



Llywodraeth Cymru
Welsh Government

Additional Learning Needs and Education Tribunal (Wales) Bill

Policy intent for subordinate
legislation to be made under the
Bill

February 2017

Policy intent for proposed subordinate legislation to be made under the Additional Learning Needs and Education Tribunal (Wales) Bill

1. This document provides an indication of the current policy direction for how the Welsh Ministers intend to exercise the subordinate legislation powers in the Additional Learning Needs and Education Tribunal (Wales) Bill (*'the Bill'*).
2. The Bill's purposes are to reform the law on education and training for children and young people with additional learning needs; and to continue the existence of the Special Educational Needs Tribunal for Wales and rename it the Education Tribunal for Wales.
3. The key components of the reforms are set out on the face of the Bill and will be commenced by orders made by the Welsh Ministers. In addition, the Bill provides the Welsh Ministers with a number of subordinate legislation powers. These will allow matters of procedural detail to be prescribed, enable specific elements of the Bill to be aligned with existing legislation, and provide for future flexibility with regard to matters which may change from time to time or need updating.
4. With the exception of the powers to commence provisions of the Bill and the Additional Learning Needs Code (*'the Code'*) by way of an order, and the making and issuing of the Code itself, the delegated powers provided by this Bill take the form of regulations. It is the Welsh Government's intention to consult where appropriate on the detail of the proposed regulations prior to them being made.
5. This document provides information on the policy intentions for the exercise of the powers in the Bill (subject to the passage of the Bill through the Assembly) to make regulations and orders. The policy intent in respect of the function of issuing a Code will be made available by way of a draft Code that will be provided separately.
6. In respect of commencement of the Bill, section 87 provides for sections 1 and 84 to 88 to come into force on the day following the day of Royal Assent. The other provisions of the Bill are to be commenced, by way of order made by the Welsh Ministers. Section 5(4) (b) provides a similar power in relation to the coming into force of the Code.

This document should be read in conjunction with the:

Additional Learning Needs and Education Tribunal (Wales) Bill

<http://www.assembly.wales/laid%20documents/pri-ld10862/pri-ld10862-e.pdf>

Explanatory Memorandum

<http://www.assembly.wales/laid%20documents/pri-ld10862-em/pri-ld10862-em-e.pdf>

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| REGULATIONS RELATING TO: | Additional Learning Provision |
| Bill Part: | 2 |
| SECTION | 3(4) |
| DESCRIPTION OF THE POWER | |
| <p>Section 3(1) defines the meaning of ‘additional learning provision’ (‘ALP’) in relation to a person aged 3 or over; section 3(2) defines ALP for those aged under three; and section 3(3) defines nursery education by reference to those who have attained the age of 3.</p> <p>Section 3(4) enables the Welsh Ministers to replace, by way of regulations, these references to the age of three with references to a different age.</p> | |
| WHY THE REGULATION POWER IS REQUIRED | |
| <p>Regulations under this section would allow the Welsh Ministers to replace the current references to the age of three with references to a different age in response to changes in early years policy or evidence based practice.</p> | |
| POLICY INTENTION OF THE REGULATIONS | |
| <p>ALP has been defined by reference to the age of three because this is the age at which the Foundation Phase, the statutory curriculum for all 3 to 7 year olds in Wales, commences in both maintained and non-maintained settings. It is also the age from which state funded education is normally provided to children. Should these circumstances cease to apply in the future, or if factors become apparent which suggest that a different age threshold might be more appropriate, it is important that the Welsh Ministers are able to adjust the age threshold appropriately. The regulation making power enables this, but its use is not anticipated in the near future.</p> | |
| Other relevant information (work to date, policy documents or ministerial statements) | |
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| POWER RELATING TO: | Additional Learning Needs Code |
| Bill Part: | 2 |
| SECTION | 4(4) |
| DESCRIPTION OF THE POWER | |
| <p>The Code may impose requirements—</p> <p>(a) on a local authority in respect of arrangements it must make under sections 7 (advice and information), 61 (avoidance and resolution of disagreements) and 62 (independent advocacy services);</p> <p>(b) on a governing body of a maintained school in Wales or an institution in the further education sector in Wales or a local authority in respect of—</p> <p>(i) decisions as to whether a child or young person has additional learning needs,</p> | |

- (ii) the preparation, content, form, review and revision of individual development plans, or
- (iii) ceasing to maintain individual development plans;

(c) on a governing body of a maintained school in Wales or an institution in the further education sector in Wales in respect of the provision of information for the purposes of this Part.

The Code may also include guidance relating to the exercise of functions under the Act by the persons listed in section 4(2).

WHY THE CODE POWER IS REQUIRED

The ALN Code is intended to be the principal document used by those responsible for delivering the new system at the operational level, especially local authorities and the staff of schools and FEIs. The power for the Code to impose requirements is intended to cover detail around the discharge by local authorities and governing bodies of their duties in relation to ALN decisions and IDPs, advice and information giving, disagreement avoidance/resolution and independent advocacy services. It is appropriate that these detailed operational requirements should be made in the document, which is in effect an operational handbook. Setting out requirements in a Code (which also contains guidance) rather than on the face of the Bill or in regulations provides a practical and easily accessible tool.

POLICY INTENTION OF THE CODE

A working draft of the Code is provided separately to indicate the policy intention.

