



Welsh Government
Consultation – summary of response

Draft Additional Learning Needs (List of Independent Special Post-16 Institutions) (Wales) Regulations 2020

Proposed subordinate legislation under the Additional Learning Needs
and Education Tribunal (Wales) Act 2018

Date of issue: November 2020

Mae'r ddogfen yma hefyd ar gael yn Gymraeg.
This document is also available in Welsh.

Draft Additional Learning Needs (List of Independent Special Post-16 Institutions) (Wales) Regulations 2020

Audience	Local authorities, specialist further education establishments, further education institutions, Estyn, and anyone else with an interest in the placement of young people into independent special post-16 institutions.
Overview	This consultation sought the views on the draft <i>Additional Learning Needs (List of Independent Special Post-16 Institutions) (Wales) Regulations 2020</i> made under the Additional Learning Needs and Education Tribunal (Wales) Act 2018.
Action required	No further action is required
Further information	<p>Enquiries about this document should be directed to: Additional Learning Needs Transformation Team Support for Learners Division Education Directorate Welsh Government Cathays Park Cardiff CF10 3NQ</p> <p>Tel: 03000 251500 e-mail: post16aln@gov.wales</p>



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Additional copies	<p>This document can be accessed from the Welsh Government's website at https://gov.wales/independent-special-post-16-institutions-ispis</p>
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Related documents

- Consultation response form - Consultation on the draft Additional Learning Needs (List of Independent Special Post-16 Institutions) (Wales) Regulations 2020
- Independent special post-16 institutions guidance
- Additional Learning Needs and Education Tribunal (Wales) Act 2018

The documents above can be accessed from the Welsh Government website at

<https://gov.wales/independent-special-post-16-institutions-ispis>

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Introduction

The Additional Learning Needs and Education Tribunal (Wales) Act 2018 ('the 2018 Act') received royal assent in January 2018.

The 2018 Act makes provision for a new statutory framework for supporting children and young people with additional learning needs ('ALN'). This will replace existing legislation surrounding special education needs ('SEN') and the assessment of children and young people with learning difficulties and/or disabilities ('LDD') in post-16 education and training.

The 2018 Act requires the Welsh Ministers to issue a Code on ALN ('the ALN Code') and provides a number of regulation-making powers to Welsh Ministers.

In accordance with the 2018 Act, local authorities in Wales will have a duty to prepare and maintain an individual development plan (IDP) for a young person with ALN who is not at a maintained school or further education institution (FEI), if it decides it is necessary in accordance with regulations¹ to do so, in order to meet his or her reasonable needs for education or training. If the reasonable needs of a young person for additional learning provision (ALP) cannot be met unless a local authority also secures a place at a particular school or other institution, or board and lodging, the authority must include a description of that provision in the IDP. Such 'other institutions' may include 'independent special post-16 institutions' (ISPIs).

Section 56 of the 2018 Act prescribes that the Welsh Ministers must establish and maintain a list of ISPIs in Wales and England and set out in regulations, among other things, the requirements that need to be met to be in the list. Local authorities will only be permitted to secure education or training provision for young people with ALN at an ISPI if it is included in the list. Section 56 of the 2018 Act goes on to define an ISPI.

This consultation sought views on the draft Additional Learning Needs (List of Independent Special Post-16 Institutions) (Wales) Regulations 2020 ("*ISPI Regulations*"), made under section 56 of the 2018 Act.

¹ To be made under section 46 of the 2018 Act

Methodology

The consultation document asked 9 questions which covered each of the 11 regulations under Section 56

Alongside the main consultation document, the Welsh Government published a draft guidance about the ISPI list with the intention of supporting and providing clarity on the draft regulations.

Summary

Under the 2018 Act, the Welsh Ministers will be required to publish a list of ISPIs in Wales and England and amend this from time to time. The aim of having a published list of ISPIs in Wales and England is to help provide local authorities with assurance that the educational provision provided at those establishments listed will be sufficient to meet the reasonable needs for education and training of young people with ALN.

