
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.

Changes to legislation:

There are currently no known outstanding effects for the The Additional Learning Needs (Wales) Regulations 2021.