order 2007 are required through an amending Order ahead of the Senedd ordinary general election currently scheduled on 6 May 2021.
17. The provisions included in the Senedd Cymru (Representation of the People) (Amendment) Order 2021 will follow the made affirmative procedure in

accordance with Section 12 of the Welsh Elections (Coronavirus) Act 2021, and apply to the 2021 Senedd general election.

Time of closure for receipt of nominations for the 2021 Senedd election

18. For the purposes of the 2021 Senedd election, Section 14(5)(a) of the Welsh Elections (Coronavirus) Act 2021 extended the time for delivery of nomination papers from 10:00am to 4:00pm on each day that nominations can be delivered to 9:00am to 5:00pm to provide more time on each day when nominations can be delivered to respond to the circumstances of the pandemic.
19. The last day for delivery of nominations is the nineteenth day before the day of the election. On that day, it is preferable for the deadline for closure of nominations and withdrawal of nominations to be contiguous.
20. The 2021 Order will revert the time for closure of receipt of nominations to 4:00pm on the nineteenth day before the day of the poll to align the times for receipt and withdrawal of nominations.

Prescribed "Home Address Form" for the Senedd elections

21. The Senedd Cymru (Representation of the People) (Amendment) Order 2020 inserted the home address form into the Conduct Order. The form allows candidates to request that their home address not be made public on nomination papers. The form asks a candidate to insert the name of the Senedd Cymru constituency within which the candidate resides.
22. The 2021 Order will amend the form to include reference to the UK Parliament and this will serve to capture any candidates living outside Wales. The provisions in the Conduct Order relating to the form will also be amended to make reference to Senedd Cymru and UK Parliamentary constituencies.
23. This amendment will apply to the 2021 Senedd election only and will need to be incorporated into a revised or new Order for subsequent elections.
24. The purpose and intended effect of the Senedd Cymru (Representation of the People) (Amendment) Order 2021 is therefore to correct the positions on the time for the closure of receipt of nominations and the home address form.

Consultation

25. The Electoral Commission have been consulted throughout the process of producing the Senedd Cymru (Representation of the People) (Amendment) Order 2021. This is in line with Section 7 of the Political Parties, Elections and Referendums Act 2000 which requires consultation with the Electoral Commission before an Order under Section 13 of the Government of Wales Act 2006 can be made.

26. The Electoral Commission's response when consulted on the draft Order was that they are content with both the provisions relating to the time of closure of receipt of nominations and the home address form.
27. The changes included in the 2021 Order have also been discussed with the electoral community, including with the five Regional Retuning Officers ("RROs"). It was agreed with the RROs to include the provision to revert the time for closure of receipt of nominations to 4:00pm on the nineteenth day before the day of the poll to align the times for receipt and withdrawal of nominations.

Regulatory Impact Assessment (RIA)

28. The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to this Order. As a result, it was not considered necessary to carry out a regulatory impact assessment as to the likely costs and benefits of complying with the provisions relating to the time of closure of receipt of nominations and the home address form as these fall within the exemption contained within the Code where routine technical amendments or factual amendments are required to update regulations.



Elin Jones MS
Llywydd
Senedd Cymru
Cardiff Bay
CF99 1SN

17 March 2021

Dear Elin

The Senedd Cymru (Representation of the People) (Amendment) Order 2021

I have today made the Senedd Cymru (Representation of the People) (Amendment) Order 2021 under section 13 of the Government of Wales Act 2006 which comes into force on 18 March 2021. I attach a copy of the statutory instrument and the accompanying Explanatory Memorandum, which I intend to lay once the statutory instrument has been registered.

In accordance with the procedure set out in section 12 of the Welsh Elections (Coronavirus) Act 2021, this instrument must be approved by the Senedd by 22 May in order for it to remain in effect. In these circumstances I understand Standing Order 21.4A is relevant and the Business Committee may establish and publish a timetable for the responsible committee or committees to report. It may be helpful to know that I intend to hold the plenary debate for this item of subordinate legislation on 24 March 2021.

I am copying this letter to the Minister for Finance and Trefnydd, Mick Antoniw MS, Chair of the Legislation, Justice and Constitution Committee, Siwan Davies, Director of Senedd Business, Sian Wilkins, Head of Chamber and Committee Services and Julian Luke, Head of Policy and Legislation Committee Service.

Yours sincerely

MARK DRAKEFORD

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1SN

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

Agenda Item 5.1

SL(5)758 – The Education Workforce Council (Interim Suspension Orders) (Additional Functions) (Wales) Order 2021

Background and Purpose

The Education Workforce Council ("the Council") was continued in existence by the Education (Wales) Act 2014 ("the 2014 Act"). The Council is the independent regulator in Wales for:

- school teachers;
- school learning support workers;
- further education teachers (lecturers);
- further education learning support workers;
- work based learning practitioners;
- qualified youth workers; and
- qualified youth support workers.

As part of its role as regulator, the Council is required to maintain a register of all the persons registered with the Council in each of the categories listed above (known as "Registered Persons").

The 2014 Act requires the Council to carry out such investigations as it thinks appropriate where it is alleged that a Registered Person is guilty of unacceptable professional conduct, professional incompetence or it is alleged the person has been convicted of a relevant offence. After carrying out such an investigation the Council must decide what action to take, with the imposition of a disciplinary order following a hearing being a possible outcome.

Currently, the functions conferred on the Council do not allow it to suspend a Registered Person pending the outcome of an investigation and disciplinary hearing. This Order adds to the functions of the Council so that the council may, by way of an Interim Suspension Order ("ISO"), suspend a Registered Person from the public register prior to the outcome of an investigation and disciplinary hearing.

Procedure

Draft Affirmative.

The Welsh Ministers have laid a draft of the Order before the Senedd. The Welsh Ministers cannot make the Order unless the Senedd approves the draft Order.



Technical Scrutiny

No points are identified for reporting under Standing Order 21.2 in respect of this instrument.

Merits Scrutiny

The following point is identified for reporting under Standing Order 21.3 in respect of this instrument:

1. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Senedd

Article 12 of this Order makes provision in connection with an application for review of an interim suspension order by the person to whom it relates.

Paragraph (1)(a) provides that a former Registered Person may make a request for an ISO to be reviewed within 6 months of:

- (i) the date of the ISO being made; or
- (ii) the date on which the order was extended by the High Court.

Paragraph (1)(b) provides that a subsequent request may be made within the 6 months thereafter.

Paragraphs (2)(a) and (b) provide that where a request for review has been made under paragraph (1)(a) or (b) respectively, the Council must convene a hearing to consider the case before the expiry of the 6 month period.

The effect of this is that the Council may have very little time to convene a meeting. This is illustrated in the following example:

An ISO is made against a person ("P") on Thursday 1 April. The 6 month period from the date on which the ISO was made expires on Thursday 30 September.

On Wednesday 29 September P submits an application (containing all the requisite information required by Article 13) to the Council requesting that it reviews the ISO.

*As P's application satisfies Article 12(1)(a) (it was made within the 6 month period), in order to comply with Article 12(2)(a) the Council **must** convene a hearing to consider the case by the end of Thursday 30 September (when the 6 month period expires).*

The application of paragraphs (2)(a) and (b) could result in onerous timescales being imposed on the Council in certain circumstances. This is inconsistent with the approach taken in paragraph (2)(c) which allows the Council a period of 10 working days to convene a hearing following receipt of an application made under paragraph (1)(c).

Welsh Government response

A Welsh Government response is required.



Committee Consideration

The Committee considered the instrument at its meeting on 15 March 2021 and reports to the Senedd in line with the reporting point above.



