

The Additional Learning Needs and Educational Tribunal (Wales) Act 2018 (Supplementary Provisions) Regulations 2019

This Explanatory Memorandum has been prepared by the Support for Learners Division of the Education Directorate and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1

Ministers Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Additional Learning Needs and Educational Tribunal (Wales) Act 2018 Supplementary Provisions Regulations 2019.

Kirsty Williams
Minister for Education
12 March 2019

1. Description

The Additional Learning Needs and Educational Tribunal (Wales) Act 2018 ('the Act') makes provision for a new statutory framework for supporting children and young people with additional learning needs in Wales.

Section 91 of the Act sets out how the Education Tribunal for Wales is constituted, including that it must have a President, and other appointments and whether appointments must have prescribed agreement.

These regulations:

- remove the requirement for the agreement of the Lord Chief Justice, for the appointment of the President of the Education Tribunal for Wales by the Lord Chancellor from Section 91 (3) of the Act;
- remove the requirement for the agreement the President of the Education Tribunal for Wales for the appointment of the legal chair panel members by the Lord Chancellor from Section 91 (4) of the Act; and
- substitute the entry in Schedule 14 to the Constitutional Reform Act 2005 relating to the Special Educational Needs Tribunal for Wales with an entry relating to the Education Tribunal for Wales.

2. Matters of special interest to the Constitutional and Legislative Affairs Committee

There are no specific matters that have been identified that are of interest to the Constitutional and Legislative Affairs Committee.

3. Legislative background

These regulations are made under Section 97 (1) and (2) of the Act under the Assembly's affirmative procedure..

Section 97 (1) and (2) of the Act provides the Welsh Ministers with power to make regulations to make supplementary, incidental, consequential, transitory, transitional or saving provisions if they consider it necessary or expedient to give full effect to provisions in the Act or in consequence of any provisions in the Act or for the purposes of any provisions of the Act. The regulations may amend, repeal or revoke any provisions in an enactment (defined in section 99(1)) and statutory documents (defined in subsection (4)).

4. Purpose and intended effect of the legislation

These regulations are necessary to amend Sections 91 (3) and (4) as those provisions do not need to include the agreement of the Lord Chief Justice when appointing the President in subsection 3 or for the President's agreement when appointing legal chair members of the panel in subsection 4 of the Act. This is because the Judicial Appointments and Discipline (Amendment and Addition of Offices) Order 2017 ('the 2017 Order'), which came into force on 1 December 2017, provides for judicial appointments as set out below.

The effect of the 2017 Order read alongside the Judicial Appointments Regulations 2013 is to require appointments of the President and legal chairs of Special Educational Needs Tribunal for Wales (and in the future, the Education Tribunal for Wales) to be subject to the usual Judicial Appointments Commission arrangements.

These regulations also substitute the entry in Schedule 14 to the Constitutional Reform Act 2005 relating to the Special Educational Needs Tribunal for Wales with an entry relating to the Education Tribunal for Wales.

5. Consultation

No specific, formal public consultation has been undertaken in relation to these regulations. These regulations make an amendment to the Act to ensure clarity and accessibility of the appointments process of the President and Legal Chairs of the Education Tribunal for Wales.

6. Regulatory Impact Assessment (RIA)

A Regulatory Impact Assessment has not been prepared as these regulations do not impose any additional costs on business, employers or third parties.

These regulations have no impact on the statutory duties (sections 77 -79 of the Government of Wales Act 2006 ('the 2006 Act') or statutory partners (sections 72-75 of the 2006 Act).