Other relevant information (work to date, policy documents or ministerial statements)

The draft Code is work in progress and work with external partners to develop its content is on-going. The current provisions will be supplemented and supported in areas both by greater detail and by supporting material. Particular areas of the Code that will inevitably evolve are those relating to sections of the Act containing a regulation making power, as highlighted throughout the current draft.

Changes might also be required as a result of amendments made to the Bill as it progresses through the Assembly.

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| ORDERRELATING TO: | Procedure for making the Code |
| Bill Part: | 2 |
| SECTION | 5(4)(b) |
| DESCRIPTION OF THE POWER | |
| Section 5(4)(b) deals with the commencement of the Code and revised Codes. They come into force, on a day appointed by the Welsh Ministers in an order made by statutory instrument. Under section 5(5), an order may appoint different days for different purposes, and make transitory, transitional, or saving provisions in connection with the coming into force of a provision in the Code. | |

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| WHY THE ORDER POWER IS REQUIRED |
| This order making power is necessary in order to ensure that the appointed day(s) for commencement of the Code or revisions to it can be appropriate depending upon the circumstances at the time, for example, so that the appointed day(s) can tie in with detailed commencement and transitional arrangements. |
| POLICY INTENTION OF THE ORDER |
| In order to enable an effective transition from the old legislative system to the new, the Code may need to come into force on a phased basis in accordance with other implementation arrangements, (which themselves will take into account the views of external partners and others). |
| Other relevant information (work to date, policy documents or ministerial statements) |
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| REGULATIONS RELATING TO: | Individual Development Plans: local authorities |
| Bill Part: | 2 |
| SECTION | 12(1)(c)(ii) |
| DESCRIPTION OF THE POWER | |
| Section 12(1)(c)(ii) sets out that a local authority must prepare and maintain an IDP if it: <ul style="list-style-type: none"> a) decides that a young person (who is not in school or attending a further education institution) has ALN; and b) decides, in accordance with the regulations to be made under 12(1)(c)(ii) that it is necessary to prepare and maintain a plan for the young person to meet his or her reasonable needs for education or training. <p>Regulations made under section 12(1)(c)(ii) will inform a local authority's decision on when it will be 'necessary' for the authority to prepare and maintain a plan in these cases.</p> | |
| WHY THE REGULATION POWER IS REQUIRED | |
| The Bill requires that local authorities decide in accordance with regulations whether it is necessary for them to prepare and maintain a plan for a young person. The appropriate criteria affecting when it is necessary for them to do so may change over time and allowing the Welsh Ministers to do this through the use of regulations will provide them with flexibility to amend the criteria that should be applied in response to changing circumstances and practice. | |
| POLICY INTENTION OF THE REGULATIONS | |
| The regulations would be used to set out the criteria that local authorities will need to apply when determining whether an IDP should be prepared for young people not in a maintained school in Wales or not attending a further education institution in Wales. The principal focus of the criteria will be on ensuring that young people with more severe and complex ALN, for whom mainstream post-16 education is not available or appropriate because of their ALN, but who nevertheless have a reasonable need for education or training, have an IDP prepared and maintained for them. These would be those young people who currently | |

receive funding directly from the Welsh Government to attend independent special post-16 institutions.

Other relevant information (work to date, policy documents or ministerial statements)

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| REGULATIONS RELATING TO: | Individual Development Plans: local authorities |
| Bill Part: | 2 |
| SECTION | 12(7)(c) |
| DESCRIPTION OF THE POWER | |
| Section 12(7)(c) enables regulations to set out other forms of provision (aside from ALP, a place at a particular school or other institution or board and lodging) which must be described in an IDP and then must be secured by a local authority, if the child or young person's reasonable needs for ALP could not otherwise be met. | |
| WHY THE REGULATION POWER IS REQUIRED | |
| As evidence emerges over time of the way in which the new system works in practice, it may become clear that other forms of auxiliary provision are necessary in order to ensure appropriate ALP can be delivered to a child or young person. This regulation making power will enable the Welsh Ministers to respond quickly to any such evidence that emerges. | |
| POLICY INTENTION OF THE REGULATIONS | |
| It is not intended that this power to make regulations would be used unless and until such time as evidence emerges that other forms of provision are essential to ensuring the delivery of appropriate ALP in some instances. | |
| Other relevant information (work to date, policy documents or ministerial statements) | |

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| REGULATIONS RELATING TO: | Key terms in relation to looked after children |
| Bill Part: | 2 |
| SECTION | 13(2) |
| DESCRIPTION OF THE POWER | |
| Section 13(2) enables regulations to prescribe categories of looked after child who are not to be treated as looked after by a local authority for the purposes of this Act. | |
| WHY THE REGULATION POWER IS REQUIRED | |
| The objective behind the provisions in the Bill on looked after children is to streamline the educational planning for such children under the social services legislation with that under the Bill (where children have ALN). To that end, generally, the Bill places duties related to ALN on the local authority looking after a child and requires that authority to incorporate any | |

IDP into the child’s personal education plan (PEP), which is maintained as part of the care and support plan for a looked after child under the Social Services and Well-being (Wales) Act 2014 (“the 2014 Act”).

The current requirement for looked after children to have a PEP is set out in regulations made under powers in the 2014 –Act and there are exceptions to it. Accordingly, this power allows the definition of looked after child for the purposes of the Bill to be aligned with the categories of looked after child who have PEPs and for that definition to be changed over time to reflect any changes which might be made under powers in the 2014 Act as to which looked after children have PEPs (see section 14 of the Bill and the regulation power to be inserted into section 83 of the 2014 Act).