Government Response: The Education Workforce Council (Interim Suspension Orders) (Additional Functions) (Wales) Order 2021

Merit Scrutiny point:

The effect of article 12 is that the EWC may have to convene a hearing to review an ISO at the request of a former registered person at 6 monthly intervals (or more often if evidence becomes available that is relevant to the case or there is a material change of circumstances since the interim suspension order was made).

It is possible that a former registered person could request that the ISO be reviewed at the end of the 6th month period (as in the example set out), but the EWC will be aware of the 6th monthly deadlines and will have had the opportunity to prepare for that eventuality.

As pointed out in the report, if new evidence did become available the former registered person is able to request a review at any time and the EWC would have 10 working days within which to convene a hearing.

This instrument has been drafted having regard to extensive consultation and input from stakeholders including the EWC who did not express any concern with regard to the timescale presented. Article 12 was drafted in order to prevent the EWC from having to convene a hearing more frequently than every 6 months unless there was evidence provided by the former registered person that there were material changes in circumstance. The suggestion formed part of the EWC's consultation response and was supported by other consultees.

Ymateb y Llywodraeth: Gorchymyn Cyngor y Gweithlu Addysg (Gorchmynion Atal Dros Dro Interim) (Swyddogaethau Ychwanegol) (Cymru) 2021

Pwynt Craffu ar Rinweddau:

Effaith erthygl 12 yw ei bod yn bosibl y bydd rhaid i Gyngor y Gweithlu Addysg gynnal gwrandawriad i adolygu gorchymyn atal dros dro interim ar gais cyn-berson cofrestredig fesul ysbaid o 6 mis (neu'n fwy aml os daw tystiolaeth ar gael sy'n berthnasol i'r achos neu os oes newid sylweddol mewn amgylchiadau ers i'r gorchymyn atal dros dro interim gael ei wneud).

Mae'n bosibl y gallai cyn-berson cofrestredig ofyn bod y gorchymyn atal dros dro interim yn cael ei adolygu ar ddiwedd y cyfnod o 6 mis (fel yn yr enghraifft a nodir), ond bydd y Cyngor yn ymwybodol o'r terfynau amser bob 6 mis ac wedi cael y cyfle i baratoi ar gyfer hynny yn y pen draw.

Fel y'i nodir yn yr adroddiad, pe deuai tystiolaeth newydd ar gael gallai'r cyn-berson cofrestredig ofyn am adolygiad ar unrhyw adeg a byddai gan y Cyngor 10 niwrnod gwaith i gynnal gwrandawriad.

Mae'r offeryn hwn wedi ei ddrafftio gan roi sylw i ymgynghoriad a chyfraniad helaeth gan randdeiliaid gan gynnwys Cyngor y Gweithlu Addysg nad oeddent yn mynegi unrhyw bryder ynghylch yr amserlen a gyflwynwyd. Drafftwyd erthygl 12 er mwyn atal y Cyngor rhag gorfod cynnal gwrandawriad yn fwy aml na phob 6 mis oni bai bod tystiolaeth wedi ei darparu gan y cyn-berson cofrestredig fod newidiadau sylweddol mewn amgylchiadau. Roedd yr awgrym yn rhan o ymateb y Cyngor i'r ymgynghoriad ac yn cael ei gefnogi gan ymgynghoreion eraill.

SL(5)767 – The Corporate Joint Committees (Transport Functions) (Wales) Regulations 2021

Background and Purpose

The Corporate Joint Committees (Transport Functions) (Wales) Regulations 2021 ("the Regulations") are made under the enabling powers contained in sections 83(2), 84 and 174 of the Local Government and Elections (Wales) Act 2021 (asc. 1) ("the 2021 Act").

Part 5 of the 2021 Act confers power on the Welsh Ministers to establish corporate joint committees. Corporate joint committees are bodies corporate consisting of such county councils and county borough councils in Wales as are specified in the Regulations establishing them. They may exercise the functions specified in those Regulations, including (among other things) specified functions of a county or county borough council relating to transport.

Section 83(2) provides the Welsh Ministers with a power to make supplementary, incidental, consequential, transitional, transitory or saving provision applying in relation to (a) all corporate joint committees; (b) a particular corporate joint committee, and (c) a particular description of corporate joint committee. And section 84 provides the Welsh Ministers with a power to make provision in connection with Part 5 of the 2021 Act, which amend, modify, apply (with or without modifications) or disapply any enactment. Finally, section 174 requires that these Regulations will be subject to the affirmative resolution procedure in the Senedd.

Part 2 of the Transport Act 2000 (c. 38) (the "2000 Act") makes provision about local transport in Wales. In particular it makes provision about Local Transport Authorities which, in Wales, are defined for the purposes of Part 2 as county or county borough councils.

Section 108 of the 2000 Act requires a Local Transport Authority to develop a local transport plan which promotes safe, integrated, efficient and economic transport within the authority's area.

The Regulations modify the 2000 Act in cases where a corporate joint committee has been established by Regulations, and the function of developing policies under section 108 of the 2000 Act has been conferred on the corporate joint committee. The modifications require the corporate joint committee to develop transport policies and establish a regional transport plan for its area. It is however the role of each Local Transport Authority within the corporate joint committee's area to implement the policies. Four corporate joint committees have been established under their respective Regulations.

Procedure

Draft Affirmative.

The Welsh Ministers have laid a draft of the Regulations before the Senedd. The Welsh Ministers cannot make the Regulations unless the Senedd approves the draft Regulations.



Technical Scrutiny

No points are identified for reporting under Standing Order 21.2 in respect of this instrument.

Merits Scrutiny

The following point is identified for reporting under Standing Order 21.3 in respect of this instrument.

1. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Senedd

The subject heading of the Regulations refers to, "LOCAL GOVERNMENT, WALES". It is noted that the main focus of the Regulations is the transfer of local transport related functions to the relevant newly formed corporate joint committees. As such, it is unclear why the subject heading does not include also 'TRANSPORT'.

Welsh Government response

A Welsh Government response is required.

Committee Consideration

The Committee considered the instrument at its meeting on 8 March 2021 and reports to the Senedd in line with the reporting point above.



Government Response: The Corporate Joint Committees (Transport Functions) (Wales) Regulations 2021

Mertis Scrutiny point 1: *Omission of additional subject heading*

The Government is grateful for notice of this issue. We agree that there would be merit in this instrument being categorised under the subject heading of “TRANSPORT” in addition to the subject heading “LOCAL GOVERNMENT, WALES”. If the Regulations are approved by the Senedd the additional subject heading will be included in the version to be signed by the Minister.

Agenda Item 6

Subordinate Legislation with Clear Reports **22 March 2021**

SL(5)799 – The Additional Learning Needs Code for Wales **2021**

Background and Purpose

The Additional Learning Needs Code ("the Code") is issued under the Additional Learning Needs and Education Tribunal (Wales) Act 2018 ("the Act"). The Act, together with the Code and regulations made under the Act, provides the statutory system for meeting the additional learning needs (ALN) of children and young people.

The Code includes statutory guidance about the exercise of functions under Part 2 of the Act (which establishes the statutory system in Wales for meeting the ALN of children and young people). The Code also includes statutory guidance on other matters connected with identifying ALN and meeting the needs of children and young people with ALN, and describes relevant statutory requirements, including ones in the Act.

The following public authorities (referred to in the Code as "relevant persons") must have regard to relevant guidance in the Code when exercising functions under Part 2 of the Act:

- a local authority in Wales or England;
- the governing body of a maintained school in Wales or England;
- the governing body of a further education institution (FEI) in Wales or England;
- the proprietor of an Academy;
- a youth offending team for an area in Wales or England;
- a person in charge of relevant youth accommodation in Wales or England;
- a Local Health Board;
- an NHS Trust;
- the National Health Service Commissioning Board;
- a clinical commissioning group;
- an NHS foundation trust;
- a Special Health Authority.

