



Llywodraeth Cymru  
Welsh Government

PUBLICATION, DOCUMENT

# Additional Learning Needs (list of Independent Special Post-16 Institutions) (Wales) Regulations 2020: integrated impact assessment

An assessment of how the Independent Special Post-16 Institutions (Wales) Regulations 2020 will impact on a number of areas.

**First published:** 30 November 2020

**Last updated:** 30 November 2020

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# 1. What action is the Welsh Government considering and why?

## Background

This impact assessment relates to the draft List of Independent Special Post-16 Institutions ('the draft ISPI regulations') published for consultation on 10 April 2020; the consultation closed on 30 June 2020.

The Additional Learning Needs and Education Tribunal (Wales) Act 2018 ('the 2018 Act') makes provision for a new statutory framework for supporting children and young people with additional learning needs ('ALN'). It 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.

Amongst other things, the 2018 Act requires Welsh Ministers to establish, maintain and publish a list of independent special post-16 institutions in Wales and England ("the list").

An ISPI means 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 additional learning needs, and which is not:

- a. an institution within the further education sector
- b. an independent school included in the register of independent schools in Wales (kept under section 158 of the Education Act 2002 (c. 32))
- c. an independent educational institution (within the meaning of Chapter 1 of Part 4 of the Education and Skills Act 2008 (c. 25)), which has been included in the register of independent educational institutions in England (kept under

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section 95 of that Act) or  
d. a 16 to 19 Academy

The 2018 Act confers powers on Welsh Ministers to make regulations for the content of the published list; requirements to be complied with as a condition of being included on the list; and 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). It also confers powers on Welsh Ministers on the removal of an institution from the list and rights of appeal to the First-tier Tribunal for proprietors of institutions, against decisions.

It is intended that the draft ISPI regulations will be laid before the National Assembly for Wales during 2020, with a view to the main provisions of the 2018 Act and regulations commencing from autumn 2021. This is to allow ISPIs sufficient time to apply and receive a decision on their inclusion on the list prior to the phased roll out of the Act commencing from September 2021.

## Development of policy

The draft ISPI regulations have been developed in light of the five ways of working as set out in the Well-being of Future Generations (Wales) Act 2015.

They are intended to provide long term underpinning to a new statutory system for supporting children and young people with ALN by ensuring that local authorities are placing young people at institutions that are viable in terms of the quality of the provision they deliver.

The requirements of the draft ISPI regulations are focused on preventing children and young people from missing out on educational opportunities and the chance to fulfil their potential, by ensuring that they receive the provision called for by their ALN, in a timely and efficient way, enabling them to participate

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in and benefit from learning.

The draft ISPI regulations and the 2018 Act that they support, integrate with the key theme of 'Ambitious and Learning' within Prosperity for All and with the well-being objectives within that key theme and others. They have been developed in collaboration with our partners, who would be subject to the regulations, in the delivery of the proposed requirements for ISPI to apply to be on the 'list'. This will be further developed in consultation with independent establishments, education inspectorates (Estyn and Ofsted) and the First Tier Tribunal.

Given that they are the intended beneficiaries of the new system of support, we have also sought to involve children, young people and their families in the development of the ALN system generally, by undertaking targeted engagement events. These particular regulations do not directly impact on children and young people in so much as they are technical regulations relating to an application process by which a proprietor of an ISPI can apply to be on a Welsh Government list.

However, as a result of this, ISPIs who are listed will be eligible to receive local authority funded learners who can access specialist educational provision tailored to their identified needs. Therefore, we sought to work with interested parties directly affected as a result of these regulations as part of the consultation. We undertook a public consultation to capture feedback from children, young people and their families. The regulations are supported by non-statutory guidance to assist interested parties and others on their application.

## Impact

The provisions within the 2018 Act and subsequent draft ISPI regulations require ISPIs to apply to the Welsh Ministers to be included on the list, if they want to be eligible to receive public funding for specialist placements. The regulations will therefore prohibit LAs in Wales from placing young people at ISPIs which are not

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on the list. In other words, an ISPI must be on the list in order to admit young people who are funded by LAs in Wales.

The rationale for having a list maintained by Welsh Ministers is to provide assurance to local authorities and to young people and their families regarding the quality of provision at ISPIs. The draft ISPI regulations will set out the conditions and requirements for ISPIs to apply to be included and maintained on this list. This will have a positive impact on vulnerable young people who might attend an ISPI, as the ISPI will meet set criteria.

## Financial implications

As a result of the 2018 Act, the current responsibility for assessing an individual's learning needs and securing post-16 specialist provision will transfer from Welsh Ministers to LAs. The existing budget used by Welsh Ministers to plan and secure specialist post-16 provision will be transferred to LAs to support them in undertaking these new responsibilities. LAs will therefore not be subject to additional costs.

