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Education & Skills  
Funding Agency

## 1. Introduction

Independent special schools and special post-16 institutions do not have a distinctive definition in law. Unlike maintained schools and academies, further education (FE) colleges and non-maintained special schools, such institutions cannot be subject to statutory duties as a distinct group.

Section 41 of the Children and Families Act 2014 (the Act) allows the Secretary of State, by order, to publish a list of approved independent special schools and special post-16 institutions. Institutions can only be included on the list with their consent. The Special Educational Needs and Disability Regulations 2014 set out the criteria for inclusion and removal of institutions. [The list](#) is published on GOV.UK.

Those independent institutions applying to join the approved list make themselves voluntarily subject to

certain duties in the Act 2014:

- local authorities' published local offer of support available to children and young people with Special Educational Needs (SEN) must refer to the institutions on the approved list
- institutions on the approved list have a reciprocal duty to co-operate with the local authority on arrangements for children and young people with SEN, and to have regard to the statutory guidance in the Special educational needs and disability code of practice: 0 to 25 years (Code of Practice)

In addition, the Act gives parents and young people the right to express a preference for independent specialist provision when their Education, Health and Care (EHC) plan is being agreed and completed. Under section 38 of the Act, if an EHC plan names a maintained school or academy, FE college, non-maintained special school or approved Section 41 independent special institution, the local authority must secure a place at that institution and the institution must admit the pupil or student. The local authority must comply with the request unless it would be unsuitable for the age, ability, aptitude or SEN of the child or young person, or the attendance of the child or young person there would be incompatible with the efficient education of others, or the efficient use of resources. This requirement places approved independent special schools and special post-16 institutions on the same legal footing as maintained schools, academies, non-maintained special schools and FE colleges, which can be named as a preferred institution.

Parents and young people may request that an independent special school or special post-16 institution not on the approved list be named in an EHC plan. The local authority will consider this request, but is not under any specific duty to secure a place, and there is no duty on the institution to admit the pupil or student. The Education and Skills Funding Agency (ESFA) is acting as the Secretary of State's agent in determining which independent special schools and special post-16 institutions should be approved to join the list.

This guide sets out the timescales and information required to complete the [online application form](#), it relates only to the approved list and approved institutions will not automatically be entitled to receive funds or a funding agreement from ESFA. An ESFA funding agreement will be subject to local authorities commissioning decisions and a separate high needs student [due diligence process](#) which is undertaken outside of any process set out in this guide.

## 1.1 Who is this guide for?

This guide provides information for those institutions that wish to be considered for inclusion on the approved list. For the purpose of this guide these are defined as:

- independent educational institutions (also referred to as independent special schools) in England, which are entered on the register of independent educational institutions under the Education and Skills Act 2008 and which are specially organised to make special educational provision for students with special educational needs
- independent special schools in Wales, which are entered on the register of independent schools under the Education Act 2002 and which are specially organised to make SEN provision
- special post-16 institutions which are legally established to provide education and are not maintained schools or FE colleges, which provide specialist post-16 education and support to young people with some of the most severe learning difficulties and/or disabilities or low incidence needs - in many cases they offer specialist residential provision which would not be economical for a local authority to replicate

For the purposes of this guide the above categories will be referred to as independent special institutions.

## 2. Special education institutions not in scope

There are 2 other types of special institution who offer services to a similar cohort. Both have their own legal status and are already subject to the statutory duties set out in the Act. They are therefore not in scope of the approved list under Section 41 of the Act. They are:

- non-maintained special schools, which cater for pupils up to age 18, they are funded on the same basis as and subject to similar inspection and accountability requirements as maintained special schools
- special free schools, which have a statutory footing as academies and are subject to a separate approval process - they are subject to the same funding, accountability and inspection regime as other academies

In addition:

- other LA maintained provision (eg pupil referral units or specialist units) is legally considered part of the local authority and is inspected as part of the local authority, since such institutions are not a distinct legal entity, they cannot be subject to statutory duties

### 2.1 When to make an application to the list of approved independent special institutions

The application process is annual, with the next application window commencing in May 2017.

