

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

