Guide for independent special institutions on applying for inclusion on the Secretary of State approved list

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1. Introduction

Independent special schools and special post 16 institutions do not have a statutory status. Some of these institutions are approved by the Secretary of State for Education to provide independent special education, 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 (SoS), by order, to publish a list of approved independent special institutions (the approved list). The SoS may approve independent special institutions for inclusion on the approved list. Section 41 of the Act also provides for the SoS to make regulations about the approved list. The list is published on GOV.UK.

Parents and young people have expressed that independent special schools or special post 16 institution can be dependent on local authorities (LA) to secure a place, and there is a lack of information about what is available in the local market. The Department and Skills Funding Agency (ESFA) is acting on the Government's commitment to provide information about what is available and what is not and special post 16 institutions should be included in this list.

This guide sets out the timescales and information required to complete the online application form.

Special post 16 institutions are also able to seek a funding agreement from the ESFA to provide 16-19 education and training. Special post 16 institutions are generally not subject to the requirements of the 16-19 provision but are advised to voluntarily be entitled to receive funds on a funding agreement from the ESFA. Information about how to apply for a funding agreement, and commissioning decisions are available on the commissioning process, which is undertaken outside of any process set out in this guide.

1.1 When 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 the terms are defined as:

- independent educational institutions (you referred to as independent special schools) in England and Wales, and institutions in receipt of independent educational institutions under the Education and Skills Act 2008 (section 41) in Wales, which are wholly or mainly concerned with providing education for children with special educational needs
- independent special schools in Wales, which are entered on the register of independent schools in Wales (section 162 of the Act) and are specially organised to meet SEN
- special post 16 institutions which are legally established to provide education for young people aged 16 to 25 with SEN, and which are not part of specialist post 16 institutions and are not colleges with some of the most severe learning difficulties and/or disabilities or low incidence needs

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

2. Special education institutions not in scope

Mainstream schools and other education provision is a similar custom. Both have SEN provision and are dedicated providers of SEN provision and are not set out in the list. 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 19. They are established under Section 342 of the Education Act 1996 and are accountability legislation and statutory guidance for maintained schools
- special free schools, which have a statutory funding as academies and are established under Section 1 of the Act and are subject to the same funding, accountability and statutory guidance for maintained schools

In addition:

- other LA maintained provision (e.g. 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 provision is not distinct legal entities, 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 2021.

Independent special schools must be registered with the Department for Education (DfE) and have completed their first full academic year of registered special school operation. Special post 16 institutions must be legally established and registered for the delivery of education with Companies House and/or the Charity Commission.

Independent special schools that have registered with the Department for Education (DfE) and special post 16 institutions that have been legally established and have registered with Companies House within the last 12 months can submit an expression of interest outside of the annual application window. The application process for these institutions will be considered on a rolling basis. Institutions that have been registered for more than 12 months can submit an application outside of the annual application window, but will need to provide evidence to PROSPECT@EducationDelivery.gov.uk, which includes:

- the institution's name
- the institution's DfE registration number (independent special schools only)
- the institution's Companies House and/or Charity Commission number and
- the date when the institution was registered with the Department for Education (independent special schools only) or Companies House and/or Charity Commission (special post 16 institutions only)

Provided the institution meets the exceptions criteria set out above, the application form will be made available to the institution. Late or incomplete applications submitted outside the exceptions process will be subject to the same process, and will need to meet the eligibility requirements set out in this guide.

2.2.1 Application process

Date	Activity
1 May 2021	Application process opens
30 June 2021	Application process closes
1 May to 24 July 2021	Application reviewed and moderated
27 July to 31 July 2021	Moderation meeting
27 August 2021	List published

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

2.2.2 Application window

Date	Activity
1 May 2021	Application process opens
30 June 2021	Application process closes
1 May to 24 July 2021	Application reviewed and moderated
27 August 2021	List published

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

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

Applicants will be assessed against the criteria items listed below, as set out in section 3 of the application process and guidance document. Applicants will be assessed against the criteria in the order they are listed in the application form. Applicants will be informed at the end of three stages of the application process successfully completed that they will be included on the approved list.

The stages are:

- stage 1 – specialism and background information
- stage 2 – pupil/student cohort
- stage 3 – financial health assessment

The evidence required for each stage is detailed in sections 3.1 to 3.6 of this guide.

Failure to respond in full to the questions posed during the application process, including providing evidence to support the claims made, will result in the institution not being able to progress the application. Failure to complete the application process in full will result in the institution not being included in the application process.

2.3. Completing the online application form

Only institutions in scope and that meet the eligibility criteria should complete the application form. Institutions that are not in scope or do not meet the eligibility criteria will not be considered. Institutions that are not in scope, are not categorised or special post 16 institutions who are not legally established and registered with Companies House and/or the Charity Commission should not apply.

Applicants can choose to either:

- sign up for an account with ESFA and complete the application to be saved and returned for at a later time/date, along with auto-completing some of the application fields using information from ESFA
- complete the application without creating an account, by selecting the 'continue without signing up' option. Applicants who do not create an account may must complete the application in one sitting otherwise the information submitted will be lost

Applicants will receive a confirmation email after they have completed the application process and have clicked 'Submit'. This information will be sent to the institution's DfE or ESFA email address. This information must data have or get a response from the institution in 2019 to 2020. This information must data have or get a response from the institution in 2019 to 2020. This information must data have or get a response from the institution in 2019 to 2020. This information must data have or get a response from the institution in 2019 to 2020.