Newly established or Department for Education (DfE) registered (within the last 12 months) special post-16 institutions and independent special schools can submit an exceptions application outside of the annual process timeframe. Enquiries should be made to [HNSSoS.ESFA@education.gov.uk](mailto:HNSSoS.ESFA@education.gov.uk) and include the institution's name, DfE registration number (independent special schools only), Companies House and/or Charity Commission number, and the date legally established/DfE registered. Subject to demonstrating the institution meets the exceptions criteria, the institution will be asked to complete an application form for consideration. Applications submitted via the exceptions process will be subject to the same process, and will need to meet the eligibility requirements set out in this guide.

#### 2016 Application window

Date	Activity
5 May 2017	Application process opens
16 June 2017	Application process closes
5 May to 28 July 2017	Applications reviewed and moderated
31 August 2017	List updated

Applications and supporting evidence received after the closing date will not be considered. Late applicants must re-apply at the next application window.

## 2018 Application window

Date	Activity
4 May 2018	Application process opens
15 June 2018	Application process closes
4 May to 27 July 2018	Applications reviewed and moderated
31 August 2018	List updated

## 2.2 Applying to be included on the list of approved independent special institutions

The application process consists of the following criteria, as set out in Part 5 of The Special Educational Needs and Disability Regulations 2014.

Independent special institutions will need to complete a 3 stage process of application. Each criterion must be met and all 3 stages of the application process successfully completed before ESFA will consider entering an independent special institution onto the list.

The 3 stages are:

- stage 1 – specialism and background information
- stage 2 – quality of provision
- stage 3 – financial health assessment

Evidence required for each of the 3 stages is detailed in sections 3.1 to 3.7 of this guide.

Independent special schools must be registered with the Department for Education before the application closing date. Schools that have not registered cannot be considered. Special post-16 institutions must be legally established and registered for the delivery of education with Companies House and/or Charity Commission. Failure to respond in full to the questions posed during the application process, including requests for information made after the application closing date, may result in ESFA not being able to progress the application, a delay in the completion of the application process or failure to successfully complete the application process.

## 3. Completing the online application form

Only institutions in scope and that meet the eligibility criteria should complete the online application form. Applications will not be considered from institution types referenced in section 2 of this guide. In addition, schools as yet unregistered or special post-16 institutions who are not legally established/registered with Companies House and/or the Charities Commission should not apply.

Applicants can choose to either:

- a. sign up for an account, which will enable the application to be saved and returned to at a later time/date, along with auto-completing some of the application fields using the information provided, or
- b. complete the application without creating an account, by selecting the continue without an account tab
  - in choosing option b applicants should note they must complete the application in one sitting otherwise the information submitted will be lost

### **3.1 Institution type and trading information (specialism and background information)**

The applicant should select the appropriate institution from one of the 2 types detailed in section 1.1:

- a. independent special school (England and Wales)
- b. special post-16 institution

The applicant should complete all relevant fields within this section including:

- a. type of company: must align to the information held at Companies House and/or the Charity Commission
- b. whether you currently hold an ESFA funding agreement
- c. independent educational institutions and special schools: must enter their 6 digit unique reference number, this can be obtained from Edubase; Non-completion of this field by independent educational institutions and special schools will result in the application not proceeding
- d. the school's information as it is held on Edubase will be included in your application, if the information is not correct, you should log onto your Edubase account to adjust or make a request to adjust the information
- e. the SoS approved list will include details of a successful institution's web address, institutions should adjust the web address as part of their application if the information held is incorrect, if you do not have a web address – enter not applicable

Institutions should provide their trading name and address. The trading name will be the name that appears on the SoS approved list should the institution's application be successful, alongside the organisation's legal name as it appears on Companies House and/or the Charity Commission.

The information provided at this section will be validated and will include, although not be limited to, data and information held by the DfE, ESFA and other parties.

### **3.2 Pupil/student cohort (specialism and background information)**

This information is required in order to confirm that the majority of the provision offered by the institution is specialist educational provision to pupils and students aged between 0 and 25 with special educational needs.