POLICY INTENTION OF THE REGULATIONS

Regulations would be produced from the outset in order to align the definition of children who are looked after for the purposes of the Bill with those that have PEPs by virtue of the 2014 Act. Currently the groups of children who do not have PEPs are: children who are looked after on the basis of being accommodated for short-term placements (as defined in the Care Planning, Placement and Case Review (Wales) Regulations 2015); and looked after children who are placed for adoption. Also, not all detained children who are looked after have PEPs, but this is already covered by section 13(1)(b) of the Bill, so would not be prescribed in these regulations.

Other relevant information (work to date, policy documents or ministerial statements)

This power is linked to the regulation power inserted into section 83 of the 2014 Act by section 14(2) of the Bill. As explained above, the intention is to co-ordinate the exercise of both powers so that the same categories are specified under each power (apart from the position regarding detained persons who are looked after).

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| REGULATIONS RELATING TO: | Amendment to the Social Services and Well-being (Wales) Act 2014 |
| Bill Part: | 2 |
| SECTION | 14(2) inserting subsection (2B) into section 83 of the 2014 Act |
| DESCRIPTION OF THE POWER | |
| Currently there is a regulation power in section 83 of the 2014 Act to prescribe the content of a care and support plan. Regulations made under the section 83 power require that the care and support plan includes a PEP, subject to some exceptions (see the Care Planning, Placement and Case Review (Wales) Regulations 2015). Section 14 would insert a new subsection (2A) into section 83 of the 2014 Act in order to place the requirement that a section 83 care and support plans include a PEP on the face of the primary legislation. This power allows for exceptions to that requirement. | |
| WHY THE REGULATION POWER IS REQUIRED | |
| The power preserves the existing flexibility to make exceptions as in some cases a PEP might not be necessary or appropriate (such as children who are looked after for occasional short-term breaks, rather than on a continuing basis) and it might be appropriate to change exceptions in light of changing circumstances. The power is appropriate in order to preserve that existing flexibility (which is also appropriate). | |

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| POLICY INTENTION OF THE REGULATIONS | |
| It is intended to use the power to maintain the status quo i.e. so that the exceptions to the requirement to secure PEPs for looked after children are replicated. | |
| Other relevant information (work to date, policy documents or ministerial statements) | |
| This power links to the regulation power in section 13(2) (power to prescribe categories of looked after child who are not looked after for the purposes of the Act). The intention is to co-ordinate the exercise of both powers so that the same categories are specified under each power (with the exception of detained children, which are covered separately). | |

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| REGULATIONS RELATING TO: | Reconsideration by local authorities of decisions of governing bodies under section 29 |
| Bill Part: | 2 |
| SECTION | 30(1)(b) |
| DESCRIPTION OF THE POWER | |
| Section 30 enables a child, a child's parent or a young person to request that a local authority reconsiders a maintained school governing body's decision under section 29 that a child or young person no longer has ALN (the consequence of such a decision is that the body may cease to maintain the IDP). Sub-section 30(1)(b) provides for the Welsh Ministers to prescribe in regulations the period during which this request can be made (following notification of the decision under section 29). If no request is made during this period, the school governing body may cease to maintain the plan (section 31(2)). | |
| WHY THE REGULATION POWER IS REQUIRED | |
| The appropriate period during which time a request for reconsideration must be made would be set in the light of the more general timescales for IDPs set out in the Code. It might also need to change over time if evidence emerges after the Bill is implemented. In order for these factors to be taken into account, the period needs to be set by regulation. | |
| POLICY INTENTION OF THE REGULATIONS | |
| The period set by the regulations will strike a reasonable balance between ensuring that a child, young person or parent has sufficient time to exercise their right to request a reconsideration of a governing body's decision that the pupil no longer has ALN, and a governing body not being subject to duties for a long period, which are no longer required. | |
| Other relevant information (work to date, policy documents or ministerial statements) | |
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| REGULATIONS RELATING TO: | Regulations about transfer of individual development plans |
| Bill Part: | 2 |
| SECTION | 34 |

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| DESCRIPTION OF THE POWER | |
| <p>Section 34 enables the Welsh Ministers to make regulations about the transfer of IDPs between local authorities and governing bodies. Regulations under this section may, for example, impose a duty on a local authority or governing body to maintain an IDP put in place by another authority and to treat the things done by the transferring authority in relation to the plan as done by the other authority or governing body.</p> <p>The details in these regulations would build upon the basic framework set out in section 33 for ensuring that the duty to maintain an IDP transfers between bodies when a child or young person moves between institutions or from one local authority area to another</p> | |
| WHY THE REGULATION POWER IS REQUIRED | |
| <p>The detail surrounding the transference of IDPs between different educational institutions or local authorities may need to change over time in response to evidence which emerges once the new legislative system has been implemented. Regulation making powers will enable the Welsh Ministers to amend the detail over time. They may also specify timescales within which the requirements set out in the framework must occur.</p> | |
| POLICY INTENTION OF THE REGULATIONS | |
| <p>The regulations would be used to establish a mechanism for ensuring that the smoothest possible transfer where the duty to maintain an IDP transfers from one body to another. The intention is that they underpin the coherence and consistency of provision made for children and young people as they move around Wales and through the various stages of education.</p> | |
| Other relevant information (work to date, policy documents or ministerial statements) | |
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| REGULATIONS RELATING TO: | Meaning of “detained person” and other key terms |
| Bill Part: | 2 |
| SECTION | 36(2) |
| DESCRIPTION OF THE POWER | |
| <p>The meaning of “home authority” (which is used in sections 36 – 40) relies upon its definition in section 562J(1) of the Education Act 1996, namely-</p> <p>“(a) in relation to a child or young person who immediately before the beginning of the detention was, or at any time since then has been, a looked after child, means the local authority who are looking after, or who have most recently been looking after, the person;</p> <p>(b) in relation to any other child or young person, means the local authority in whose area the person is ordinarily resident” (ignoring the period when the person is subject to the detention order and regulations under section 562J(4) may make further provision for determining where a person is ordinarily resident).</p> <p>For the purposes of Part 2, the regulations may provide for</p> <ul style="list-style-type: none"> • paragraph (a) of the definition to apply with modifications; • for provisions of any regulations under section 562J(4) of the Education Act 1996 to apply with or without modifications. | |