The Education Tribunal for Wales must have regard to any provision of the Code that appears to it to be relevant to a question arising on an appeal under Part 2 of the Act.

The Code includes guidance relevant to local authority funded, non-maintained providers of nursery education to which such providers, in accordance with the local authority's funding arrangements, are required to have regard.



The Code imposes requirements on local authorities in respect of their duties under the Act to make arrangements for the-

- provision of advice and information,
- avoidance and resolution of disagreements, and
- provision of independent advocacy services.

The Code imposes requirements on the governing bodies of maintained schools, FEIs and on local authorities in respect of-

- decisions about whether a child or young person has ALN,
- the preparation, content, form, review and revision of individual development plans ("IDPs"), and
- ceasing to maintain IDPs.

The Code also sets out what is required of local authorities and NHS bodies to discharge their duties to have due regard to United Nations' Conventions.

Procedure

Draft affirmative

Parent Act: Additional Learning Needs and Education Tribunal (Wales) Act 2018

SL(5)788 – The Candidate Election Expenses (Senedd Elections) Code of Practice 2021 (Appointed Day) Order 2021

Background and Purpose

This Order appointed 9 March 2021 as the day on which the Candidate Election Expenses (Senedd Elections) Code of Practice 2021 ("the Code of Practice") came into force.

The Electoral Commission prepared the Code of Practice and submitted it to the Welsh Ministers for approval. The Welsh Ministers have approved the Code of Practice, which was laid before Senedd Cymru on 20 January 2021.

This Committee reported on the Code of Practice on 1 February 2021.

The Senedd did not resolve not to approve the Code of Practice and, as a result, the Welsh Ministers made this Order for the Code of Practice to come into force on 9 March 2021.

Procedure

No procedure



Parent Act: National Assembly for Wales (Representation of the People) Order 2007

Date Made: 8 March 2021

SL(5)794 – The Senedd Cymru (Returning Officers’ Charges) Order 2021

Background and Purpose

This Order contains the maximum amounts a returning officer may recover for services rendered and expenses incurred for, or in connection with, the conduct of the 2021 Senedd Cymru election.

Articles 4, 5 and 6 of this Order specify the maximum amounts for services rendered and expenses incurred for, or in connection with, a contested constituency election. The amounts are listed in the table in Schedule 1.

Articles 7, 8 and 9 of this Order specify the maximum amounts for services rendered and expenses incurred for, or in connection with, a contested regional election. The amounts are listed in the table in Schedule 2.

Article 10 specifies the maximum amount for an uncontested constituency election, whereas article 11 specifies the maximum amount for an uncontested regional election.

Procedure

No procedure

Parent Act: The National Assembly for Wales (Representation of the People) Order 2007

Date Made: 12 March 2021



**WRITTEN STATEMENT
BY
THE WELSH GOVERNMENT**

TITLE **The Official Controls, Plant Health, Seeds and Seed Potatoes
(Amendment etc.) Regulations 2021**

DATE **10 March 2021**

BY **Rebecca Evans MS, Minister for Finance and Trefnydd**

SI laid in Parliament, which amends secondary legislation in a devolved area

**The Official Controls, Plant Health, Seeds and Seed Potatoes (Amendment etc.)
Regulations 2021**

The 2021 Regulations amend or revoke the following legislation:

EU Legislation amended

- Regulation (EU) 2016/2031 (“the Plant Health Regulation”) on protective measures against pests of plants;
- Commission Implementing Regulation (EU) 2019/2072 (“the Phytosanitary Conditions Regulation”) establishing uniform conditions for the implementation of Regulation (EU) 2016/2031;
- Commission Implementing Regulation (EU) 2020/1217 on a derogation from Implementing Regulation (EU) 2019/2072 concerning the introduction into the Union of naturally or artificially dwarfed plants for planting of *Chamaecyparis Spach*, *Juniperus* L. and certain species of *Pinus* L., originating in Japan;
- Commission Implementing Regulation (EU) 2020/1231 on the format and instructions for the annual reports on the results of the surveys and on the format of the multiannual survey programmes and the practical arrangements, respectively provided for in Articles 22 and 23 of Regulation (EU) 2016/2031; and
- Commission Implementing Regulation (EU) 2019/66 on rules on uniform practical arrangements for the performance of official controls on plants, plant products and other objects in order to verify compliance with Union rules on protective measures against pests of plants applicable to those goods.

EU Legislation revoked

- Commission Implementing Regulation (EU) 2020/1292 as regards measures to prevent the entry into the Union of *Agrilus planipennis* Fairmaire from Ukraine; and
- Commission Implementing Decision (EU) 2020/1549 repealing Decision 2004/200/EC on measures to prevent the introduction into and the spread within the Community of *Pepino* mosaic virus.

Secondary legislation amended

- The Seed Marketing Regulations 2011;
- The Seed Potatoes (England) Regulations 2015;
- The Animal Health, Plant Health, Seeds and Seed Potatoes (Amendment) (EU Exit) Regulations 2019; and
- The Official Controls and Phytosanitary Conditions (Amendment) Regulations 2021.

Any impact the SI may have on the Senedd's legislative competence and/or the Welsh Ministers' executive competence

The 2021 Regulations confer a function on the Welsh Ministers without encumbrance as a 'Competent Authority'. They also confer functions on the National Plant Protection Organisation of Great Britain and of the United Kingdom. These functions may constitute functions of a reserved authority for the purposes of paragraph 8(1) of Schedule 7B to the Government of Wales Act 2006 and as such represent a potential restriction on the future competence of the Senedd.

The purpose of the amendments

The amendments introduced by the 2021 Regulations are technical operability amendments and do not include any policy changes. The purpose of the 2021 Regulations is to ensure that plant health controls operate effectively to protect biosecurity and support trade between Great Britain and the relevant third countries.

The 2021 Regulations correct deficiencies that had not been fully mitigated by previous plant health related EU Exit Regulations. They also amend EU decisions, in relation to Great Britain, that had been introduced after the drafting of the previous plant health related EU Exit Regulations was finalised.

The 2021 Regulations modify Commission Implementing Regulation (EU) 2019/66 in order to set out the frequency rates of physical checks and identity checks carried out on certain regulated plants, plant products and other objects imported into Great Britain from EU member states, Switzerland and Liechtenstein, based on the risk each poses.

The 2021 Regulations also make a small number of corrections to secondary legislation that applies to England and secondary legislation that applies to Great Britain.

The 2020 Regulations and accompanying Explanatory Memorandum, setting out the detail of the provenance, purpose and effect of the amendments is available here:

<https://www.gov.uk/eu-withdrawal-act-2018-statutory-instruments/the-official-controls-plant-health-seeds-and-seed-potatoes-amendment-etc-dot-regulations-2021>

Why consent was given

Consent has been given for the UK Government to make these corrections in relation to, and on behalf of, Wales for reasons of efficiency, expediency and due to the technical nature of the amendments. The amendments have been considered fully and there is no divergence in policy. This is in line with the principles for correcting agreed by the Cabinet Sub-Committee on European Transition in May.

