

**THE ADDITIONAL LEARNING
NEEDS (LIST ON INDEPENDENT
SPECIAL POST-16 INSTITUTIONS)
(WALES) REGULATIONS 2020**

Explanatory Memorandum
Incorporating the Regulatory Impact Assessment
and Explanatory Notes

November 2020

Explanatory Memorandum to the Additional Learning Needs (List of Independent Special Post-16 Institutions) (Wales) Regulations 2020

This Explanatory Memorandum has been prepared by the Education Department and is laid before Senedd Cymru in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Additional Learning Needs (List of Independent Special Post-16 Institutions) (Wales) Regulations 2020. I am satisfied that the benefits justify the likely costs.

Kirsty Williams MS, Minister for Education
30 November 2020

PART 1

1. Description

These Regulations set out the requirements for the publication and maintenance of the list of Independent Special Post-16 Institutions (ISPIs) in Wales and England, which Welsh Ministers are legally obliged to publish and amend from time to time. The aim of having a published list of ISPIs in Wales and England is to help provide local authorities, who have responsibility for securing such placements, 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 additional learning needs (ALN).

2. Matters of special interest to the Legislation, Justice and Constitution Committee

In order to support the ISPI Regulations, non-statutory guidance will be published alongside the regulations when they come into force in January 2021. .

3. Legislative background

Section 56¹ of the Additional Learning Needs and Education Tribunal (Wales) Act 2018 (*“the 2018 Act”*) sets out the legal requirement for Welsh Ministers to publish and maintain a list of ISPIs and requires that they publish regulations that provide:

- (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 made by Welsh Ministers in accordance with the regulations

In accordance with section 98 of the 2018 Act, the IPSI Regulations are subject to annulment in pursuance of a resolution of the National Assembly for Wales (now Senedd Cymru) - under the negative resolution procedure.

¹ The Additional Learning Needs and Education Tribunal (Wales) Act 2018 (Commencement No. 1) Order 2020 has been made, which commences section 56 of the Act

4. Purpose and intended effect of the legislation

The purpose of these Regulations is to ensure that a local authority may only secure education or training for a child or young person at an ISPI in Wales or England if the institution is included in the list. An ISPI is defined within the Act 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, the institution 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 aim of having a published list of ISPIs in Wales and England is to help provide local authorities and families 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. 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.

To support ISPIs, local authorities and other interested parties, the ISPI Regulations will be accompanied by non-statutory guidance which will set out advice on how ISPIs can apply to be included and maintained on the Welsh Government list of ISPIs. The non-statutory guidance will also provide advice on other functions relating to provisions set out in the Regulations.

5. Consultation

A 12 week consultation ran from 5 March 2020 to 30 June 2020 on the draft IPSI Regulations. The consultation was drawn to the attention of key stakeholders including local authorities, specialist further education establishments, and inspection agencies.

There was broad agreement to the proposals of the consultation. Consideration has been taken of all consultation responses and it has been decided that no amendments were necessary to the Regulations. However, amendments are going to be made to the non-statutory guidance in order to provide clarity around some of the points made via the consultation.

A summary of the consultation responses is available at <https://gov.wales/independent-special-post-16-institutions-ispis>

PART 2 – REGULATORY IMPACT ASSESSMENT

6. Options

The only option, as set out in the explanatory memorandum, is to make the legislation due to the legal requirements under section 56 of the 2018 Act.

7. Costs and benefits

In terms of costs associated with these regulations, this would be in relation to the administering and publishing of the list.

ISPIs

There would be nominal costs for ISPIs applying to be on the list, which would mainly involve the requirement to complete the application form. Those independent specialist colleges (ISCs) who are already in receipt of a funding agreement, already have to undertake administration requirements in order to comply with the funding agreement. There are approximately 25 ISCs currently in receipt of a funding agreement.

Welsh Government

The costs for maintaining the list will be absorbed within the existing staff structure. The cost for maintaining the list would be approximately 10% of Executive Officers (EOs) time, based on mid-range salary (£37,775 including on costs) which equates to approximately £3,800 per financial year.

There is also additional resource in terms of the financial monitoring of the placement. This again is deemed to be a minimal additional cost as this activity is already being undertaken under the requirements for current ISCs to adhere to the conditions of funding via the Funding Agreement.

External Agencies (i.e. ESTYN)

For those colleges already established, then Estyn will already be undertaking monitoring for those ISCs and therefore any additional costs for undertaking the work associated with the ISPI regulations is expected to be nominal.

8. Justice Impact

We have completed a justice impact assessment identification form which has confirmed that the justice impact of these regulations is low to minimal. We are undertaking the necessary engagement with Ministry of Justice to update them so that they can be assured of this also.

9. Competition Assessment

As this legislation does affect the business and/or charities sector, which these ISPIs do fall under, then a competition assessment filter has been undertaken.

The Regulations are not expected to impact on the level of competition in Wales or the competitiveness of Welsh businesses.

10. Post implementation review

Welsh Government intends to undertake a post implementation review of the new ALN system (including requirements set out in the ISPI Regulations) that will form part of the Welsh Government's overarching monitoring and evaluation model, which will consider implementation in stages, specifically:

- readiness – to assess the extent to which delivery agents are prepared for the changes;
- compliance – to monitor how effectively organisations are adhering to the new legislative requirements once they take effect; and
- impact – to evaluate the extent to which the legislative and wider policy changes are being embedded and making an impact on outcomes for learners.

This compliance, impact monitoring and evaluation approach will be further supported through ongoing inspection and review arrangements led by Estyn.