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| WHY THE REGULATION POWER IS REQUIRED | |
| This gives flexibility to allow for a different meaning in the context of looked after children and ALN matters and in any exercise of the other power, to apply the same or modified provision for the ALN context. Delegated powers, therefore, are appropriate to enable this to happen. | |
| POLICY INTENTION OF THE REGULATIONS | |
| It is not currently anticipated that this power will be exercised in the near future. | |
| Other relevant information (work to date, policy documents or ministerial statements) | |
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| REGULATIONS RELATING TO: | Preparing individual development plans for detained persons |
| Bill Part: | 2 |
| SECTION | 37(2)(b) |
| DESCRIPTION OF THE POWER | |
| The power is to make provision in regulations for the matters that must inform a local authority decision as to whether it will be necessary for an individual development plan to be maintained for the detained person when he or she is released from detention. | |
| WHY THE REGULATION POWER IS REQUIRED | |
| The Bill requires local authorities to decide in accordance with regulations whether it will be necessary for a plan to be maintained for a detained person when they are released from detention. The setting of criteria for determining when it is necessary for them to do so is suitable for delegated powers as this will provide the Welsh Ministers with flexibility to amend over time the criteria that should be applied in response to evidence based need and practice and any changing education policy. | |
| POLICY INTENTION OF THE REGULATIONS | |
| The regulations would be used to set out the criteria that local authorities will need to apply when determining whether an IDP should be maintained for a detained person when they are released from detention. The intention is that the focus of these criteria will be on ensuring that where the individual is likely to have a reasonable need for education or training upon release, an IDP is in place so as to facilitate the person's return to education or training outside of detention. | |
| Other relevant information (work to date, policy documents or ministerial statements) | |
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| REGULATIONS RELATING TO: | Duty to favour education for children at mainstream maintained schools |
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| Bill Part: | 2 |
| SECTION | 45(2)(d) |
| DESCRIPTION OF THE POWER | |
| Regulations may provide for circumstances (additional to those in section 45(2)(a) – (c)) where a local authority is not required to secure education for a child (who should be educated in a school) in a mainstream maintained school. | |
| WHY THE REGULATION POWER IS REQUIRED | |
| Regulations under this section allow Welsh Ministers to set out further circumstances in which local authorities would not be under a duty to favour mainstream maintained education for a child with ALN. There may be a need to add in an exception in response to evidence based practice. Therefore, delegated powers are appropriate. | |
| POLICY INTENTION OF THE REGULATIONS | |
| It is not currently anticipated that this power will be exercised in the near future. | |
| Other relevant information (work to date, policy documents or ministerial statements) | |
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| REGULATIONS RELATING TO: | List of independent special post-16 institutions |
| Bill Part: | 2 |
| SECTION | 50(3) |
| DESCRIPTION OF THE POWER | |
| Local authorities, when exercising their functions under this Bill, can only secure education or training for a child or young person at an independent special post-16 institution in Wales or England if the institution is on the list maintained by the Welsh Ministers under section 50. Section 50(3) provides the Welsh Ministers with a power to prescribe exemptions to this. | |
| WHY THE REGULATION POWER IS REQUIRED | |
| This power provides the Welsh Ministers with flexibility for example, to add (or remove) exemptions to the general prohibition in order to cover unforeseen and exceptional circumstances which might arise in the light of evidence-based practice. It is, therefore, suitable as a delegated power. | |
| POLICY INTENTION OF THE REGULATIONS | |
| It is not anticipated that this power will be used in the near future. | |
| Other relevant information (work to date, policy documents or ministerial statements) | |
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| REGULATIONS RELATING TO: | List of independent special post-16 institutions |
| Bill Part: | 2 |
| SECTION | 50(5) |
| DESCRIPTION OF THE POWER | |
| Regulations must provide for matters relating to the list of independent special post-16 institutions | |
| WHY THE REGULATION POWER IS REQUIRED | |
| <p>Local authorities, when exercising their functions under this Bill, can only secure education or training for a child or young person at an independent special post-16 institution in Wales or England if the institution is on the list maintained by the Welsh Ministers under section 50, subject to any prescribed exemptions made under section 50(3). This power related to the list is suitable for delegated powers as it provides the Welsh Ministers with flexibility for example, to add and amend what information must be collated as part of the list; set requirements that must be complied with to be placed on the list; criteria in respect of removal from the list; and provide for rights of appeal against decisions. There may be a need to amend the detailed requirements over time in light of evidence-based practice. It is, therefore, suitable for delegated powers.</p> | |
| POLICY INTENTION OF THE REGULATIONS | |
| <p>The regulations will strike a balance between ensuring that those added to and kept on the list meet a set of minimum criteria/standards that safeguard the interests of learners who might be placed with them, whilst at the same time avoiding the imposition of bureaucratic burdens on these institutions that are disproportionate and unfair.</p> <p>Some of the criteria/standards that might be considered for the regulations are contained in the Welsh Government's current guidance "<i>Securing provision for learners with learning difficulties at specialist further education establishments</i>".</p> | |
| Other relevant information (work to date, policy documents or ministerial statements) | |
| http://gov.wales/topics/educationandskills/publications/guidance/p-16-funding-for-learners-with-learning-difficulties/?lang=en&dfd | |