UK MINISTERS ACTING IN DEVOLVED AREAS

218 - Official Controls, Plant Health, Seeds and Seed Potatoes (Amendment etc.) Regulations 2021

Laid in the UK Parliament: 9 March 2021

Sifting

Subject to sifting in UK Parliament?	Yes
Procedure:	Proposed negative
Date of consideration by the House of Commons European Statutory Instruments Committee	Not known
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	Not known
Date sifting period ends in UK Parliament	24 March 2021
SICM under SO 30A (because amends primary legislation)	Not required

Scrutiny procedure

Outcome of sifting	Not known
Procedure	Not known
Date of consideration by the Joint Committee on Statutory Instruments	Not known
Date of consideration by the House of Commons Statutory Instruments Committee	Not known
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	Not known

Background

These Regulations are proposed to be made by the UK Government pursuant to section 8 of the European Union (Withdrawal) Act 2018.

Summary

These Regulations are made in exercise of section 8(1) of the European Union (Withdrawal) Act 2018 (c.16) in order to address failures of retained EU law to operate effectively and other deficiencies (in particular the deficiencies referred to in paragraphs (a) to (c) of section 8(2)) arising from the withdrawal of the United Kingdom from the European Union.

The Regulations correct deficiencies in retained EU law in order to ensure that plant health controls operate effectively to protect biosecurity and support trade between Great Britain ("GB") and the relevant third countries.

Regulation (EU) 2016/2031 ("the Plant Health Regulation") and Regulation (EU) 2017/625 ("the Official Controls Regulation"), (together "the EU

Regulations”), respectively establish protective measures against pests of plants, and provide for the conduct of official controls and other official activities to ensure the proper application of rules on plant health and plant protection products.

The EU Regulations, and the additional EU legislation made under them, have been incorporated into domestic law (“retained EU law”) using powers under the European Union (Withdrawal) Act 2018 (“the Withdrawal Act”). These Regulations address the remaining deficiencies of that retained EU law, and makes a small number of corrections to an earlier instrument (S.I. 2019/809) and to secondary legislation on the marketing of vegetable seed and seed potatoes, that have arisen as a result of the withdrawal of the UK from the European Union and the Protocol on Ireland/Northern Ireland to the Withdrawal Agreement (“the NI Protocol”).

The Regulations also correct an error in an earlier instrument relating to official controls (S.I. 2021/136), in respect of the importation of ware potatoes from Portugal, Poland, Romania and Spain. In addition, the Regulations modifies Commission Implementing Regulation (EU) 2019/66 (“Implementing Regulation 2019/66”) to introduce frequency rates of plant health checks on regulated plants, plant products and other objects imported into GB from the European Union, Switzerland and Liechtenstein. This will apply to plants, plant products and other objects deemed as a higher risk to GB biosecurity.

Statement by Welsh Government

Legal Advisers agree with the statement laid by the Welsh Government dated 10 March 2021 regarding the effect of these Regulations.

In particular, we note that these Regulations confer a function on the Welsh Ministers without encumbrance as a ‘Competent Authority’. They also confer functions on the National Plant Protection Organisation of Great Britain and of the United Kingdom. These functions may constitute functions of a reserved authority for the purposes of paragraph 8(1) of Schedule 7B to the Government of Wales Act 2006 and as such represent a potential restriction on the future competence of the Senedd.

Intergovernmental Agreement on the European Union (Withdrawal) Bill

The above summary and the content of the Explanatory Memorandum to these Regulations confirm their effect.



WRITTEN STATEMENT BY THE WELSH GOVERNMENT

TITLE **The Agricultural Products, Food and Drink (Amendment) (EU Exit) Regulations 2020**

DATE **12 March 2021**

BY **Rebecca Evans MS, Minister for Finance and Trefnydd**

SI laid in Parliament, which amends secondary legislation in a devolved area

The Agricultural Products, Food and Drink (Amendment) (EU Exit) Regulations 2020

The law which is being amended

Domestic Legislation

- The Spirit Drinks Regulations 2008
- The Trade Marks (Amendment etc.) (EU Exit) Regulations 2019
- The Organic Production (Control of Imports) (Amendment) (EU Exit) Regulations 2019
- The Food and Farming (Amendment) (EU Exit) Regulations 2019
- The Agriculture (Legislative Functions) (EU Exit) (No. 2) Regulations 2019
- The Agricultural Products, Food and Drink (Amendment etc.) (EU Exit) Regulations 2020

Retained Direct EU Legislation

- Commission Regulation (EC) No 1416/2006 laying down specific rules on the implementation of Article 7(2) of the Agreement between the European Community and the United States of America on trade in wine concerning the protection of US names of origin in the Community
- Commission Regulation (EC) No 936/2009 applying the agreements between the European Union and third countries on the mutual recognition of certain spirit drinks
- Regulation (EU) No 1151/2012 of the European Parliament and of the Council on

quality schemes for agricultural products and foodstuffs

- Commission Implementing Regulation No 716/2013 laying down rules for the application of Regulation (EC) 110/2008 of the European Parliament and of the Council on the definition, description, presentation, labelling and the protection of geographical indications of spirit drinks
- Regulation (EU) No 1308/2013 of the European Parliament and of the Council establishing a common organisation of the markets in agricultural products
- Regulation (EU) No 251/2014 of the European Parliament and of the Council on the definition, description, presentation, labelling and the protection of geographical indications of aromatised wine products
- Commission Implementing Regulation 668/2014 laying down rules for the application of Regulation (EU) No 1151/2012 of the European Parliament and of the Council on quality schemes for agricultural products and foodstuffs
- Commission Delegated Regulation (EU) 2019/33 supplementing Regulation (EU) No 1308/2013 of the European Parliament and of the Council as regards applications for protections of designations of origin, geographical indications and traditional terms in the wine sector, the objection procedure, restrictions of use, amendments to product specifications, cancellation of protection, and labelling and presentation
- Regulation (EU) 2019/787 of the European Parliament and of the Council on the definition, description, presentation and labelling of spirit drinks, the use of the names of spirit drinks in the presentation and labelling of other foodstuffs, the protection of geographical indications for spirit drinks, the use of ethyl alcohol and distillates of agricultural origin in alcoholic beverages

Any impact the SI may have on the Senedd's legislative competence and/or the Welsh Ministers' executive competence

Welsh Government officials are of the view that the 2020 Regulations contain provisions conferring functions on the Secretary of State in areas that are within the scope of the Senedd's legislative competence. Functions conferred on the Secretary of State without encumbrance will constitute functions of a Minister of the Crown for the purposes of paragraph 11(2) of Schedule 7B to the Government of Wales Act 2006 ('GoWA'), which restricts the Senedd's legislative competence to remove or modify such functions without consulting the relevant UK government minister.

The purpose of the amendments

The 2020 Regulations amend retained EU food and drink Regulations and domestic subordinate legislation concerning geographical indication ("GI") schemes, wine and organic products. It is subject to the made-affirmative procedure as the provisions contained needed

to enter into force as soon as the transition period ended, but for timing reasons, could not be included in previous secondary legislation.

Primarily, the 2020 Regulations amends retained direct EU legislation to enable the UK to provide for interim protection of third country GIs and traditional wine terms agreed in continuity trade agreements between the UK and third countries, but which have not yet been ratified- referred to as “bridging arrangements”.

The 2020 Regulations also included some other minor amendments which needed to enter in to force at the end of the transition period, including on wine import certifications, US wine names of origin, the importing of organic food and feed, ongoing protection of US and Mexican product designations, the functionality of retained spirits drinks regulations and adding a new class of GI to support the UK-Japan trade agreement.

The 2020 Regulations were laid to address deficiencies in retained EU legislation arising from EU Exit. It is required to ensure that the retained EU legislation is operable in the UK (as provided for by the European Union (Withdrawal) Act 2018).