The 2018 Act defines an ISPI as an institution which provides education or training for persons over compulsory school age and is specially organised to provide such education or training for persons with ALN. However, an ISPI cannot be:

- (a) an institution within the further education sector;
- (b) an independent school included in the register of independent schools in Wales;
- (c) an independent educational institution which has been included in the register of independent educational institutions in England; or
- (d) a 16 to 19 Academy.

The 2018 requires the ISPI Regulations to provide the following information:

- (a) the contents of the list;
- (b) requirements to be complied with as a condition of being included in the list;
- (c) requirements to be complied with while the institution is listed (including requirements for approval by the Welsh Ministers of arrangements at the institution and change of such arrangements);
- (d) removal of the institution from the list; and
- (e) rights of appeal to the First-tier Tribunal for proprietors of institutions against decisions—
 - (i) to refuse to list an institution;
 - (ii) to remove an institution from the list;
 - (iii) not to approve or not to approve a change to arrangements at the institution.

Responses

In total, there were 14 organisations responses to the main consultation. Four of those responses were submitted via the consultation response form and the remainder were free text submissions.

Annex A provides a list of respondents.

Most of the 9 questions asked for a 'yes', 'no' or 'not sure' response as well as supporting comments. The number of responses shown in the tables in this document reflects those who completed the form, and the supporting text presents an analysis of all responses received (including submissions not using the form). As identified within the tables, not all respondents provided either a tick box answer or commented on every question. During the consultation period, stakeholders were encouraged to respond to any of those questions they had a view on rather than feeling they had to respond to all questions.

Welsh Government response

The Welsh Government is grateful to all those who have taken the time and effort to respond to this consultation.

Some consultation responses included information that was out of scope of the ISPI regulations and related to wider matters. These included matters around transitional arrangements; transfer of funding; and the definition of an ISPI within the Act.

Whilst these matters do not impact on the ISPI regulations, they will be considered separately.

Next Steps

The responses to the consultation have provided useful information to consider, but do not affect the requirement for the ISPI regulations to be amended. However, changes will be made within the non-statutory guidance in order to provide clarity, which includes 'change to arrangements' and 'an application to remove an ISPI from the list'. The Welsh Government will lay the ISPI regulations before the Senedd Cymru (Welsh Parliament) during the autumn term 2020.

Summary of responses

Content of the list – regulations 3 and 4

Question 1: Do you agree with the information and arrangements required to be included on the list of independent special post-16 institutions (ISPIs)?

Overall, the majority of the 14 respondents answered 'yes', with the remaining respondents either answering 'no', 'not sure' or didn't provide a response, in relation to regulation 3 and 4, which sets out the information and arrangements that are required to be included on the list for ISPIs. 13 respondents provided supporting comments, many of whom felt that additional clarification was needed, particularly in relation to number of persons that the ISPI caters for (regulation 3(b)(ii)). Furthermore clarity was sought with regard to the type of additional learning provision (ALP) provided by the ISPI (regulation 3(b)(iv)). It was felt by some that this can be ambiguous and open to interpretation. Some other comments provided to this question did not directly link to the regulations.

Requirements to be included and to remain on the list of ISPIs – regulations 5 and 6

Question 2: Do you agree with the requirements to be complied with as a condition of being included on the list and the requirements to be complied with while an ISPI is included on the list?

11 respondents answered either 'yes', 'no' or 'not sure' to this question, with the remaining 3 not providing an answer. All those who did respond provided a supporting comment. Overall, respondents did not disagree with the regulations, but did highlight the need for clarification in relation to the guidance to support the regulations. For example, one reoccurring point was in relation to not including reference Care Inspectorate Wales (CIW) from regulation 5(2)(b)(iii)(aa) and 6(b)(i). CIW is not specifically referenced within the regulations as they fall within the remit of Welsh Ministers, which explains why Welsh Ministers is referenced and not CIW.

Change to arrangements – regulation 7

Question 3: Are the procedures for making changes to the arrangements of the ISPI appropriate?