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| REGULATIONS RELATING TO: | Additional learning needs co-ordinator |
| Bill Part: | 2 |
| SECTION | 54(4) |
| DESCRIPTION OF THE POWER | |

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| Regulations may— (a) require governing bodies to ensure that additional learning needs co-ordinators have prescribed qualifications or prescribed experience (or both); and (b) confer functions on additional learning needs co-ordinators in relation to provision for pupils or students (as the case may be) with additional learning needs. |
| WHY THE REGULATION POWER IS REQUIRED |
| The Bill requires governing bodies of maintained schools (except special schools) and of FEs in Wales to designate an ‘additional learning needs co-ordinator’ (ALNCo.) The power provides the Welsh Ministers with flexibility to specify prescribed qualifications and experience that an ALNCo must have, as well as conferring any other functions relating to an ALNCo considered necessary to undertake their duties. The power also provides the Welsh Ministers with the flexibility to take into account the timescales needed to transition to a fully qualified workforce and the different requirements (including language requirements) that might be needed in relation to different settings. These may require updating from time to time in response to evidence based practice and needs and, therefore, are appropriate for delegated powers. |
| POLICY INTENTION OF THE REGULATIONS |
| The detail of these regulations will be subject to the outcome of a project currently being undertaken in conjunction with external stakeholders to determine the appropriate level of expertise for the role. This is likely to involve early consultation on the principles. The regulations may need to allow for a phased approach to the implementation of requirements in order to permit the necessary workforce development. |
| Other relevant information (work to date, policy documents or ministerial statements) |
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| REGULATIONS RELATING TO: | Duties of certain public bodies to provide information and other help |
| Bill Part: | 2 |
| SECTION | 58(5) |
| DESCRIPTION OF THE POWER | |
| The Bill places duties on particular public persons to provide information or other help to local authorities upon request, where the local authority requires it for the purpose of exercising its functions under Part 2. The power will enable the Welsh Ministers to prescribe a period, within which the person must comply with the request, subject to exceptions which may be prescribed in the regulations (and also subject to the exception in subsection (2)). . | |
| WHY THE REGULATION POWER IS REQUIRED | |
| The timescales and any exceptions may need to change from time to time in the light of evidence based practice, changing practical considerations, and the content of the ALN Code. Delegated powers, therefore, are appropriate. | |
| POLICY INTENTION OF THE REGULATIONS | |
| The current intention would be to use the power in a similar way to the existing regulations on special education needs (The Education (Special Educational Needs) (Wales)) | |

Regulations 2002), which require compliance with a request to a health authority for a contribution to a statutory assessment within six weeks of the date on which the request is received, subject to exceptions.

However, it might be appropriate to change this timescale in the future.

Other relevant information (work to date, policy documents or ministerial statements)

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| REGULATIONS RELATING TO: | Provision of goods or services in relation to additional learning provision |
| Bill Part: | 2 |
| SECTION | 60(1) |
| DESCRIPTION OF THE POWER | |
| Regulations may provide for a local authority to supply goods or services to— (a) a person exercising functions under Part 2, or (b) a person making additional learning provision in connection with the exercise of functions under Part 2. | |
| WHY THE REGULATION POWER IS REQUIRED | |
| The Bill provides for regulations to enable a local authority to supply goods and services in relation to ALP. This is suitable for delegated powers as it enables the Welsh Ministers to set out technical detail about terms and conditions, which may need to change from time to time. | |
| POLICY INTENTION OF THE REGULATIONS | |
| The use of this power is subject to further consideration. However, the general intention in relation to any regulations which are made will be that they facilitate the supply of goods and services where that is beneficial to the operation of the new legislative system. | |
| Other relevant information (work to date, policy documents or ministerial statements) | |
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| REGULATIONS RELATING TO: | Regulations about appeals and applications |
| Bill Part: | 2 |
| SECTION | 67(1) |
| DESCRIPTION OF THE POWER/ | |
| Regulations may make further provision about appeals (about ALN) and applications (in relation to the capacity of a child to understand and case friends) to the Education Tribunal for Wales. For example, regulations may provide further provisions for making and determining appeals or applications, conferring further powers on the Tribunal on | |

