

# WELSH GOVERNMENT

## CHILDREN'S RIGHTS IMPACT ASSESSMENT

<b>Title of proposal:</b>	<b>List of Independent Special Post-16 Institutions Regulations</b>
<b>Official(s) completing the Integrated Impact Assessment (name(s) and name of team):</b>	<b>Additional Learning Needs Transformation Team</b>
<b>Department:</b>	<b>Education and Public Services</b>
<b>Head of Division/SRO (name):</b>	<b>Chris Jones</b>
<b>Cabinet Secretary/Minister responsible:</b>	<b>Kirsty Williams</b>
<b>Start Date:</b>	<b>22 October 2020</b>

## A. CHILDREN'S RIGHTS IMPACT ASSESSMENT

### 1. Describe and explain the impact of the proposal on children and young people.

#### Background

- 1.1. 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.
- 1.2. 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.
- 1.3. 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").
- 1.4. An Independent Special Post-16 Institution (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 section 95 of that Act), or
  - (d) a 16 to 19 Academy
- 1.5. 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 to be maintained on the list (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 removal of the institution from the list and rights of appeal to the First-tier Tribunal for proprietors of institutions against decisions.
- 1.6. It is intended that the draft ISPI regulations will be laid before the Welsh Parliament (Senedd Cymru) in October 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 the inclusion on the list prior to the roll out of the Act commencing from September 2021.

- 1.7. Currently there is no equivalent list under the existing system. However there is a funding agreement which sets out the conditions of funding, including specific conditions such as quality of provision.

## **2. Explain how the proposal is likely to impact on children's rights.**

### Effect of the proposal on lives of children

- 2.1. The development of the proposals for the draft ISPI regulations have been guided by giving effect to the policy intentions behind the Act and to the United Nations Convention on the Rights of the Child ('UNCRC') rights.
- 2.2. A suite of impact assessments was completed during the development of the Additional Learning Needs and Education Tribunal (Wales) Bill ('the Bill'), which included an impact assessment on the rights of the child<sup>1</sup>. The impact assessments were published in December 2016 upon introduction of the Bill and were revised throughout the period of legislative scrutiny on the Bill. As these regulations are being made under the 2018 Act, the potential impact of the provisions relating to **ISPI regulations** was considered as part of the Bill's development and this is reflected in the respective impact assessments.
- 2.3. This children's rights impact assessment on the draft ISPI Regulations assesses the impact of the processes, procedures and requirements prescribed in the draft regulations, on children and young people.
- 2.4. The draft ISPI regulations aim to create a national system which provides assurance that all ISPIs in Wales and England meet minimum criteria relating to the quality of additional learning provision (ALP) provided therein. The Act and the regulations made under this power 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.
- 2.5. A national system will provide Welsh Government, LAs and families with a level of assurance that learners/young people are only placed at ISPIs which have met a consistent set of minimum criteria whilst ensuring that the learners/young people's ALP is met. This should have a positive effect on children and young people. 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

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<sup>1</sup> <https://gov.wales/additional-learning-needs-and-education-tribunal-wales-act#Impactassessments>

reasonable needs for education and training of young people with additional learning needs (ALN).

- 2.6. Those ISPIs on the published list will need to meet certain requirements in order that they comply with being on this list. This will be monitored to ensure their compliance in providing the quality of provision needed.
- 2.7. 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 in and benefit from learning.
- 2.8. 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. The regulations will therefore prohibit LAs in Wales from placing young people at ISPIs which are not on the list. In other words, an ISPI must be on the list in order to for the LA to admit young people who are funded by LAs in Wales. The regulations will be supported by non-statutory guidance to assist interested parties and others on their application.

#### Effect of proposal on different groups of children

- 2.9. Children and young people with ALN are at a distinct disadvantage by comparison with those who do not have ALN. Educational attainment levels among those who have ALN are significantly below the average and their life chances are significantly impaired as a consequence. Furthermore, children and young people currently recorded as having SEN are twice as likely to be eligible for free school meals as those who do not.
- 2.10. The 2018 Act's provisions and the draft ISPI regulations provide children and young people assurances that the specialist provision they require at an ISPI, should this be named as their Additional Learning Provision (ALP) on their Individual Development Plan (IDP), will provide minimum criteria whilst ensuring that their ALP is met.

