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WELSH STATUTORY INSTRUMENTS

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**2020 No. 1367 (W. 303)**

**EDUCATION, WALES**

**The Additional Learning Needs (List of Independent Special Post-16 Institutions) (Wales) Regulations 2020**

<i>Made</i>	- - - -	<i>26 November 2020</i>
<i>Laid before Senedd Cymru</i>		<i>30 November 2020</i>
<i>Coming into force</i>	- -	<i>4 January 2021</i>

The Welsh Ministers, in exercise of the powers conferred on them by section 56 of the Additional Learning Needs and Education Tribunal (Wales) Act 2018(1), make the following Regulations:

**Title and commencement**

1. The title of these Regulations is the Additional Learning Needs (List of Independent Special Post-16 Institutions) (Wales) Regulations 2020 and they come into force on 4 January 2021.

**Interpretation**

2. In these Regulations—

“the Act” (“*y Ddeddf*”) means the Additional Learning Needs and Education Tribunal (Wales) Act 2018;

“ALP” (“*DDdY*”) means additional learning provision;

“arrangements at the ISPI” (“*trefniadau yn yr SOAA*”) means the arrangements listed in regulation 3(b).

“ISPI” (“*SOAA*”) means an independent special post-16 institution within the meaning of section 56(6) of the Act;

“the list” (“*y rhestr*”) means the list published by the Welsh Ministers under section 56(2) of the Act.

**The ISPI list**

3. The list must contain, in respect of each ISPI included—

(a) the following information—

- (i) its trading name;
  - (ii) the website address (if available);
  - (iii) its address;
  - (iv) whether it provides residential accommodation;
  - (v) the date that the ISPI was included in the list;
  - (vi) the date that any changes to the arrangements at the ISPI were approved by the Welsh Ministers;
- (b) the following information relating to arrangements at the ISPI—
- (i) the age range of the persons that the ISPI caters for;
  - (ii) the number of persons that the ISPI caters for;
  - (iii) the proprietor;
  - (iv) the type of ALP provided by the ISPI.

#### **ISPI arrangements**

**4.—**(1) The proprietor of an ISPI may apply to the Welsh Ministers for approval of arrangements at the ISPI.

(2) An application for approval under this regulation must be made in writing.

(3) The Welsh Ministers must notify the proprietor whether or not they approve the arrangements.

(4) The proprietor must provide the Welsh Ministers with any information relating to the arrangements at the ISPI that the Welsh Ministers may reasonably require.

#### **Requirements to be complied with as a condition of being included in the list**

**5.—**(1) The proprietor of an ISPI may apply to the Welsh Ministers for the inclusion of an ISPI in the list.

(2) In order for an ISPI to be included in the list—

(a) the arrangements at the ISPI must have been approved;

(b) the proprietor of the ISPI must provide the Welsh Ministers with the following—

(i) the information mentioned in regulation 3(a)(i) – (iv);

(ii) evidence that satisfies the Welsh Ministers that the ISPI is financially viable;

(iii) evidence that satisfies the Welsh Ministers as to the quality of the ALP provided at the ISPI including—

(aa) (if the ISPI is in Wales) reports relating to the ISPI by Her Majesty’s Chief Inspector of Education and Training in Wales or the Welsh Ministers (if available);

(bb) (if the ISPI is in England) reports relating to the ISPI by Her Majesty’s Chief Inspector of Education, Children’s Services and Skills or the Care Quality Commission (if available);

(iv) any other information relating to the ALP, the management or the governance of the ISPI that the Welsh Ministers may reasonably require.

(3) The Welsh Ministers must notify the proprietor whether or not the ISPI will be included in the list.

### **Requirements to be complied with while the ISPI is included in the list**

6. An ISPI included in the list must, following a request from the Welsh Ministers, provide them with the following information—

- (a) evidence that satisfies the Welsh Ministers that the ISPI is financially viable;
- (b) evidence that satisfies the Welsh Ministers as to the quality of the ALP including—
  - (i) (if the ISPI is in Wales) reports relating to the ISPI by Her Majesty’s Chief Inspector of Education and Training in Wales or the Welsh Ministers (if available);
  - (ii) (if the ISPI is in England) reports relating to the ISPI by Her Majesty’s Chief Inspector of Education, Children’s Services and Skills or the Care Quality Commission (if available);
- (c) any other information relating to the ALP, the management or the governance of the ISPI or the arrangements at the ISPI that the Welsh Ministers may reasonably require.

### **Change to arrangements**

7.—(1) The proprietor of an ISPI may apply to the Welsh Ministers for approval of a change in the arrangements at the ISPI.

(2) An application for approval under this regulation must be made in writing and, in the case of approval of a change of proprietor, must be made by the proposed new proprietor.

(3) The Welsh Ministers must notify the proprietor and any proposed new proprietor whether or not they approve the change to the arrangements.

### **Application by proprietor for removal of the ISPI from the list**

8.—(1) The proprietor of an ISPI may apply to the Welsh Ministers for the removal of the ISPI from the list.

(2) An application for removal under this regulation must be made in writing and specify a removal date at least 28 days from the date of the application

(3) The removal of the ISPI from the list will take effect—

- (a) on the date specified in the application; or
- (b) on a date agreed between the proprietor of the ISPI and the Welsh Ministers.