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| determining appeals or applications, and for unopposed appeals or applications. |
| WHY THE REGULATION POWER IS REQUIRED |
| The Bill entitles children, their parents and young people to appeal against and make applications about certain matters. The detail of how such appeals and applications can be made and determined could change from time to time in response to changing practical considerations and changing policies. It is, therefore, suitable for delegated powers. |
| POLICY INTENTION OF THE REGULATIONS |
| Regulations made under this power are likely to be similar to those currently set out in the Special Educational Needs Tribunal for Wales Regulations 2012 (“SENTW Regulations 2012”). |
| Other relevant information (work to date, policy documents or ministerial statements) |
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| REGULATIONS RELATING TO: | Procedure on appeals |
| Bill Part: | 2 |
| SECTION | 68(1) and (2) |
| DESCRIPTION OF THE POWER/REGULATION | |
| Section 68(1) provides that regulations may make provision about - (a) the initiation of an appeal under the Bill, and (b) the proceedings of the Education Tribunal for Wales on an appeal under the Bill | |
| Section 68(2) includes a (non-exhaustive) list of matters in respect of which regulations under s.68(1) may include provision. | |
| WHY THE REGULATION POWER IS REQUIRED | |
| The detailed appeal procedures may need to change from time to time in response to changing practical considerations. For example, changes in policies with regard to the award of costs or expenses, which need to be consistent across the Tribunal system as a whole. Therefore, delegated powers are appropriate. | |
| POLICY INTENTION OF THE REGULATIONS | |
| Regulations made under this power are likely to be similar to those currently set out in the SENTW Regulations 2012. | |
| Other relevant information (work to date, policy documents or ministerial statements) | |
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| REGULATIONS RELATING TO: | Proceedings in private |
| Bill Part: | 2 |
| SECTION | 68(3) |
| DESCRIPTION OF THE POWER | |
| Regulations may prescribe circumstances in which proceedings before the Tribunal must be heard in private. | |
| WHY THE REGULATION POWER IS REQUIRED | |
| The detailed appeal procedures may need to change from time to time in response to changing practical considerations. These might include the circumstances in which it would be appropriate for the Tribunal's proceedings to be held in public, perhaps in response to changing practices in respect of tribunals more generally. Therefore, delegated powers are appropriate. | |
| POLICY INTENTION OF THE REGULATIONS | |
| The regulation making power is likely to be used to require that all hearings are heard in private except in the limited circumstances currently set out in the SENTW Regulations 2012. | |
| Other relevant information (work to date, policy documents or ministerial statements) | |
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| REGULATIONS RELATING TO: | Application of Arbitration Act provisions |
| Bill Part: | 2 |
| SECTION | 68(4) |
| DESCRIPTION OF THE POWER | |
| Regulations may make provision corresponding to any provision of Part 1 of the Arbitration Act 1996. | |
| WHY THE REGULATION POWER IS REQUIRED | |
| The detailed appeal procedures may need to change from time to time in response to changing practical considerations. This might include the making of provision which corresponds to Part 1 of the Arbitration Act 1996, perhaps in response to changing practices in respect of tribunals more generally. Therefore, delegated powers are appropriate. | |
| POLICY INTENTION OF THE REGULATIONS | |
| The regulation making power is unlikely to be used in the near future. The same power exists in relation to the existing SEN system but has not been used. | |
| Other relevant information (work to date, policy documents or ministerial statements) | |

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| REGULATIONS RELATING TO: | Compliance with orders |
| Bill Part: | 2 |
| SECTION | 69 |
| DESCRIPTION OF THE POWER | |
| Regulations can set a period within which the governing body of an FEI or local authority concerned must comply with an order of the Education Tribunal for Wales, beginning with the date on which it is made. | |
| WHY THE REGULATION POWER IS REQUIRED | |
| The Bill enables the Welsh Ministers to prescribe in regulations a period within which the governing body or local authority concerned must comply with an order of the Education Tribunal for Wales, beginning with the date on which it is made. This may need to change from time to time to reflect evidenced based practice. It is, therefore, suitable for delegated powers. | |
| POLICY INTENTION OF THE REGULATIONS | |
| Regulations made under this power are likely to be similar to those currently set out in the SENTW Regulations 2012. | |
| Other relevant information (work to date, policy documents or ministerial statements) | |
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| REGULATIONS RELATING TO: | Regulations about disclosure and use of information |
| Bill Part: | 2 |
| SECTION | 73(1) |
| DESCRIPTION OF THE POWER/REGULATION | |
| This power allows for provision about the disclosure and use of information for the purposes of this Part of the Bill or other purposes connected with the education of a child or young person. This may include, for example, disclosure of an IDP without consent of the person to whom it relates. | |
| WHY THE REGULATION POWER IS REQUIRED | |
| Provisions about disclosure may need to change from time to time to reflect changing practical considerations such as developments in case law. Delegated powers, therefore, are appropriate. | |
| POLICY INTENTION OF THE REGULATIONS | |
| The exercise of the power will be considered in light of the wider work towards | |