11 responded, the majority of which agreed that there is general consensus to the regulation regarding changes to the arrangements of an ISPI. However, points were raised in relation to the process which is associated with the non-statutory guidance. Some concerns were also raised about timescales and how this could affect learners who are currently placed at an ISPI whilst the change of arrangement is being considered.

Applying for the removal of an ISPI from the list – regulation 8

Question 4: Do you agree with the procedure for applying to be removed from the list?

For this question 10 respondents provided a 'yes', 'no' or 'not sure' response with 4 respondents providing supporting comments.

Even though a higher number of respondents agreed with regulation when setting out to apply for the removal of an ISPI from the list, some respondents raised concerns over the timeframe for providing this notification to local authorities. This included further concern on how this would impact on learners already placed at the ISPI as well as the reference to 28 days in terms of impacting on the need to find alternative provision.

Removal of an ISPI from the list – regulations 9 and 10

Question 5: Do you agree with the considerations to remove an ISPI from the list and the procedure for removal?

11 of the 14 respondents answered 'yes', 'no' or 'not sure' to this question and 11 provided supporting comments. The majority of respondents who answered this question queried the regulation to remove an ISPI and the corresponding advice set out in the associated non-statutory guidance. Specifically, it was felt that 28 days to remove an ISPI is not long enough to ensure the necessary investigation takes place. Some suggested the need for an additional option of a temporary suspension.

Right of appeal – regulations 11 and 12

Question 6: Are the procedures for appealing decisions appropriate?

11 of the 14 respondents answered 'yes', 'no' or 'not sure' to this question and 8 provided supporting comments.

Even though there was a higher number of respondents who do not agree with the regulation on rights of appeal, some of these were in relation to regulation 9 and 10, but around the process rather than the regulations itself. In considering the supporting comments, it is the view that there are no issues with the regulations.

Question 7: We would like to know your views on the effects that the ISPI regulations would have on the Welsh language, specifically on: i) opportunities for people to use Welsh ii) treating the Welsh language no less favourably than the English language. What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?

This was an open question, in which 6 respondents provided comments.

Overall, it is felt that procedures associated with the 12 regulations will not have a detrimental impact on the Welsh language. It is noted that the ISPI regulations have no specific impact on opportunities for people to use Welsh or in treating the Welsh language less favourably.

Some wider responses were received in relation to requirements on reviewing Welsh Language policies in respect of ALN and in relation to promoting opportunities for young people with ALN. However, these are out of scope of the regulations.

Welsh Language impact assessment has been developed in the drafting these regulations.

Question 8: Please also explain how you believe the proposed ISPI regulations could be formulated or changed so as to have: i) positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language ii) no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

This was an open question, in which 5 respondents provided comments.

Overall, it is felt that the regulations to not have any adverse effects on opportunities for young people to use the Welsh Language. It is also felt that neither English nor Welsh is more or less favoured in terms of the documentation pertaining to the ISPI regulations.

Some wider responses were received in relation to improved access to public transport and services to ensure that young people can actively engage in the language of choice in the local community. This included the delivery of provision through the medium of Welsh. However, these are out of scope of the regulations.

Question 9: We have asked a number of specific questions. If you have any related issues which we have not specifically addressed, please use this space to report them.

This was an open question, in which 3 respondents provided comments.

Comments raised were not directly linked to the ISPI regulations. These were:

- the need to receive confirmation on the future role of Careers Wales and the impact this might have on the need for local authorities to plan for any future changes;
- concern about how prepared local authorities are in undertaken the commissioning and quality assurance of ISPIs;
- engagement of local authorities with Careers Wales in supporting local authorities and ISPIs during the period of transition is also unclear; and
- clarity needed regarding the transfer of funding to local authorities, and concern that local authorities will not be prepared as well as they need to be to undertake the transfer of responsibility.

Annex A: List of respondents

List of Respondents who responded to the 'Draft ISPI Regulations' consultation

Name	Organisation
C Howard/K Jones	Natspec
J Baldwin	Bridgend College
R James	Ceredigion Local Authority
K Jones	Coleg Elidyr
L Hinks	Estyn
R Williams	UCAC
C Denham	Colegau Cymru
D Jones	National Star College