The applicant should provide the total number of pupils/students at the institution you are applying as, or are registered under, not solely those with special needs or those falling within a particular age range. This figure should then be broken down to detail the number of pupils/students with an EHC plan, and those without, for all of the relevant age ranges (as at the start of the academic year 2016 to 2017), for the institution you are applying as or registered under. The pupils/student numbers must align with the information provided in support of the application ie latest inspection reports and other documentation.

We expect that the majority of the pupil/student intake in an approved special institution will be in possession of an EHC plan.

If we are unable to verify the student cohort information using data available to the ESFA, institutions will be contacted and will be required to provide confirmation from local authorities of the number of students they have placed at the institution in 2016 to 2017. This information must detail how many of these students are subject to a EHC plan that have named the applying institution

If other parties do not support planned or commissioned places, the application cannot be considered and will fail. Non-submission of this information within the timeframe, will result in the application failing.

### **3.3 Financial health assessment**

The financial health of institutions will be assessed using ESFA's financial health assessment methodology. This is a standard formula based assessment which will categorise institutions' financial health as: outstanding, good, satisfactory, or inadequate. These categories are based on a scoring of three ratios: solvency (current ratio); sustainability (surplus divided by income); and status (debt as a percentage of reserves). It will also take into account the nature of the institution, eg charity or business.

The applicant must provide financial documentation in support of their application:

- a. audited financial statements (not abbreviated) for the last 2 years; or
- b. for an institution that has not yet prepared its first set of annual accounts, a costed business plan including, which must include a minimum of:
  - 12 month forecasted income and expenditure
  - cash flow forecast
  - projected balance sheet
  - full explanation of assumptions behind the figures provided

The information will be reviewed and the institution's financial health will be categorised as detailed in section 3.4. Institutions whose financial health is assessed as being inadequate or have omitted to provide the financial information required will fail the application process.

ESFA reserves the right to carry out further financial checks throughout the application process and/or if more up to date information becomes available.

### **3.4 Type and quality of provision**

Applicants will be asked what type of provision they offer, which will include: day placements only, residential placements only, or a mix of day and residential placements.

Applicants who indicate that they offer residential placements will be required to provide the date, rating, reference and link to their latest Care Quality Commission (CQC), Ofsted Social Care, Care and Social Services Inspectorate Wales (CSSIW), or other inspectorate published full inspection report. The absence of this information will result in the application not proceeding.

Applicants should confirm whether their education provision is subject to inspection by Ofsted, Independent Schools Inspectorate or Estyn and details should be given of the date, rating, reference and link to inspectorate report for the last full inspection:

- a. Ofsted and Estyn inspected institutions should confirm their last full inspection rating
- b. Independent Schools Inspectorate inspected institutions should confirm the quality of pupils achievement and learning rating

Where an institution is assessed as being inadequate at their last full education or full social care inspection including residential accommodation, or linked children's homes, and/or judged [not to be meeting the essential requirements], the institution will fail the application process. It is important to note that any published emergency inspection reports that have been conducted after the last full education or full social care inspection, will be reviewed and taken into consideration.

Institutions that have not been inspected by Ofsted, Independent School Inspectorate, Estyn, CSSIW or CQC, will be asked to confirm they plan to register with the appropriate inspectorate/s and cover the cost of inspection. This must be agreed to as part of the online application process before the institution can be considered for approval. The inspection must take place within 24 months of publication of the approved list, as follows:

- c. special post-16 institutions in England will be inspected against the Ofsted Common Inspection framework and, (where appropriate) CQC inspection framework
- d. Independent special schools in England against the Ofsted school inspection framework, or Independent School Inspectorate inspection framework
- e. Independent Schools and special post-16 institutions in Wales against the Estyn Common Inspection framework and CCSIW (where appropriate)

Should an inspection not take place within 24 months or the inspection cost are not covered, the institution will be removed from the approved list. Once an inspection has taken place, and been published, the institution will be able to resubmit an application for consideration at the next application window.