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| implementation, including the operational details in the Code and the details of other regulations. The intention would be to include safeguards where appropriate. |
| Other relevant information (work to date, policy documents or ministerial statements) |
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| REGULATIONS RELATING TO: | Parents and young people lacking capacity |
| Bill Part: | 2 |
| SECTION | 74(1) |
| DESCRIPTION OF THE POWER | |
| Regulations may apply any enactment with modifications, for the purpose of giving effect to this Part in a case where a young person, or the parent of a child, lacks capacity at the relevant time. | |
| WHY THE REGULATION POWER IS REQUIRED | |
| The Bill requires the Welsh Ministers to make regulations to ensure that young people, or parents of children, who are lacking mental capacity, at a time when they have a right to make a decision or represent their views in relation to matters within the Bill, are sufficiently represented by an appropriate person. These provisions may need to be amended from time to time to reflect evidence based practice and, therefore, are suitable for delegated powers. An equivalent power has been inserted into the Equality Act 2010 by virtue of Schedule 1 to the Bill, in relation to disability discrimination claims under that Act. | |
| POLICY INTENTION OF THE REGULATIONS | |
| If a parent of a child, or young person, is lacking capacity (within the meaning of the Mental Capacity Act 2005) at the relevant time, regulations will allow a representative to act on behalf of that person, e.g. a deputy appointed by the Court of Protection. | |
| Other relevant information (work to date, policy documents or ministerial statements) | |
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| REGULATIONS RELATING TO: | Case friends |
| Bill Part: | 2 |
| SECTION | 76(8) |
| DESCRIPTION OF THE POWER | |
| Section 76 enables case friends to be appointed for children who lack sufficient understanding to exercise rights conferred on them by the Bill or to understand information and documents which must be given to them under the Bill. The Bill sets out the main provisions on case friends, for example what they may do and how they must act. | |
| The power under s.76(8) is to make further provision about case friends, for example (but not limited to) in relation to the matters listed at s.76(8)(a)-(g). | |

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| WHY THE REGULATION POWER IS REQUIRED |
| The regulatory framework around case friends may need to change over time as the new legislative system set out in the Bill becomes embedded and evidence of the ways in which case friends can be best used to support the rights of the child emerges. The provision of a regulation power represents the most effective way of ensuring that the framework can be adapted in line with the evidence. It also allows for similar detail to that contained within the SENTW Regulations 2012 to be included in regulations, e.g. detailed procedural matters. |
| POLICY INTENTION OF THE REGULATIONS |
| Case friends already exist under the Education Act 1996 and are further provided for in the SENTW Regulations 2012. Regulations made under this power will provide further detail in order to make the case friends provisions in the Bill operable, for example further setting out the role of the Tribunal in relation to case friends and specifying certain circumstances in which a person cannot act as a case friend. |
| Other relevant information (work to date, policy documents or ministerial statements) |
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| REGULATIONS RELATING TO: | Constitution of the Education Tribunal for Wales |
| Bill Part: | 3 |
| SECTION | 79(6) |
| DESCRIPTION OF THE POWER | |
| Regulations made by the Welsh Ministers, with the agreement of the Secretary of State, may— (a) provide for the jurisdiction of the Tribunal to be exercised by such number of tribunals as the President may determine from time to time, and (b) make any other provision in connection with the establishment and continuation of the Tribunal which are considered necessary or desirable. | |
| WHY THE REGULATION POWER IS REQUIRED | |
| The Bill sets out how the Education Tribunal for Wales is constituted. Regulations made under this section will provide administrative detail that may need to be updated from time to time in response to changing policies in relation to how the tribunals more generally operate. Therefore, delegated powers are appropriate. | |
| POLICY INTENTION OF THE REGULATIONS | |
| Regulations made using this power are likely to be similar to the existing SENTW Regulations 2012. | |
| Other relevant information (work to date, policy documents or ministerial statements) | |
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| REGULATIONS RELATING TO: | The President and members of the panels |
| Bill Part: | 3 |
| SECTION | 80(2) |
| DESCRIPTION OF THE POWER | |
| Regulations made by the Welsh Ministers, with the agreement of the Secretary of State, may prescribe requirements that a person must satisfy before he can be appointed as a member of the lay panel. | |
| WHY THE REGULATION POWER IS REQUIRED | |
| The Bill sets out provisions for appointing a person as President, and appointing a person as member of the legal chair panel or lay panel. Delegated powers enable the Welsh Ministers to prescribe requirements that a person must satisfy to be appointed as a member of the lay panel. These may be updated from time to time to take account of new considerations. Therefore, delegated powers are appropriate. | |
| POLICY INTENTION OF THE REGULATIONS | |
| Regulations made using this power are likely to be similar to those currently contained in the SENTW Regulations 2012. | |
| Other relevant information (work to date, policy documents or ministerial statements) | |
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| REGULATIONS RELATING TO: | Meaning of “in the area” of a local authority |
| Bill Part: | 4 |
| SECTION | 82 |
| DESCRIPTION OF THE POWER/REGULATION | |
| Section 82 inserts a regulation making power into section 579 of the Education Act 1996 to enable further provision to be made about the meaning of references to a person being “in the area” of a local authority in Wales. | |
| WHY THE REGULATION POWER IS REQUIRED | |
| This power gives flexibility to make further provision, for example, in light of any uncertain situations which may arise. | |
| POLICY INTENTION OF THE REGULATIONS | |
| It is not currently anticipated that this power will be used in the near future. | |
| Other relevant information (work to date, policy documents or ministerial statements) | |
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| REGULATIONS RELATING TO: | Power to make consequential and transitional provision etc. |
| Bill Part: | 4 |
| SECTION | 84(1) |
| DESCRIPTION OF THE POWER/REGULATION | |
| This is a power to make supplementary, incidental, consequential, transitory, transitional or saving provision if the Welsh Ministers consider it necessary or expedient for the purposes of, in consequence of, or for giving full effect to any provision of the Act. The regulations may amend, repeal and revoke enactments, and statutory documents. | |
| WHY THE REGULATION POWER IS REQUIRED | |
| Delegated powers are suitable to give the Welsh Ministers the flexibility to make such provision. The Schedule to the Bill contains some of the consequential amendments to primary legislation; consequential amendments to secondary legislation will also be required. | |
| POLICY INTENTION OF THE REGULATIONS | |
| The necessity or otherwise of using the power to make consequential amendments will depend whether these are necessary taking into account any changes to the Bill as it passes through scrutiny. The intention is to make consequentials which appropriately align the Bill's provisions with other legislation. | |
| Other relevant information (work to date, policy documents or ministerial statements) | |
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| REGULATIONS RELATING TO: | Definition of an NHS Body |
| Bill Part: | 4 |
| SECTION | 86(8) |
| DESCRIPTION OF THE POWER/REGULATION | |
| Regulations may amend the definition of NHS body so that it includes a Special Health Authority. | |
| WHY THE REGULATION POWER IS REQUIRED | |
| This power would allow the Welsh Ministers to amend the definition of "NHS body" used in the Bill so that it includes a Special Health Authority established under section 22 of the National Health Service (Wales) Act 2006. This would result in the duties under sections 18 and 19 (about additional learning provision) on NHS bodies applying to any Special Health Authority. The current Special Health Authorities do not exercise functions of relevance in the ALN context, but new ones might be created in future that would do so. If that were to occur, this regulation making power provides scope for including them within the bodies subject to the duties in those sections. | |
| POLICY INTENTION OF THE REGULATIONS | |
| It is not currently anticipated that this power will be used in the near future. | |