The Regulations and accompanying Explanatory Memorandum, setting out the effect of amendments is available here:

<https://www.legislation.gov.uk/ukdsi/2020/9780348214109/contents>

Consent

The Welsh Government’s position is that geographical indications schemes, wine, spirit drinks and organic food and feed are devolved and do not relate to the reserved matters under any heading in Schedule 7A to the Government of Wales Act 2006. However, the UK Government does not agree, and believes the subject matter of the 2020 Regulations is reserved. Therefore, the UK Government has not requested Welsh Ministerial consent.

However, Welsh Government confirms that Welsh Minister consent to make these corrections in relation to, and on behalf of, Wales would have been given had it been sought for reasons of efficiency and expediency. There is no divergence in policy between the Welsh Government and the UK Government in relation to the substantive provision made by the 2020 Regulations. These amendments are to ensure that the retained direct EU legislation concern, and the regimes underpinned by that legislation, continues to operate effectively as of the end of the transition period.

Welsh Government has written to the UK Government to inform them of our view that it is not appropriate for UK Government Ministers to take unilateral decisions on matters which have a direct effect upon areas of devolved competence’

UK MINISTERS ACTING IN DEVOLVED AREAS

219 - The Agricultural Products, Food and Drink (Amendment) (EU Exit) Regulations 2020

Laid in the UK Parliament: 31 December 2020

Sifting

Subject to sifting in UK Parliament?	No
Procedure:	Made Affirmative
Date of consideration by the House of Commons European Statutory Instruments Committee	N/A
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	N/A
Date sifting period ends in UK Parliament	N/A
SICM under SO 30A (because amends primary legislation)	Not required

Scrutiny procedure

Outcome of sifting	N/A
Procedure	Made Affirmative
Date of consideration by the Joint Committee on Statutory Instruments	20 January 2021
Date of consideration by the House of Commons Statutory Instruments Committee	Not known
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	12 January 2021

Background

These Regulations are proposed to be made by the UK Government pursuant to section 8 of, and paragraphs 5(3) and 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018.

Summary

The 2020 Regulations amend retained EU food and drink Regulations and domestic subordinate legislation concerning geographical indication ("GI") schemes, wine and organic products.

Primarily, the 2020 Regulations amends retained direct EU legislation to enable the UK to provide for interim protection of third country GIs and traditional wine terms agreed in continuity trade agreements between the UK and third countries, but which have not yet been ratified- referred to as "bridging arrangements".

The 2020 Regulations also include some other minor amendments which needed to enter in to force at the end of the transition period, including

on wine import certifications, US wine names of origin, the importing of organic food and feed, ongoing protection of US and Mexican product designations, the functionality of retained spirits drinks regulations and adding a new class of GI to support the UK-Japan trade agreement.

Statement by Welsh Government

The link to the Explanatory Memorandum to these Regulations contained in the statement is incorrect. The link mistakenly directs to the Agricultural Products, Food and Drink (Amendment etc.) (EU Exit) Regulations 2020 – those Regulations were the subject of a SO30C Statement made on 23 November 2020.

With the exception of that error, Legal Advisers agree with the statement laid by the Welsh Government dated 12 March 2021 regarding the effect of these Regulations.

The 2020 Regulations contain provisions conferring functions on the Secretary of State in areas that are within the scope of the Senedd's legislative competence. Functions conferred on the Secretary of State without encumbrance will constitute functions of a Minister of the Crown for the purposes of paragraph 11(2) of Schedule 7B to the Government of Wales Act 2006, which restricts the Senedd's legislative competence to remove or modify such functions without consulting the relevant UK government minister.

Intergovernmental Agreement on the European Union (Withdrawal) Bill

The above summary and the content of the Explanatory Memorandum to these Regulations confirm their effect.

The Welsh Government and the UK Government are in disagreement as to whether Geographical Indication schemes, wine, spirit drinks and organic food and feed are devolved. The Welsh Government's written statement says:

"The Welsh Government's position is that geographical indications schemes, wine, spirit drinks and organic food and feed are devolved and do not relate to the reserved matters under any heading in Schedule 7A to the Government of Wales Act 2006. However, the UK Government does not agree, and believes the subject matter of the 2020 Regulations is reserved. Therefore, the UK Government has not requested Welsh Ministerial consent."

We note that, whether these matters are devolved or not, the wider the territorial extent, the more that Welsh products will be protected.

The Welsh Government's written statement confirms that Welsh Minister consent to make these corrections in relation to, and on behalf of, Wales

would have been given had it been sought for reasons of efficiency and expediency.

The Welsh Government's written statement also notes that the Welsh Government has written to the UK Government to inform them of their view that it is not appropriate for UK Government Ministers to take unilateral decisions on matters which have a direct effect upon areas of devolved competence.



Llywodraeth Cymru
Welsh Government

Mick Antoniw MS
Chair
Legislation, Justice and Constitution Committee

15 March 2021

Dear Mick

The Exemptions from Official Controls at Border Control Posts (Amendment) Regulations 2021

The above named regulations (the “2021 Regulations”) exercise powers in the Official Control Regulations (EU) 2017/625 (the “OCR”) to extend an exemption from official controls at Border Control Posts (BCPs) for certain categories of animals. Invertebrates intended for scientific purposes are already exempt from the requirement for official controls at BCPs. The 2021 Regulations will extend the exemption to other types of animals used for scientific purposes, which originate from the EU.

The OCR which forms part of retained EU law under the European Union (Withdrawal) Act 2018, subject to amendments made by legislation including the Official Controls (Animals, Feed and Food, Plant Health etc) (Amendment) (EU Exit) Regulations 2020, generally requires checks on live animals entering GB to be carried out at a BCP. Article 48 of the OCR makes provision for derogations from the requirement for checks to be carried out at a BCP to be made in regulations for certain categories of animals or goods. This includes animals and goods intended for scientific purposes.

The 2021 Regulations use the powers in Article 48 to amend Commission Delegated Regulation 2019/2122 to broaden the scope of the exemption, so that it also applies to animals listed in Schedule 2 to the Animals (Scientific Procedures) Act 1986. Corresponding amendments to the legislation which enforces the OCR in Wales, the Trade in Animals and Related Products (Wales) Regulations 2011 (“TARP”), will be made in parallel by the Welsh Government.

The amendments to 2019/2122 will enable important trade in animals needed for scientific research, which pose very low biosecurity risk, to have safe entry into GB through the main routes (from EU or via transit through EU) without checks at BCPs. Without these Regulations, animals intended for research would be required to enter GB via a BCP for inspection, despite posing low biosecurity risks. Animals intended for scientific research enter GB on licence, where required, and biosecurity controls are managed at destination. Additional checks at BCPs are therefore unnecessary.

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Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
0300 0604400

Gohebiaeth.Lesley.Griffiths@llyw.cymru
Correspondence.Lesley.Griffiths@gov.wales

Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

The approach has been agreed by the Animal Disease Policy Group, which is the decision-making body of the Common UK Framework on Animal Health and Welfare. A single amendment to 2019/2122 applying to all administrations provides clarity for those relying on its provisions.

I am writing to let you know I give my consent to the Secretary of State to make the 2021 Regulations so that the amendments to Commission Delegated Regulation (EU) 2019/2122 apply in Wales. I understand the Regulations will be laid before the Houses of Parliament on 6 April. The SI will be subject to the negative procedure.

In these exceptional circumstances when we are required to consider and correct an unprecedented volume of legislation within a tight timeframe and with finite resources, the Welsh Government's general principal is that it is appropriate that we ask the UK Government to legislate on our behalf in a large number of statutory instruments. Should consent be withheld, these corrections will need to be made through legislation made by the Welsh Government.

I am copying this letter to the Counsel General and Minister for European Transition and Chair of the Climate Change, Environment and Rural Affairs Committee.

