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Llywodraeth Cymru
Welsh Government



Welsh Government
Consultation Document

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: 10 March 2020
Action required: Responses by 5 May 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

Overview

This consultation seeks the views on the draft *Additional Learning Needs (List of Independent Special Post-16 Institutions) (Wales) Regulations 2019* made under the Additional Learning Needs and Education Tribunal (Wales) Act 2018.

How to respond

Responses to this consultation should be e-mailed/posted to the address below to arrive by **5 May 2020** at the latest.

Further information and 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/draft-additional-learning-needs-code>

Large print, Braille and alternative language versions of this document and those listed above are available on request.

Contact details

For further information:
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General Data Protection Regulation (GDPR)

The Welsh Government will be data controller for any personal data you provide as part of your response to the consultation. Welsh Ministers have statutory powers they will rely on to process this personal data which will enable them to make informed decisions about how they exercise their public functions. Any response you send us will be seen in full by Welsh Government staff dealing with the issues which this consultation is about or planning future consultations. Where the Welsh Government undertakes further analysis of consultation responses then this work may be commissioned to be carried out by an accredited third party (e.g. a research organisation or a consultancy company). Any such work will only be undertaken under contract. Welsh Government's standard terms and conditions for such contracts set out strict requirements for the processing and safekeeping of personal data.

In order to show that the consultation was carried out properly, the Welsh Government intends to publish a summary of the responses to this document. We may also publish responses in full. Normally, the name and address (or part of the address) of the person or organisation who sent the response are published with the response. If you do not want your name or address published, please tell us this in writing when you send your response. We will then redact them before publishing.

You should also be aware of our responsibilities under Freedom of Information legislation. If your details are published as part of the consultation response then these published reports will be retained indefinitely. Any of your data held otherwise by Welsh Government will be kept for no more than three years.

Your rights

Under the data protection legislation, you have the right:

- to be informed of the personal data holds about you and to access it
- to require us to rectify inaccuracies in that data
- to (in certain circumstances) object to or restrict processing
- for (in certain circumstances) your data to be 'erased'
- to (in certain circumstances) data portability
- to lodge a complaint with the Information Commissioner's Office (ICO) who is our independent regulator for data protection.

For further details about the information the Welsh Government holds and its use, or if you want to exercise your rights under the GDPR, please see contact details below:

Data Protection Officer:
Welsh Government
Cathays Park
Cardiff
CF10 3NQ

e-mail: Data.ProtectionOfficer@gov.wales

The contact details for the Information Commissioner's Office are:

Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Tel: 01625 545 745 or
0303 123 1113

Website: <https://ico.org.uk/>

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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 seeks views on the draft Additional Learning Needs (List of Independent Special Post-16 Institutions) (Wales) Regulations 20xx ("*ISPI Regulations*") which will be made under section 56 of the 2018 Act.

Draft guidance about the ISPI list has been published alongside this consultation to assist consultees in understanding how the regulations will be applied.

Special further education establishments, local authorities, education inspectorates and care inspectorates will have an interest in these regulations. The Welsh Government would also welcome the views of anyone else with an interest.

¹ To be made under section 46 of the 2018 Act

How to respond to the consultation

Consultees are invited to respond to questions asked within this consultation document. A separate response form is provided.

The Welsh Government values and appreciates the time spent and the input from all stakeholders and members of the public who submit responses to this consultation.

All responses will be carefully considered by the Welsh Government and will be used to help refine and shape the final regulations.

The ISPI Regulations

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.

Next steps

It is intended that the ISPI regulations will be laid before the National Assembly for Wales in 2020, with them coming into force later that year. This is ahead of the other provisions of the 2018 Act and regulations due to commence from September 2021. This is to allow time for those special further education establishments who currently

have a funding agreement with Welsh Ministers to apply to be an ISPI and have decisions made to their applications before the implementation of the 2018 Act.

For further information on the implementation of the 2018 Act, please see:
<https://gov.wales/additional-learning-needs-and-education-tribunal-wales-act>

Consultation: The draft ISPI regulations

- 1.1 A total of 11 regulations are set out within the ISPI regulations. These place requirements on ISPIs, Welsh Ministers and the First Tier Tribunal.
- 1.2 The title, commencement and interpretations are set out in regulations 1 and 2. We have not asked any questions in relation to these.
- 1.3 Regulation 3 prescribes the 'information' and 'arrangements' at an ISPI that will be included in the published list. Contact details and whether an ISPI provides residential accommodation form part of the 'information'. The 'arrangements' at an ISPI will require approval from Welsh Ministers (as set out in regulation 4). The arrangements include details about the age range and number of persons that the ISPI caters for, the proprietor of the ISPI, and the type of ALP provided by the ISPI.

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

- 1.4 The requirements to be complied with as a condition of being included in the list are set out in regulation 5. These include the arrangements at the ISPI being approved by Welsh Ministers, and the provision of evidence to Welsh Ministers which satisfies them of the ISPI's financial viability, the quality of the ALP it provides (which may be evidenced via relevant inspection reports), and any other information relating to the ALP, the management or the governance of the ISPI that the Welsh Ministers may reasonably require.
- 1.5 Regulation 6 provides the requirements to be complied with while the ISPI is included in the list. Similar information to that under regulation 5 will be required at the request of Welsh Ministers.

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

- 1.6 The procedure for seeking changes to the arrangements at an ISPI are prescribed at regulation 7, via an application in writing, and in the case of a change of proprietor, made by the proposed new proprietor.

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

- 1.7 Regulation 8 provides that a proprietor of an ISPI may apply to the Welsh Ministers for the removal of the ISPI from the ISPI list. This includes the associated timescales and requirements on Welsh Ministers to notify relevant parties accordingly.

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

- 1.8 Regulation 9 prescribes the considerations Welsh Ministers may take into account when deciding whether to remove an ISPI from the list. These considerations are evidence relating to the financial viability of the ISPI, relevant reports linked to regulation 5, evidence obtained at request of Welsh Ministers in accordance with regulation 6, and any serious concerns about the ISPI received by Welsh Ministers.
- 1.9 The procedure for removing an ISPI from the list is set out in regulation 10 which includes the associated timescales and the requirements on Welsh Ministers to notify relevant parties of its decision.

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

- 1.10 Regulation 11 sets out the procedures for appealing a decision of the Welsh Ministers to the First Tier Tribunal. Appeals relate to a decision by the Welsh Ministers to refuse to include an ISPI in the list, to remove an ISPI from the list, not to approve arrangements at the ISPI or not to approve a change to arrangements. This regulation also sets out the timeline for submitting an appeal.
- 1.11 The determination of an appeal by the First Tier Tribunal is set out in regulation 12.

Question 6 – Are the procedures for appealing decisions appropriate?