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| Other relevant information (work to date, policy documents or ministerial statements) |
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| REGULATIONS RELATING TO: | Inserting replacement paragraph 6A(7) into Schedule 17 to the Equality Act 2010 |
| Bill Part: | Schedule 1 |
| SECTION | Paragraph 11(5)(f) |
| DESCRIPTION OF THE POWER | |
| This power (which is similar to the existing regulation making power in paragraph 6A of Schedule 17 to the Equality Act 2010) is to make further provision about case friends for children bringing disability discrimination claims to the Tribunal. | |
| WHY THE REGULATION POWER IS REQUIRED | |
| Case friends may be appointed for children who lack sufficient understanding to exercise the right to make a disability discrimination claim conferred on them by the Equality Act 2010. The Act, as amended by the Bill, sets out the main provisions on case friends – what they are, may do and how they are appointed and removed. This detail is suitable for delegated powers as the Welsh Ministers may need to make amendments over time, including in response to changing circumstances in relation to how case friends might be used to support the rights of the child. Therefore, delegated powers are appropriate. An equivalent power has been included at section 76(8) of the Bill in relation to ALN related appeals made under the Bill. | |
| POLICY INTENTION OF THE REGULATIONS | |
| Regulations made using this power will mirror as closely as possible those made under the regulation making power at section 76(8) so that the provision of case friends in relation to disability discrimination claims relating to schools is equivalent to the provision of case friends in relation to ALN appeals. The regulations are likely to be similar to the current SENTW Regulations 2012 on case friends. | |
| Other relevant information (work to date, policy documents or ministerial statements) | |
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| REGULATIONS RELATING TO: | Inserting replacement paragraph 6F(1) into Schedule 17 of Equality Act 2010) |
| Bill Part: | Schedule 1 |
| SECTION | Paragraph 11(5)(g) |
| DESCRIPTION OF THE POWER/ | |
| Regulations to ensure that parents who are lacking mental capacity, at a time where they have a right to make a disability discrimination claim on behalf of their child, are sufficiently represented by an appropriate person. Also regulations to ensure persons over compulsory | |

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| school age that lack capacity are sufficiently represented. |
| WHY THE REGULATION POWER IS REQUIRED |
| This power, inserted into the Equality Act 2010 by the Bill, requires the Welsh Ministers to make regulations to ensure that parents, who are lacking mental capacity at a time where they have a right to make a disability discrimination claim on behalf of their child, are sufficiently represented by an appropriate person. It also requires the Welsh Ministers to make regulations to ensure persons over compulsory school age that lack capacity are sufficiently represented. These provisions may need to be amended from time to time to reflect evidence based practice and, therefore, are suitable for delegated powers. An equivalent power has been included at section 74(1) of the Bill in relation to appeals made under the Bill. |
| POLICY INTENTION OF THE REGULATIONS |
| Regulations made using this power will mirror as closely as possible those made under the regulation making power at section 74(1), so that the provision in relation to the capacity of parents and young people in relation to disability discrimination claims relating to schools is equivalent to that in relation to ALN appeals. |
| Other relevant information (work to date, policy documents or ministerial statements) |
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| ORDER RELATING TO: | Coming into force |
| Bill Part: | 4 |
| SECTION | 87(2) |
| DESCRIPTION OF THE POWER | |
| Sections 1 and 84 to 88 would all come into force on the day after the day the Act receives Royal Assent. The remaining provisions of this Act would come into force on a day appointed by the Welsh Ministers in an order made by statutory instrument. This power also allows for transitory, transitional or saving provision to be made in connection with the coming into force of a provision. | |
| WHY THE ORDER IS REQUIRED | |
| This delegated power is necessary in order to ensure that the appointed days tie in with the detailed transition and implementation arrangements following the passing of the Bill for example, so that the commencement of sections of the Bill can be appropriately co-ordinated with the commencement of the Code. | |
| POLICY INTENTION OF THE ORDER | |
| The coming into force dates and related implementation matters (such as transitionals) are the subject of ongoing discussion with stakeholders. | |
| Other relevant information (work to date, policy documents or ministerial statements) | |
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