Regards,

A handwritten signature in black ink, reading 'Lesley Griffiths'. The signature is written in a cursive style with a large, sweeping 'L' and a long, trailing 's'.

Lesley Griffiths AS/MS

Gweinidog yr Amgylchedd, Ynni a Materion Gwledig
Minister for Environment, Energy and Rural Affairs



Mike Hedges MS
Chair
Climate Change, Environment and Rural Affairs Committee

15 March 2021

Dear Mike,

The Exemptions from Official Controls at Border Control Posts (Amendment) Regulations 2021

The above named regulations (the “2021 Regulations”) exercise powers in the Official Control Regulations (EU) 2017/625 (the “OCR”) to extend an exemption from official controls at Border Control Posts (BCPs) for certain categories of animals. Invertebrates intended for scientific purposes are already exempt from the requirement for official controls at BCPs. The 2021 Regulations will extend the exemption to other types of animals used for scientific purposes, which originate from the EU.

The OCR which forms part of retained EU law under the European Union (Withdrawal) Act 2018, subject to amendments made by legislation including the Official Controls (Animals, Feed and Food, Plant Health etc) (Amendment) (EU Exit) Regulations 2020, generally requires checks on live animals entering GB to be carried out at a BCP. Article 48 of the OCR makes provision for derogations from the requirement for checks to be carried out at a BCP to be made in regulations for certain categories of animals or goods. This includes animals and goods intended for scientific purposes.

The 2021 Regulations use the powers in Article 48 to amend Commission Delegated Regulation 2019/2122 to broaden the scope of the exemption, so that it also applies to animals listed in Schedule 2 to the Animals (Scientific Procedures) Act 1986. Corresponding amendments to the legislation which enforces the OCR in Wales, the Trade in Animals and Related Products (Wales) Regulations 2011 (“TARP”), will be made in parallel by the Welsh Government.

The amendments to 2019/2122 will enable important trade in animals needed for scientific research, which pose very low biosecurity risk, to have safe entry into GB through the main routes (from EU or via transit through EU) without checks at BCPs. Without these Regulations, animals intended for research would be required to enter GB via a BCP for inspection, despite posing low biosecurity risks. Animals intended for scientific research enter GB on licence, where required, and biosecurity controls are managed at destination. Additional checks at BCPs are therefore unnecessary.

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0300 0604400

Gohebiaeth.Lesley.Griffiths@llyw.cymru
Correspondence.Lesley.Griffiths@gov.wales

Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

The approach has been agreed by the Animal Disease Policy Group, which is the decision-making body of the Common UK Framework on Animal Health and Welfare. A single amendment to 2019/2122 applying to all administrations provides clarity for those relying on its provisions.

I am writing to let you know I give my consent to the Secretary of State to make the 2021 Regulations so that the amendments to Commission Delegated Regulation (EU) 2019/2122 apply in Wales. I understand the Regulations will be laid before the Houses of Parliament on 6 April. The SI will be subject to the negative procedure.

In these exceptional circumstances when we are required to consider and correct an unprecedented volume of legislation within a tight timeframe and with finite resources, the Welsh Government's general principal is that it is appropriate that we ask the UK Government to legislate on our behalf in a large number of statutory instruments. Should consent be withheld, these corrections will need to be made through legislation made by the Welsh Government.

I am copying this letter to the Counsel General and Minister for European Transition and Chair of the Legislation, Justice and Constitution Committee.

Regards,

A handwritten signature in black ink, reading 'Lesley Griffiths'. The signature is written in a cursive style with a large, sweeping 'L' and a long, trailing 's'.

Lesley Griffiths AS/MS

Gweinidog yr Amgylchedd, Ynni a Materion Gwledig
Minister for Environment, Energy and Rural Affairs

Agenda Item 6.2

Julie James AS/MS
Y Gweinidog Tai a Llywodraeth Leol
Minister for Housing and Local Government



Llywodraeth Cymru
Welsh Government

Eich cyf/Your ref
Ein cyf/Our ref

Mick Antoniw MS
Chair of the Legislation, Justice and Constitution Committee
Welsh Parliament
Cardiff Bay
Cardiff
CF99 1SN

seneddlic@senedd.wales

15 March 2021

Dear Mick,

Thank you for your letter of 9 March regarding the Welsh Government's response to the Legislation, Justice and Constitution Committee's consideration of The Local Land Charges (Fees) (Wales) Rules 2021.

I have consulted with officials, who have reviewed our response in light of your comments. I agree that the basis of the removal of the requirement for Welsh Ministers to consult the Treasury in this instance, arises from the saving provision set out in paragraph 26 of Schedule 11 to the Government of Wales Act 2006.

Yours sincerely

Julie James AS/MS
Y Gweinidog Tai a Llywodraeth Leol
Minister for Housing and Local Government

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
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Gohebiaeth.Julie.James@llyw.cymru
Correspondence.Julie.James@gov.Wales

Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

Julie James MS
Minister for Housing and Local Government

9 March 2021

Dear Julie

The Local Land Charges (Fees) (Wales) Rules 2021

We considered **The Local Land Charges (Fees) (Wales) Rules 2021** at our meeting on 8 March 2021. In doing so, we discussed the Welsh Government's response to the single merits point in our report, which has now been **laid** before the Senedd.

We acknowledge the explanation provided as regards why Treasury consent was not required to make these Rules. However, there is one matter on which we would be grateful to receive further clarity.

The response to our report states:

“Paragraph 9(2) of Schedule 3 to the 1998 Act provides an Order under section 22 of the 1998 Act transferring a function to the NAFW shall be free from that requirement unless the Order provides otherwise.”

We would be grateful if you would clarify whether you considered paragraph 26(2) of Schedule 11, and paragraph 7(2) of Schedule 3, to the *Government of Wales Act 2006*, rather than paragraph 9(2) of Schedule 3 to the *Government of Wales Act 1998*, when deciding that Treasury consent was not needed.



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Given the fast approaching end to this Fifth Senedd, I would be grateful to receive your response by 17 March 2021.

Yours sincerely

A handwritten signature in black ink, reading 'Mick Antoniw'.

Mick Antoniw MS

Chair of the Legislation, Justice and Constitution Committee

Croesewir gohebiaeth yn Gymraeg neu Saesneg
We welcome correspondence in Welsh or English



To: All Senedd Committee Chairs
Via email

15 March 2021

Dear Chair,

Welsh Elections (Coronavirus) Bill 2021 – impact on Senedd Committees

Following the passing of the Welsh Elections (Coronavirus) Bill 2021, I am writing to draw to your attention the impact on committee business prior to the dissolution of the Senedd.

The Bill shortens the dissolution period to begin one week before the day of the election, scheduled for 6 May 2021. Dissolution will commence on 29 April and Members will continue as Members of the Senedd until that date.

The rationale for a shortened dissolution period (one week rather than four), as set out in the Explanatory Memorandum to the Bill, is:

- To enable any new powers (provided for in the Bill) to postpone the election (which cannot be exercised during a dissolution period) to be exercised up to one week before the election; and
- To provide a mechanism to enable the current Senedd to respond, if required to do so, to the unfolding public health issues in the period leading up to the election.

Business Committee has agreed that, as far as possible, during the election period there should be a level playing field for all candidates, to ensure a fair election and equality of opportunity for all. This principle has been reflected in decisions taken by the Senedd Commission in considering the availability of Senedd resources to Members and Senedd committees during the period. You will recall that this approach was also discussed and endorsed by the Chairs' Forum at its meeting on 11 February.

