
Ymateb i Ymgynghoriad / Consultation Response

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Pwnc / Subject:	Independent special post-16 institutions (ISPIs)

Background information about Estyn

Estyn is the Office of Her Majesty's Inspectorate for Education and Training in Wales. As a Crown body, Estyn is independent of the Welsh Government.

Estyn's principal aim is to raise the standards and quality education and training in Wales. This is primarily set out in the Learning and Skills Act 2000 and the Education Act 2005. In exercising its functions, Estyn must give regard to the:

- Quality of education and training in Wales;
- Extent to which education and training meets the needs of learners;
- Educational standards achieved by education and training providers in Wales;
- Quality of leadership and management of those education and training providers;
- Spiritual, moral, social and cultural development of learners; and,
- Contribution made to the well-being of learners.

Estyn's remit includes (but is not exclusive to) nurseries and non-maintained settings, primary schools, secondary schools, independent schools, pupil referrals units, further education, adult community learning, local government education services, work-based learning, and teacher education and training.

Estyn may give advice to the Assembly on any matter connected to education and training in Wales. To achieve excellence for learners, Estyn has set three strategic objectives:

- Provide accountability to service users on the quality and standards of education and training in Wales;
- Inform the development of national policy by the Welsh Government;
- Build capacity for improvement of the education and training system in Wales.

This response is not confidential.

Response

Introduction

We support the proposals suggested in the consultation. There is a need for guidance that clearly outlines the role of ISPIs, local authorities and their partners.

In response to Question 9, we have identified a number of issues in relation to the transfer of responsibility from Welsh Ministers to local authorities. These are related to: planning, commissioning, IDP thresholds and funding. We recommend that Welsh Government assure themselves of the preparedness of local authorities before transferring responsibilities. The impact that the current pandemic will have had on local authority plans and Welsh Government timelines is unclear.

Questions

Content of the list – regulations 3 and 4

Question 1 – Do you agree with the information and arrangements required to be included on the list of independent special post-16 institutions (ISPIs)?

Yes	✓	No	<input type="checkbox"/>	Not sure	<input type="checkbox"/>
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Supporting comments

Regulation 3 would be strengthened further if it distinguished the number of learners being provided for as residents and those as day learners.

Requirements to be included and to remain on the list of ISPIs – regulations 5 and 6

Question 2 – Do you agree with the requirements to be complied with as a condition of being included on the list and the requirements to be complied with while an ISPI is included on the list?

Yes	✓	No	<input type="checkbox"/>	Not sure	<input type="checkbox"/>
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Supporting comments

In relation to publicly funded post-16 education and training, HMCI currently has a legal obligation to provide Ministers with reports on the quality of education and training. Estyn shares these with Welsh Ministers as a matter of routine. The regulations and guidance as drafted currently place a requirement on ISPIs to also provide these reports, which is also helpful, but not absolutely necessary for Welsh-based providers. However, the inclusion of this requirement would be helpful in the case of English-based providers.

Regulation 5 and 6 requires evidence in relation to financial viability, for ISPIs to be included on the list. However, it is unclear what future checks around financial viability are to be provided to Welsh Ministers. Such checks need to be undertaken regularly by bodies qualified to do so, and information used by Welsh Government to ensure/mitigate against sudden closure or premature ending of learners' placements at the ISPI.

Change to arrangements – regulation 7

Question 3 – Are the procedures for making changes to the arrangements of the ISPI appropriate?

Yes	<input checked="" type="checkbox"/>	No	<input type="checkbox"/>	Not sure	<input type="checkbox"/>
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Supporting comments

This section would be strengthened if, where an application for a change in proprietor is being made, that the current and future proprietor guarantee that continuity of learning, support, and accommodation will be maintained during the change of ownership. In addition, it would be prudent for relevant bodies [external to the ISPI] to undertake due diligence checks on any proposed change of proprietor.

Applying for the removal of an ISPI from the list – regulation 8

Question 4 – Do you agree with the procedure for applying to be removed from the list?

Yes	<input type="checkbox"/>	No	<input checked="" type="checkbox"/>	Not sure	<input type="checkbox"/>
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Supporting comments

The requirement for 28 days' notice period is insufficient for ISPIs to work in partnership with local authorities, parents, young people and other agencies to secure appropriate provision. The procedure highlighted in regulation 8 does not provide enough consideration to the arrangements that need to be made to secure appropriate provision elsewhere.

Removal of an ISPI from the list – regulations 9 and 10

Question 5 – Do you agree with the considerations to remove an ISPI from the list and the procedure for removal?

