

EXPLANATORY MEMORANDUM TO
THE GOVERNMENT OF WALES ACT 2006 (SCHEDULE 9A – DEVOLVED
WELSH AUTHORITIES) (AMENDMENT) ORDER 2023

2023 No. 1095

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Wales Office and is laid before Parliament by Command of His Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 The Order updates the list of devolved Welsh authorities in Schedule 9A (Devolved Welsh Authorities) to the Government of Wales Act 2006 (“GoWA”) by removing the reference to “The Special Educational Needs Tribunal for Wales or Tribiwnlys Anghenion Addysgol Arbennig Cymru” and replacing it with “The Education Tribunal for Wales or Tribiwnlys Addysg Cymru”.
- 2.2 This amendment is required to update the list of devolved Welsh authorities in Schedule 9A as a consequence of the amendment made by the Additional Learning Needs and Education Tribunal (Wales) Act 2018 (“ALNET Act”).

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 As a result of the amendment to GoWA made by section 91(1) of the ALNET Act an Order is required to replace an entry in the list of devolved Welsh authorities in Schedule 9A to GoWA. This is so that the “Special Educational Needs Tribunal Wales” is renamed the “Education Tribunal for Wales or Tribiwnlys Addysg Cymru”.
- 3.2 Section 91(1) of the ALNET Act states:
Constitution of the Education Tribunal for Wales
(1) The Special Educational Needs Tribunal for Wales is to continue and is renamed the Education Tribunal for Wales.
- 3.3 Section 157A(5) of GoWA provides the vires for amending Schedule 9A by removing or revising an entry, or adding or substituting a public authority. When making such changes, subsection (6) requires the affirmative procedure unless subsection (7) applies where the Order in Council only makes provision for either (a) the omission of an entry where the authority concerned has ceased to exist, or (b) the variation of an entry in consequence of a change of name or transfer of functions; in which case the negative procedure applies.
- 3.4 The Government’s view is that this change constitutes “the variation of an entry in consequence of a change of name” under s.157A(7)(b) and therefore the Order will follow the negative procedure.

4. Extent and Territorial Application

- 4.1 The substantive provisions of GoWA extend (with limited exceptions) to the whole of the United Kingdom although its practical application is confined almost entirely to Wales. The territorial extent and application of this instrument reflects that.

5. European Convention on Human Rights

- 5.1 The Secretary of State for Wales, Rt Hon David T.C. Davies MP, has made the following statement regarding Human Rights:

“In my view the provisions of the Government of Wales Act 2006 (Schedule 9A – Devolved Welsh Authorities) (Amendment) Order 2023 are compatible with the Convention rights.”

6. Legislative Context

- 6.1 This Order is made under section 157A(5) of the Government of Wales Act 2006 which enables His Majesty, by Order in Council, to amend Schedule 9A to the Government of Wales Act 2006 so as to remove or revise an entry, or to add to, or substitute a devolved Welsh authority in the Schedule.

7. Policy background

What is being done and why?

- 7.1 The ALNET Act establishes a statutory framework for supporting children and young people with additional learning needs. It replaces the legislation surrounding special educational needs and the assessment of children and young people with learning difficulties and/or disabilities in post-16 education and training.
- 7.2 It introduces a new statutory plan called an 'individual development plan' to replace statutory and non-statutory education plans specifically for children and young people with Additional Learning Needs. The meanings of child and young person for the purposes of this Act are set out in section 99. A 'child' means a person not over compulsory school age, while a 'young person' means a person over compulsory school age but under 25.
- 7.3 The ALNET Act provides rights of appeal to children, the parents of children and young people in connection with this new statutory plan and related rights about additional learning provision. These appeals are to the Education Tribunal for Wales, which is the new name for the Special Educational Needs Tribunal for Wales as renamed by section 91(1) (Constitution of the Education Tribunal for Wales) of the ALNET Act.

Explanations

What did any law do before the changes to be made by this instrument?

- 7.4 Section 157A of GoWA defines “devolved Welsh authority” for the purposes of that Act. This includes a public authority whose functions are
- exercisable only in relation to Wales; and
 - wholly or mainly functions that do not relate to devolved matters.
- 7.5 Public authorities are also devolved Welsh authorities by virtue of being named in Schedule 9A to GoWA which performs a partly confirmatory role so as to increase

transparency by naming authorities which meet the conditions outlined above. Schedule 9A currently includes reference to the “The Special Educational Needs Tribunal for Wales or Tribiwnlys Anghenion Addysgol Arbennig Cymru”.

What will it now do?

- 7.6 This Order will remove the reference in Schedule 9A to GoWA to “The Special Educational Needs Tribunal for Wales or Tribiwnlys Anghenion Addysgol Arbennig Cymru” and replaces it with a reference to “The Education Tribunal for Wales or Tribiwnlys Addysg Cymru” in consequence of the amendments made by the ALNET Act.

8. European Union Withdrawal and Future Relationship

- 8.1 This instrument does not relate to withdrawal from the European Union or otherwise trigger the statement requirements under the European Union (Withdrawal) Act 2018.

9. Consolidation

- 9.1 This Order makes amendments to primary legislation. Consolidation is therefore not necessary.

10. Consultation outcome

- 10.1 As the Order makes a consequential amendment to update the list of devolved Welsh authorities, reflecting a change in the name of a Welsh tribunal only, and therefore makes no further changes to Welsh Government’s policy, a formal public consultation did not take place.

11. Guidance

- 11.1 No guidance is required in relation to this instrument.

12. Impact

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 A full Impact Assessment has not been prepared for this instrument. As this Order updates the name of a Welsh tribunal within the list of devolved Welsh authorities in Schedule 9A to GoWA, reflecting an earlier change brought about by section 91 of the ALNET Act, the amendment does not alter the policy or its impact in any significant way.
- 12.4 The consequential provisions in the Order make technical amendments which changes the wording of the law rather than its purpose or effect.

13. Regulating small business

- 13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

- 14.1 The Government will continue to review the list of bodies in Schedule 9A and bring forward similar orders in future should further updates be necessary.
- 14.2 The instrument does not include a statutory review clause.

15. Contact

- 15.1 David Harries at the Wales Office Telephone: 07840 009179 or email: David.Harries@ukgovwales.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Geth Williams, Deputy Director for Union, at the Wales Office can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Rt Hon David T.C. Davies MP, Secretary of State at the Wales Office can confirm that this Explanatory Memorandum meets the required standard.