In line with this principle, the Business Committee has agreed that:

- The Senedd will be in recess from 7 April until 28 April, to be called the 'pre-dissolution period'. The pre-dissolution period will follow the Easter recess (29 March -6 April). This is consistent with previous election years, where Easter recess has led directly into dissolution;
- In order to provide a 'level playing field' for all candidates as far as possible during the election period, Senedd business during the pre-dissolution period will be limited to that which is related to the specific purposes of the shortened dissolution as outlined in the Explanatory Memorandum of the Bill;



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- As such, Senedd Committees will cease all activity during the pre-dissolution period; and
- However, given its role in scrutinising urgent regulations, the Legislation, Justice and Constitution Committee may meet if it needs to consider urgent regulations related to Coronavirus, of the type that would require a Senedd recall, or regulations related to a postponement of the 2021 Senedd election, during the pre-dissolution period. To note, made affirmative coronavirus regulations would not routinely require a report from the Committee during this period.

Whilst Chairs and members of committees will remain in place formally, Senedd committees are expected to cease all activity throughout the pre-dissolution period, including (but not limited to):

- Publishing committee reports;
- Making public statements, in any media, including social media; and
- Any reference to the Member's position on the Committee in any public forum.

In the event that the Senedd election is postponed in accordance with section 6 of the Bill, I will convene the Business Committee to consider the Senedd business timetable, including the scheduling of committee business.

Once the Bill has received Royal Assent, I will be writing to all Members about Senedd business during the pre-dissolution period.

Yours sincerely,



Elin Jones MS

Llywydd and Chair of the Business Committee

Croesewir gohebiaeth yn Gymraeg neu Saesneg. We welcome correspondence in Welsh or English.



Eich cyf/Your ref
Ein cyf/Our ref: MA/LG/0223/21

Rebecca Pow MP
Parliamentary Under Secretary of State
Department for Environment, Food & Rural Affairs

15 March 2021

Dear Rebecca,

My officials have been liaising with Defra officials on the preparation of the Reservoirs Act (Panels of Civil Engineers) (Applications and Fees) Regulations 2021. This is a piece of legislation which is a no procedure Statutory Instrument and therefore is not required to be laid before the respective legislatures. With this in mind, Welsh Government officials approached Defra officials to seek agreement for the Statutory Instrument to be made bilingually. Defra officials agreed to this approach, and Welsh Government officials have subsequently proceeded on that basis.

I understand the Wales Office has since intervened and prevented this approach by stating UK Ministers cannot consider bilingual instruments. My officials have been provided with very limited rationale for this position, which I do not agree with. I am therefore writing to express my disappointment at the position that has been taken and would ask that you reconsider. Defra has statutory duties to provide services bilingually and promote the Welsh language in its Welsh Language Scheme, as agreed with the Welsh Language Commissioner. Committing to creating a bilingual instrument would be in keeping with the spirit of those duties under the Scheme. In the event that this position remains unchanged, I would request a response setting out the reasons for the UK Government's position.

I am copying this letter to the First Minister, Counsel General and the Minister for Mental Health, Wellbeing and Welsh Language. I am also copying this letter to the Secretary of State for Wales and Secretary of State for Environment, Food and Rural Affairs to express my dissatisfaction with the position taken by the Wales Office.

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

In addition, a copy of this letter will be sent to the Senedd's Legislation, Justice and Constitution Committee.

Yours sincerely,

A handwritten signature in black ink that reads "Lesley Griffiths". The signature is written in a cursive style with a large, sweeping 'L' and a long, trailing 's' at the end.

Lesley Griffiths AS/MS

Gweinidog yr Amgylchedd, Ynni a Materion Gwledig
Minister for Environment, Energy and Rural Affairs

**WRITTEN STATEMENT
BY
THE WELSH GOVERNMENT**

TITLE Improving the accessibility of Welsh law

DATE 16 March 2021

BY Jeremy Miles MS, Counsel General and Minister for European Transition

The coronavirus pandemic has led to a perhaps unprecedented focus on the law as people's lives have been subject to exceptional legal restrictions. As a Government we are more conscious than ever of the need to draft laws that are clear and published effectively. We have made over 190 items of subordinate legislation to deal with a wide ranging and pervasive set of circumstances. Just as importantly, we have sought to help people understand the law with a range of explanatory material.

We have ensured that all of the subordinate legislation that we have made has been published to a dedicated part of the GOV.WALES website, and linked it to focussed guidance aimed at specific stakeholder groups. That guidance has sought to ensure that individuals, businesses and organisations are aware of their responsibilities and the requirements upon them. We have made extensive efforts to ensure the guidance is updated as the legislation has changed, and we have made sure that up-to-date versions of the key main restrictions Regulations and the international travel Regulations have been available, and in both languages. More generally we have sought to ensure that simple, yet legally accurate, messages are conveyed in our communications.

Helping people understand the law systematically in this way breaks new ground. But unfortunately it is an exception rather than the norm. Whilst the amount of time and resources needed to help explain the coronavirus restrictions has been significant, it has highlighted how more accessible law can be achieved even in the most difficult circumstances, and I want to ensure that more of this type of work is done in "normal" times. This work makes a difference as it helps people to understand their rights and obligations. Meanwhile failing to do this risks criminalising individuals unnecessarily, undermines our policy intentions, and can even undermine the rule of law itself.

We as the Senedd fully understand this, and I am grateful to Members for their support and continuing interest in the Government's work to improve the accessibility of Welsh law. Most notably of course we have passed Legislation (Wales) Act 2019, and it will be for the

next Government to bring forward the first formal programme of activity to make Welsh law more accessible under that Act

As Counsel General I have been clear about the type of projects we need to focus on, and about the time and resource it will take. This Government has already committed to two consolidation Bills and work is already under way on these: a consolidation of historic environment legislation and the simplification and modernisation of planning law. And I believe that further consolidation projects should focus on areas of law where individuals' rights, obligations and freedoms are affected the most.

Consolidation is not the only way that we can improve accessibility, and in line with the intentions set out in *The Future of Welsh Law* (a consultation undertaken at the end of 2019) we also have three projects underway to:

- develop a model to classify legislation by subject matter, which will provide a structure for future work (and the organisation of the new Codes of Welsh Law) and a method by which users can locate and use legislation;
- improve and expand the explanatory material available on our Law Wales website, and here the lessons learnt from our work making the coronavirus legislation available and understandable has significantly informed the approach to be taken in future;
- work with The National Archives to further improve the legislation.gov.uk website so that users can search Welsh law by subject, and access up to date versions of legislation in the Welsh language.

Members will understand that progress with these projects have been affected by the diversion of resources to respond to the pandemic, but a renewed focus is being brought to them which I believe will yield positive outcomes soon.

In tumultuous times it is perhaps too easy to overlook some of the less high profile, yet still fundamental, responsibilities that we as lawmakers have; and I trust that the next Senedd, and the next Government, will continue to appreciate that this is important work that needs to continue.

Julie James AS/MS
Y Gweinidog Tai a Llywodraeth Leol
Minister for Housing and Local Government



Llywodraeth Cymru
Welsh Government

Our ref: DC/JJ/00529/21

Mick Antoniw MS - Chair
Legislation, Justice and Constitution Committee
Welsh Parliament

SeneddLJC@senedd.wales

17 March 2021

Dear Mick,

I am writing further to my letter of 3 March 2021, and in accordance with the inter-institutional relations agreement, to report on the British-Irish Council (BIC) Digital Inclusion Work Sector Ministerial Meeting.

I have today issued a Written Ministerial Statement which can be found at <https://gov.wales/written-statement-2nd-ministerial-meeting-digital-inclusion-work-sector>.