Institutions that have successfully met stages 1 and 3 but have not yet been subject to a full inspection by Ofsted/Estyn will be included on the list provisionally until an inspection takes place

The information provided at this section will be validated against information held by the DfE, ESFA and other parties.

### **3.5 Institution contact information**

The applicant must provide contact details for the principal or head of the institution and if they are not the principal or head provide their contact details.

Non completion of this section will result in the online application not proceeding. The information collected will be used to notify institutions of their application outcome and to obtain further information should this be required.

### 3.6 Declaration

All applicants must complete the declaration section, to confirm they are authorised to submit the application on behalf of the institution and that the information provided is accurate, as at the date the application was made.

## 4. Application submission and next steps

Following submission of the application, the institution will receive an automated acknowledgement confirming that their application has been received, along with an email containing a pdf version of the application. This does not mean that the institution will automatically be confirmed on the approved list, but is confirmation that the application has been received. The information and documentation submitted will be reviewed and the application outcome provided to the institution by the 31 August 2017.

ESFA may contact an institution after the application closing date if validation checks result in further information being required. The institution will be contacted via the details provided within their application and must provide the information within the specified timeframe to enable their application to be considered. Failure to respond to requests within the timeframe may result in the application failing.

### 4.1 Decision

Where an institution has successfully passed stages 1 to 3 (section 3) of the application process, the decision on whether to place the institution on the SoS's approved list will be made by a panel comprising representatives from across ESFA, operating on behalf of the Secretary of State. The evidence provided in support of all the qualifying criteria will be considered. Some applicants may not proceed to the panel review where they do not meet the application criteria.

The institution will be informed of the decision in writing via the email address provided in their application, and the SoS [approved list of Special Education Institutions](#) will be updated on 31 August 2017 on GOV.UK.

## 5. Review of the list of independent special institutions

The list of approved institutions will be reviewed termly, with institutions expected to continue to meet the qualifying criteria. Any new information such as recent inspection reports will be taken into account during this review. If serious concerns relating to an institution have been raised with the SoS by any individual (for example relating to safeguarding), ESFA will consider the implications of this information which may include removal (on a temporary or permanent basis from the list).

The ESFA will notify an institution if it is to be removed from the list, detailing the reason for the removal. The removal of an institution will take effect 28 days after notification has been given (condition 61.3 - SEND Regulations 2014). All local authorities in England will be notified of an institution's removal (condition 61.2 – SEND Regulations 2014) from the SoS approved list.

Institutions wishing to be removed from the secretary of state approved list must write to the ESFA stating

the reasons for the request for removal. The institution will be removed from the list at the next termly review. The ESFA will notify all local authorities and Ofsted about this voluntary removal. Once an institution has been removed from the list voluntarily, they cannot re-apply to appear on the list until one full academic year after removal.

From December 2016 the list has included a new section to show all institutions that were once on the list, but have subsequently been removed, in order to provide a complete and transparent record. This list will include all removals following the first publication in August 2014.

## 6. Right of Appeal should you not be entered onto the list

All ESFA decisions are final and not subject to appeal. However, applicants that fail to meet some or all of the criteria may apply again once they feel they have addressed the issues raised in the feedback from ESFA.

Institutions can be added or removed from the list on an exceptional basis should any additional information become available. This will include, but not be limited to, updated financial health assessments, outcomes from emergency inspections or safeguarding concerns.

## 7. EFA contact details

If you have any questions about any part of the application process please contact [HNSSoS.EFA@education.gov.uk](mailto:HNSSoS.EFA@education.gov.uk).

## 8. Further sources of information

[Children and Families Act 2014](#)

[Section 41 Secretary of State approved list of independent special institutions](#)

[ESFA application form and guidance](#)

[Edubase](#)

## 9. Other advice and guidance you may be interested in

[16 to 19 education: high needs funding](#)

[High-needs students due diligence process](#)

[SEND Code of Practice 2014](#)

[The Special Educational Needs and Disability Regulations 2014](#)

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