- 2.10.1. In summary ALP<sup>2</sup> is for a person aged three or over means educational or training provision that is additional to, or different from, that made generally for others of the same age.
- 2.10.2. In summary an IDP<sup>3</sup> is a document that contain a description of a person's additional learning needs and the ALP which the person's learning difficult or disability calls for.

### Consultation with children and young people

- 2.11. The principal consultation conducted in relation to the new ALN system was that conducted in relation to the draft Additional Learning Needs and Education Tribunal (Wales) Bill. The consultation ran from 6 July to 18 December 2015.
- 2.12. A consultation document for children and young people was published along with an easy read explanation of the draft Bill. These documents supported the delivery of bespoke participation workshops with children, young people and their parents/carers. A total of 23 workshops took place.
- 2.13. During the workshops the views of children and young people were elicited separately from those of their parents/carers to ensure that their views were accurately recorded. There were 19 workshops for children and young people, held at 16 settings, with a total of 222 participants. Workshops took place at special schools, primary schools, secondary schools, FE settings and a pupil referral unit, as well as with a group of looked after children and home educated children.
- 2.14. There were four workshops for adults with a direct interest in the legislation; a total of 45 adults participated. The sessions included a group of foster carers, a support group consisting of parents with statemented children, an early years group and a group of home educating parents.
- 2.15. In addition to the series of workshops with children, young people and their carers, the Welsh Government hosted two national events in North and South Wales, which were attended by 158 people; and delivered a programme of informal, targeted sessions with key stakeholders from across the public services and third sector.
- 2.16. An easy read and a children and young people's version consultation document on the draft ALN Code and draft regulations, including the draft ALNCo regulations, was developed by the Welsh Government for publication during 2019. All comments and feedback received from children and young people during the consultation period was considered and used to refine the regulations as appropriate.

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<sup>2</sup> <https://www.legislation.gov.uk/anaw/2018/2/section/3>

<sup>3</sup> <https://www.legislation.gov.uk/anaw/2018/2/section/10>

2.17. In March 2020, we consulted on the ISPI regulations and can confirm that whilst a targeted consultation took place, this was available online for the public to consider. However, given these are technical regulations relating to the registration of ISPIs, no targeted consultation with children and young person was necessary, as these regulations do not impact on them directly. Consequently we have received no feedback from children and young people. However, we did receive feedback from stakeholders, in which the outcome has resulted in no changes required for the regulations, but have incorporated changes as part of the non-statutory guidance.

### Overall impact on children's rights

2.18. As required by the Rights of Children and Young Persons (Wales) Measure 2011, the draft ISPI regulations have been developed by the Welsh Ministers with due regard to the requirements of the UNCRC and its Optional Protocols.

2.19. The 2018 Act itself aims to significantly improve services for children and young people and improve the rights of the child with regards to their education and learning. The provisions set out in the draft ISPI regulations were developed with the rights children and young people in mind.

### Relevant UNCRC articles and way in which rights under these articles are supported

2.20. The UNCRC articles have been considered and the following are most relevant/indirectly linked to the ISPI regulations.

- Article 2 – Non-discrimination;
- Article 3 - best interests of the child;
- Article 23 – Disabled children;
- Article 28 – Education;
- Article 29 – Goals of education;

2.21. The draft ISPI Regulations aim to ensure that children and young people, whose ALP required provision at an ISPI, receive the provision necessary to meet their learning needs as identified in their IDP (articles 2, 28 and 29).

2.22. The draft ISPI Regulations intend to ensure that children and young people access the quality of provision relating to the ALP identified in their IDP, but providing longer term underpinning to a new statutory system, by ensuring that local authorities are placing young people at institutions that are viable in terms of quality of provision they deliver (articles 28 and 29).

2.23. The draft ISPI Regulations, via a national system, will provide Welsh Government, LAs and families with a level of assurance that learners/young people are only placed at ISPIs which

have met a consistent set of minimum criteria whilst ensuring that the learners/young people's ALP is met (articles 23, 28 and 29)

- 2.24. The draft ISPI regulation 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 in and benefit from learning (articles 3, 23, 28 and 29)

Negative impact on children's rights arising from the proposal

- 2.25. We have identified no negative impacts of these proposals on children and young people.