I am copying this letter to the chairs of the Equality, Local Government and Communities Committee, John Griffiths MS, Children, Young People and Education Committee, Lynne Neagle, MS, Culture, Welsh Language and Communications Committee, Bethan Sayed, MS, and Economy, Infrastructure and Skills Committee, Russell George, MS.

Yours sincerely,

Julie James AS/MS
Y Gweinidog Tai a Llywodraeth Leol
Minister for Housing and Local Government

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We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

Agenda Item 6.7

Julie James AS/MS
Y Gweinidog Tai a Llywodraeth Leol
Minister for Housing and Local Government



Llywodraeth Cymru
Welsh Government

Our ref: DC-JJ-00371-21

Mick Antoniw MS - Chair
Legislation, Justice and Constitution Committee
Welsh Parliament

SeneddLJC@senedd.wales

18 March 2021

Dear Mick,

I am writing further to my letter of 24 February, and in accordance with the inter institutional relations agreement, to report on the British-Irish Council (BIC) Joint Housing and Spatial Planning Work Sectors Ministerial meeting I attended.

I have today issued a Written Ministerial Statement regarding the meeting which can be found at:

<https://gov.wales/written-statement-british-irish-council-bic-joint-ministerial-meeting-collaborative-spatial>

I have written in similar terms to the chairs of the Equality, Local Government and Communities Committee, John Griffiths MS and the Climate Change, Environment and Rural Affairs Committee, Mike Hedges MS.

Yours sincerely,

Julie James AS/MS

Y Gweinidog Tai a Llywodraeth Leol
Minister for Housing and Local Government

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We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

Ein cyf/Our ref: RE/514/21

Mick Antoniw MS,
Chair of the Legislation, Justice and Constitution Committee

19 March 2021

Dear Mick,

Standing Order 30C Written Statement - The Greenhouse Gas Emissions (Kyoto Protocol Registry) (Amendments) (EU Exit) Regulations 2021

Thank you for your letter seeking clarification as to:

- 1) why a Statutory Instrument Consent Memorandum (SICM) was not laid before the Senedd in relation to this SI; and,
- 2) why the approach to the Kyoto Protocol scheme does not follow the joint UK-wide approach of the UK emissions trading scheme (ETS) (established via the Greenhouse Gas Emissions Trading Scheme Order 2020, as amended).

In relation to question (1), I have concluded that a SICM is not required in relation to this SI for the following reasons.

Section 41A(7) of the Environment Act 1995 currently defines a “trading scheme registry” as any registry operated by the Environment Agency for the purpose of meeting the obligations of the United Kingdom referred to in Articles 4(3) and 5(1) of the Registries Regulation 2013 (Commission Regulation (EU) No 389/2013). The amendment made by Regulation 11 of this SI will change the reference to a “trading scheme registry” in section 41A(7) to “the Kyoto Protocol Registry”, and define the latter as the registry administered on behalf of the UK for the purposes of its obligations as a party to the Kyoto Protocol.

This is necessary because these specific Articles of the Registries Regulation 2013 refer to the Union Registry, which is the EU registry for allowances under both the EU ETS and the Kyoto Protocol. When the UK participated in the EU ETS, the Environment Agency was designated the UK national administrator and registry administrator for the Kyoto Protocol, for the purposes of the Union Registry¹. Post-Brexit, the UK isn't part of the Union Registry, but has its own UK ETS registry and its own UK Kyoto Protocol Registry. The two are separate,

¹ See Regulations 8 and 81 of the Greenhouse Gas Emissions Trading Scheme Regulations 2012.

and whilst the new UK ETS legislation designates all 4 UK regulators as joint registry administrators for the UK ETS, that is not the case with the UK Kyoto Protocol registry. This touches upon your second question and I return to this in more detail below.

In order for the SICM test to be met, it would need to be argued it is within the legislative competence of the Senedd to amend section 41A(7) Environment Act 1995, either to:

- Establish a Welsh Kyoto Protocol registry, administered by NRW: or
- Designate either NRW, the Environment Agency or all 4 UK environmental regulators as the UK Kyoto Protocol registry administrator.

Whilst it is arguable that the Senedd pass legislation to establish a Welsh Kyoto Protocol registry, such a registry would in reality be an empty vessel. It would not be capable of holding Welsh allowance units for trading (because the Kyoto Protocol is concerned with UK units, being held under the name of the government of the country that is signed up to the Protocol, i.e. the UK Government). The Welsh Ministers could not create a Welsh Kyoto unit for the purposes of a Welsh Kyoto Protocol registry, and therefore our view is that we could not achieve substantially the same effect in Wales as is achieved by this SI.

In addition, designating NRW as the UK Kyoto Protocol registry administrator is highly likely to fall foul of section 108A(2)(a) and (b) of the Government of Wales Act 2006, as the provision would extend beyond England and Wales and apply otherwise than in relation to Wales. Like the UK ETS registry, making these arrangements would need to be done jointly.

This brings me back to question (2). The UK Government developed the two work-streams independently of one another. Regrettably, the UK Government did not accept that the subject matter of the SI is devolved for around 18 months, despite repeated challenge from us (particularly on the basis of the UK ETS comparator). In September 2020, the UK Government did accept that the subject matter is devolved but the delay meant that insufficient time was available to design the scheme on a 4-nations basis (like the UK ETS). We acknowledge that this position is disappointing, consequently I am clear that we reserve the right to revisit the design of the scheme in future, in particular who carries out the regulatory role.

Finally, you have indicated that the title of the SI is incorrect on the written statement. The Welsh Ministers provided consent to what we understood to be the final SI, however, the UK Government amended the title of the SI when they shared a definitive 'final' SI. Titles of SIs can be subject to amendment by the UK Government prior to being laid before Parliament. On this occasion the late change to the title was not picked up at the point of issue of the notification statement.

Yours sincerely,



Rebecca Evans AS/MS
Y Gweinidog Cyllid a'r Trefnydd
Minister for Finance and Trefnydd

Rebecca Evans MS
Minister for Finance and Trefnydd

15 March 2021

Dear Rebecca

Standing Order 30C Written Statement - The Greenhouse Gas Emissions (Kyoto Protocol Registry) (Amendments) (EU Exit) Regulations 2021

At our meeting this week we considered the Welsh Government's written statement in relation to **The Greenhouse Gas Emissions (Kyoto Protocol Registry) (Amendments) (EU Exit) Regulations 2021** (the Regulations).

We noted that the written statement gives notification that the Welsh Government has consented to the making of these Regulations for reasons of efficiency and expediency. The written statement also notes that the Regulations amend the *Environment Act 1995* as it applies to "charging authorities", and we are aware that The Natural Resources Body for Wales is a charging authority.

Insofar as the Regulations amend the *Environment Act 1995* in devolved areas, we would welcome clarification as to why:

- a Statutory Instrument Consent Memorandum has not been laid before the Senedd, and
- the approach to the Kyoto Protocol scheme does not follow the joint UK-wide approach of the **Greenhouse Gas Emission Trading Scheme**.

It also appears that the written statement incorrectly cites the name of the Regulations. The correct name, as set out in the Regulations laid before the UK Parliament, is The Greenhouse Gas Emissions (Kyoto Protocol Registry) Regulations 2021.



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Given that our last meeting of the Fifth Senedd is scheduled to take place next Monday, 22 March, I would welcome a response from you by noon this coming Friday, 19 March.

Yours sincerely

A handwritten signature in black ink, reading 'Mick Antoniw', with a horizontal line underneath the name.

Mick Antoniw MS

Chair of the Legislation, Justice and Constitution Committee

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We welcome correspondence in Welsh or English



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Agenda Item 11

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Agenda Item 12

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Agenda Item 14

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