If local authorities do not confirm placements, the application cannot be submitted. Applicants will receive a confirmation email within the timeframe set out in the application form.

2.4 Type and quality of provision

Applicants will be asked when sign up of provision they offer, which will include:

- day placements only,
- residential placements only, or
- a mix of day and residential placements

Applicants who indicate they offer residential placements will be required to provide the date, rating, reference and link to their latest Care Quality Commission (CQC) inspection report. Applicants who do not provide the latest Ofsted (SCIDIS) or CQC inspection report will be unable to progress their application.

Applicants should confirm whether their education provision is subject to inspection by Ofsted or CQC. Institutions subject to inspection by Ofsted/CQC should be given of the date, rating, reference and link to inspection report for the latest inspection.

Ofsted and Estyn inspected institutions should confirm their last full inspection date.

Independent Schools Inspectorate inspected institutions should confirm the quality of pupils' achievement and learning rating.

Institutions will be required to provide evidence supporting of their last full education or full social care inspection (including inspection of residential provision) report. Institutions will be required to provide a link to or sending the essential requirements. Institutions will be required to provide evidence that is important for him that any published emergency inspection reports that have been published since the last full inspection report, and any evidence that the institution has received from the inspectorate.

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

Institutions that have successfully met stages 1 and 2 but have not yet been inspected by Ofsted or CQC, the application will be included on the list provisionally until an inspection takes place.

2.5 Special post 16 institutions not in scope of inspection by Ofsted

Special post 16 institutions (SPIs) that do not wish or receive of funding directly from the ESFA, or have not been in receipt of ESFA funding, are not in a position which successfully completed the ESFA funding application, but do not provisionally in the first instance. ESFA will arrange for a DfE education adviser to visit the institution to undertake a review of the quality of provision. The review will consider the quality of provision, and focus on the quality of provision, the proposed curriculum and study programmes, internal policies in relation to safeguarding, and the institution's governance and financial governance arrangements. Following the visit, the education adviser will submit a report to the ESFA on their findings. The ESFA will convene a panel to review the report and make a decision. If the panel decides that the SPI is not included on the approved list, the institution will be informed of the findings. As deauthoritisation, the institution will be removed from the list with immediate effect.

3.6 Institution contact information

The application must include contact details for the principal or head of the institution. If the principal or head of the institution is not the principal or head, the applicant must provide their own contact details.

Applicants will be required to provide a contact email address in application and processing. The information will be used to provide updates on the application process and application outcome and to obtain further information should this be required.

3.7 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 of 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 PIN* service of the application. The PIN service will be used to provide updates on the application process, and approved lists, and information about the institution's approved status. The information and documentation submitted will be reviewed and the application process will be moderated by the ESFA and DfE.

ESFA may contact an institution for clarification or further information. Failure to provide clarification or further information when requested, or to provide information that is not in line with the application process, may result in the application being not considered. Failure to respond to requests within the timeframe may result in the application being not considered.

4.1 Decision

Where an institution has successfully passed stages 1 to 3 (section 3) of the application process, the decision will be made to include the institution on the list. SoS's approved list will be ready to present comprising representations from ESFA and DfE. The SoS approved list will be ready to present to the SoS for approval in August 2021 and published on GOV.UK.

The institution will be informed of the decision in writing via the email address provided in their application. The SoS approved list will be published Education Institutions will be updated on 26 August 2020 on GOV.UK.

5. Review of the list of independent special institutions

The list of approved institutions will be reviewed bonus, with institutions being added or removed from the list. Institutions may be removed from the list as recent inspection reports, emergency inspection reports and monitoring visits, or other information, indicate that the institution is not providing a good education or is not providing a good education to the extent that it is reasonable to be seeking to safeguard pupils. ESFA will consider the implications of this information and will make a decision on the future of the institution. If the institution is to be removed from the list, ESFA will inform the institution of the decision to remove. The removal of an institution will take effect 28 days after notification of the decision to remove. Institutions will be given 28 days to make a final appeal against the decision to remove. If the appeal is successful, the Secretary of State for England will be notified of an institution's removal from the SoS approved list. If the appeal is unsuccessful, the institution will be removed from the list. Appeals will be considered by a panel of independent people.

Institutions wishing to be removed from the Secretary of State approved list can write to the ESFA stating that they wish to be removed from the list. The institution will be removed from the list at the next terms review. The ESFA will inform the institution of the decision to remove. Institutions that have been deauthorised from the approved list will be ineligible to re-apply for inclusion on the approved list.

There includes a section to close institutions that were once on the list and have ceased to be approved, in order to provide a complete and transparent record. This list will include all removals following the first publication in August 2021.

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 have been not included on the list may request a review if they feel they have addressed the issues raised in the feedback from ESFA.

7. ESFA contact details

If you have any questions about any part of the application process please contact PROSPECT@EducationDelivery.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

Getting information about Schools

9. Other advice and guidance you may be interested in

The SEND Code of Practice: 0 to 25 years

High needs students due diligence process

SEND Code of Practice 2015

The Special Educational Needs and Disability Regulations 2014

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