(4) The Welsh Ministers must notify all local authorities in Wales of the date that the ISPI will be removed from the list.

### **Consideration of removal of the ISPI from the list**

9.—(1) The Welsh Ministers may take into account the following when deciding whether to remove an ISPI from the list—

- (a) evidence relating to the financial viability of the ISPI;
- (b) the reports relating to the ISPI referred to in regulation 5(2);
- (c) any evidence received as a result of a request under regulation 6; and
- (d) any serious concerns about the ISPI received from a local authority, a person attending the ISPI or from any other person.

### **Removal from the list**

10.—(1) If the Welsh Ministers decide to remove an ISPI from the list, they must notify the proprietor of the ISPI of that decision.

(2) The Welsh Ministers must notify all local authorities in Wales of that decision.

(3) The removal of the ISPI from the list will be in accordance with regulation 11(3) or 12(3) (as the case may be) if the proprietor exercises the right of appeal referred to in regulation 11, and in all other cases the removal will take effect after 28 days have expired beginning with the day on which the notice of the decision to remove is served on the proprietor.

### **Right of appeal**

**11.**—(1) The proprietor of an ISPI may appeal to the First Tier Tribunal against a decision—

- (a) to refuse to list an ISPI;
- (b) to remove an ISPI from the list;
- (c) not to approve arrangements at the ISPI;
- (d) not to approve a change to arrangements at the ISPI.

(2) An appeal must be made within the period of 28 days beginning with the day on which notice of the decision to refuse, to remove, or not to approve is served on the proprietor (“the appeal period”).

(3) Where an appeal is made against a decision to remove an ISPI from the list—

- (a) if the appeal is withdrawn or otherwise disposed of before it is determined by the tribunal under regulation 12, the Welsh Ministers may remove the ISPI from the list on such date after the appeal period as they may determine, and
- (b) in any other case, the Welsh Ministers may only remove the ISPI pursuant to the determination made by the tribunal under regulation 12.

(4) In the case of an appeal against a decision to remove an ISPI from the list, if at any time the tribunal considers that there is a risk of serious harm occurring to the welfare of persons before the determination of the appeal, it may by order provide that the ISPI is to be regarded as not included in the list for the purposes of section 56(3) of the Act until the tribunal determines the appeal under regulation 12 (or revokes the order before so determining the appeal).

### **Determination of appeal**

**12.**—(1) In the case of an appeal against a decision not to approve or not to approve a change to arrangements, the tribunal may—

- (a) uphold the decision not to approve, or
- (b) itself approve the arrangements or the change in arrangements.

(2) In the case of an appeal against a decision to remove the ISPI from the list, the tribunal may—

- (a) uphold the decision, or
- (b) revoke the decision.

(3) Where under paragraph (2)(a) the tribunal upholds a decision, the Welsh Ministers must remove the ISPI from the list on such date as the tribunal may specify or, if it does not specify a date, on such date as the Welsh Ministers may determine.

(4) In the case of an appeal against a decision to refuse to include the ISPI in the list, the tribunal may—

- (a) uphold the decision, or
- (b) direct the Welsh Ministers to include the IPSP in the list.

26 November 2020

*Kirsty Williams*  
Minister for Education, one of the Welsh  
Ministers

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations are made under section 56 of the Additional Learning Needs and Education Tribunal (Wales) Act 2018 (“the Act”) and they make provision in relation to the inclusion of an independent special post-16 institution (“ISPI”) within the list (“the ISPI list”) published by the Welsh Ministers under section 56(2) of the Act.

The Regulations details the contents of the ISPI list including certain information relating to the arrangements at the ISPI (regulation 3).

Regulation 4 details how an application may be made to the Welsh Ministers to approve the arrangements at the ISPI.

Regulation 5 details the requirements that must be complied with in order for an ISPI to be included within the ISPI list and regulation 6 details the requirements that need to be complied with for the ongoing inclusion of the ISPI in the ISPI list.

Should a proprietor wish to make changes to the approved arrangements at the ISPI, then the proprietor of the ISPI may apply to the Welsh Ministers for approval of the change (regulation 7).

Regulation 8 provides that a proprietor of an ISPI may apply to the Welsh Ministers for the removal of the ISPI from inclusion in the ISPI list.

Regulation 9 details what the Welsh Ministers may take into account when deciding whether an ISPI should be removed from the ISPI list. If the Welsh Ministers decide that an ISPI should be removed from the ISPI list, they need to inform the proprietor and all Welsh local authorities of that decision (regulation 10).

Regulation 11 details the right of appeal to the First Tier Tribunal in respect of a decision of the Welsh Ministers to refuse to list an ISPI, to remove an ISPI from the ISPI list, not to approve arrangements or a change of arrangements at the ISPI. Regulation 12 details how the Tribunal may determine an appeal made under regulation 11.

The Welsh Ministers’ Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, a regulatory impact assessment has been prepared as to the likely costs and benefits of complying with these Regulations. A copy can be obtained from the Department of Education, Welsh Government, Cathays Park, Cardiff, CF10 3NQ.