The financial implications of the new system introduced by the 2018 Act and subsequent subordinate legislation were set out in the **Regulatory Impact Assessment that accompanied the 2018 Act**. A specific Regulatory Impact Assessment for the ISPI regulations has been produced to be laid alongside the regulations for approval by the Senedd.

## Mechanism for delivery

The ALN Code will provide the necessary comprehensive guide to public bodies on their statutory functions in relation to ALN, including those set out in the 2018 Act and regulations made under it. The delivery of the ISPI Regulations will be supported by non-statutory guidance which will set out advice on how ISPIs can

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apply to be included on Welsh Government list of ISPIs and other functions relating to provisions within the regulations.

## **Section 7: Conclusion**

### **How have people most likely to be affected by the proposal been involved in developing it?**

These regulations are technical in nature and only directly impact on a limited set of key stakeholders. In developing these proposals, the Welsh Government has liaised with specialist further education (FE) establishments and Estyn.

More generally, the new ALN system has been the subject of extensive consultation with numerous stakeholders including children, young people and their families, SENCOs and other practitioners from schools, FEIs, and local authorities, as well as representatives from Estyn, the Children's Commissioner, the Welsh Language Commissioner, the third sector and others.

Previous iterations of the draft ALN Code have been published as part of the development of the 2018 Act and have been the subject of public scrutiny and comment. This has included large scale public consultation events and a number of targeted engagement workshops with children, young people and their families.

### **What are the most significant impacts, positive and negative?**

The new ALN system will mean that decisions regarding suitable educational provision for young people with complex needs will be taken locally by people who will usually have been involved in supporting the young person for their

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entire education. Local authorities will be familiar with the needs of the young people in the system and can plan years in advance for their transition to post-16 education. This will also encourage and enable local authorities and post-16 providers (both mainstream and independent) to work together to plan for and develop the future provision required to meet local needs.

The most significant impact the proposed regulations will have is assurance to local authorities and to young people and their families regarding the quality of provision provided at IPSIs. The requirements set out in the regulations will mean IPSIs listed, and therefore eligible to receive young people funded by local authorities in Wales, will meet a satisfactory standard.

These proposals and the improvements they make to the support given to children and young people with ALN, relate directly to the key theme of 'Ambitious and Learning' within Prosperity for All and with the well-being objectives within that key theme and others. They also relate to a number of the well-being goals set out in the Well-being of Future Generations Act, in particular that they contribute to a more prosperous Wales (by enabling all learners with ALN to reach their educational potential and thus be better placed to contribute economically); and a more equal Wales (by ensuring that children and young people are able to benefit from education on a more equitable basis).



## **In light of the impacts identified, how will the proposal:**

- **maximise contribution to our well-being objectives and the seven well-being goals**
- **avoid, reduce or mitigate any negative impacts?**

As noted above, the regulations themselves will contribute towards the Welsh Government's well-being objectives and seven well-being goals, particularly, a prosperous and a more equal Wales.

Transition to, and implementation of, the ALN system will require considerable preparation on the part of schools and FEIs in particular. To enable this preparation to take place; maximise the positive impacts of the proposed regulatory requirements; and mitigate any harmful impacts that might manifest, the Welsh Government has established a comprehensive Transformation Programme including a £20 million package of investment.

In respect of these regulations, existing specialist FE establishments and any new establishments seeking to be in the list of ISPIs would need to prepare accordingly for application to Welsh Ministers. However, the requirements are not regarded as onerous or very different to requirements set out in existing funding agreements Welsh Ministers have with specialist FE establishments. Setting our clear requirements in regulations and supporting guidance will assist ISPIs in meeting the standards necessary to support young people with ALN.

## How will the impact of the proposal be monitored and evaluated as it progresses and when it concludes?

The Welsh Government has appointed five ALN Transformation Leads whose role includes monitoring and reviewing implementation arrangements during the transition period into the new ALN system.

A post-implementation review will form part of the Welsh Government's overarching monitoring and evaluation model, which itself 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. This includes inspection and monitoring of ISPIs.

The Welsh Government has a duty to maintain a list of ISPIs in Wales and England. Consequently there will be a small ongoing administration process involved which will monitor the list of ISPIs in respect of requirements set out in the ISPI regulations.

# Section 8: Declaration

## Declaration

I am satisfied that the impact of the proposed action has been adequately assessed and recorded.

Name of Deputy Director: Chris Jones

Department: Education and Public Services

Date: 22 October 2020

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