Yes	<input type="checkbox"/>	No	<input type="checkbox"/>	Not sure	<input checked="" type="checkbox"/>
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Supporting comments

The considerations are largely perfunctory and do not give due consideration to the continuity of learning, support and accommodation of the learners in attendance at the ISPI. As result, the considerations in the regulations do not safeguard learners well enough. The accompanying guidance could be used to strengthen these requirements.

The impact of removing an ISPI from the list needs to be made clear to all relevant bodies, including local authorities, parents and young people.

It is not clear enough what process may be put in place if Estyn reports shortcomings in the quality of provision. How will the threshold of acceptable quality be determined? What steps would the WG take to seek improvements in quality from an ISPI before removing from the list? Are there any other steps that need to be built in e.g. the power to limit any new placements if a provider is underperforming?

Right of appeal – regulations 11 and 12

Question 6 – Are the procedures for appealing decisions appropriate?

Yes	<input checked="" type="checkbox"/>	No	<input type="checkbox"/>	Not sure	<input type="checkbox"/>
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Supporting comments

Regulation 11, paragraph 4 outlines broadly appropriate procedures to be adopted where ETW considers that there is a risk of serious harm to the welfare of learners. However, supplementing the regulations with clear guidance in respect of this issue and those identified in the responses to questions 4 and 5 would be beneficial.

The regulations outlining the procedures for ISPIs to appeal decisions is clear. Supplementing the regulations with clear guidance on the responsibilities of ISPIs, local authorities and partners in ensuring continuity of learning, support and accommodation in scenarios listed in regulations 11 and 12 is essential.

Question 7 – We would like to know your views on the effects that the ISPI regulations would have on the Welsh language, specifically on:

- i) opportunities for people to use Welsh
- ii) treating the Welsh language no less favourably than the English language.

What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?

Supporting comments

The ISPI regulations have no specific impact on opportunities for people to use Welsh or in treating the Welsh language less favourably.

Question 8 – Please also explain how you believe the proposed ISPI regulations could be formulated or changed so as to have:

- i) positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language
- ii) no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

Supporting comments

Regulations could be amended to make specific reference to provision being made through the medium of Welsh for learners who wish to receive their education and training in Welsh.

Question 9 – We have asked a number of specific questions. If you have any related issues which we have not specifically addressed, please use this space to report them.

1. The Chief Inspector's Annual Report [2018-2019] noted that in the majority of ISPIs [colleges] inspected, robust processes to identify learners' starting points on entry to the college provide tutors and support staff with detailed information on the needs and abilities of learners. However, a third of colleges did not have important information about learners' needs and prior learning. This made it difficult for these colleges to plan suitable learning pathways for learners.

Our understanding is that local authorities are working with regional consortia to develop their own set of thresholds that distinguish when an IDP is to be maintained by the school and those that will be maintained by local authorities. However, the role of the ISPI community in working with local authorities to determine IDP criteria for post-16 learners is unclear. As a result of regions and local authorities developing their own criteria, this is likely to lead to inconsistent approaches to identifying and meeting need across Wales.

2. ALNET places a statutory duty on local authorities to keep ALP under review. However, it is not clear how prepared local authorities are in undertaking the commissioning and quality assurance of ISPIs. The engagement of local authorities with Careers Wales in supporting local authorities, ISPIs during the period of transition is also unclear. Our thematic inspection "Learner progress and destinations in independent special colleges" May 2016 identified that most independent specialist colleges liaise well with Careers Wales and local authorities to make sure that transition out of college is as smooth as possible for the learner. However, we also noted that for a minority of learners who are secure in their choice of future, there is too often a delay in finding a secure and suitable destination placement. For many learners, there is little choice for their future and many end up accepting what is available, rather than what meets their needs.

3. The Chief Inspector's most recent annual report highlighted that in all colleges inspected, teaching staff have a strong understanding of the needs of learners and build productive working relationships with them. They use this knowledge appropriately to set individual learning goals that take suitable account of learners' different interests and aspirations. In the majority of colleges teaching focusses particularly effectively on developing learners' independence. Learning experiences provide learners with a broad range of stimulating activities that engage interests and support learners' progress well.

Our understanding is that funding mechanisms and formula to local authorities is:

- a) yet to be determined and
- b) likely to be un-hypothecated.

Both of these create considerable uncertainty in the system for all relevant partners, including: ISPIs, local authorities, and young people. There is also a risk that local authorities will not be prepared as well as they need to be to undertake the transfer of responsibility.

There is a risk that local authorities will seek to secure provision on a least cost basis and this will not necessarily be in the best interest of learners.

Responses to consultations are likely to be made public, on the internet or in a report. If you would prefer your response to remain anonymous, please tick here: