



Department
for Education

Out-of-school education settings: call for evidence

Government consultation

Launch date 26 November 2015

Respond by 11 January 2016

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Introduction

The Department for Education is calling for evidence to inform the development of the government's proposals for requiring certain out-of-school education settings to register and be subject to risk-based inspections.

Who this is for?

Local authorities; supplementary schools; tuition centres; other out-of-school education settings; schools; accreditation bodies; parents; young people; any other interested organisations and individuals.

Issue date

The call for evidence was issued on 26 November 2015

Enquiries

If your enquiry is related to the policy content of this document you can email the team on: outofschoolsettings.REVIEW@education.gsi.gov.uk

If your enquiry is related to the DfE e-consultation website or the consultation process in general, you can contact the DfE Ministerial and Public Communications Division by email: consultation.unit@education.gsi.gov.uk or by telephone: 0370 000 2288 or via the [DfE Contact us page](#).

Additional copies

Additional copies are available electronically and can be downloaded from [GOV.UK DfE consultations](#).

The response

The results of the consultation and the Department's response will be [published on GOV.UK](#) in 2016.

How to Respond

Respond online

To help us analyse the responses please use the online system wherever possible. Visit www.education.gov.uk/consultations to submit your response.

Other ways to respond

If for exceptional reasons, you are unable to use the online system, for example because you use specialist accessibility software that is not compatible with the system, you may download a word document version of the form and email it or post it.

By email

outofschoolsettings.REVIEW@education.gsi.gov.uk

By post

Out-of-school settings: call for evidence
Department for Education
Sanctuary Buildings
Great Smith Street
London
SW1P 3BT

Deadline

This call for evidence closes on 11 January 2016.

1. Summary

- 1.1. We are inviting interested education providers, local authorities, other organisations and individuals to help us broaden our evidence base concerning out-of-school education settings. This call for evidence follows the announcement to introduce a new system for registering and inspecting out-of-school education settings providing intensive tuition, training or instruction to children. The system we envisage is intended to avoid imposing unnecessary burdens on the great number of such settings which are positively enhancing children's education. It would, however, enable action to be taken where settings are failing to safeguard and promote the welfare of children, which includes failing to protect them from the harm caused by extremism.
- 1.2. When referring to out-of-school education settings, we mean any institution providing tuition, training or instruction to children aged under 19 in England that is not a school, college, 16-19 academy or registered childcare provider¹. For these purposes, 'school' means all schools whether maintained, non-maintained or independent, including academies and free schools, alternative provision academies, and pupil referral units. 'School' also includes maintained nursery schools. 'College' means further education colleges and sixth-form colleges as established under the Further and Higher Education Act 1992.
- 1.3. We have provided an outline of the proposal and have put together a series of questions we would like answered to increase our understanding of out-of-school education settings, and the potential scope and impact of the proposed system to register such settings and investigate concerns that arise.

¹ Settings required to register as childcare providers are defined here: <https://www.gov.uk/register-childminder-childcare-provider/overview>

2. Background

- 2.1. The 2011 Prevent strategy first made clear that, over the lifetime of the strategy, the government would work to reduce the risk that children and young people are exposed to harm and extremist views in out-of-school education settings. Extremism poses a serious and unprecedented threat to our country and the Counter-Extremism Strategy, published on 19 October 2015, sets out the government's comprehensive approach to tackling extremism in all its forms. Specifically in relation to out-of-school settings, it confirms the intention to introduce a new system to enable intervention in such settings with the broad aim of keeping children safe generally from the risk of harm, including emotional harm, and promoting their welfare. This followed an earlier commitment by the Prime Minister to introduce a registration and risk-based inspection scheme for out-of-school education settings providing intensive tuition, training or instruction to children.
- 2.2. The government is committed to safeguarding all children and protecting them from the risk of harm and extremism, including in out-of-school settings. Safeguarding children and protecting them from harm is everyone's responsibility; everyone who comes into contact with children and families has a role to play. Currently schools and childcare providers are regulated under child protection, education and/or childcare law. This helps ensure that pupils are properly safeguarded, including from the risk of radicalisation. Other harmful practices, such as corporal punishment, are banned and requirements are in place to ensure background checks are carried out on staff. These safeguards are not mandatory in out-of-school education settings and as a result children may be more vulnerable to the risk of extremism and other types of harm.
- 2.3. Concerns of this nature are being raised by local authorities and Ofsted, in particular, who are anxious about the lack of powers for any authority to act swiftly to secure the safety of children concerned. For example, the Department for Education has received reports of some part-time tuition centres which are teaching children in premises which raise a number of safeguarding and health and safety concerns, such as overcrowded, cramped and dirty conditions; exposed gas pipes; no fire escape; no access to drinking water, etc. There have been reports of unsuitable teaching materials being used, and evidence that no suitability checks are being conducted on staff to ensure children are safe. Peter Clarke's review into Birmingham schools found evidence of "co-ordinated, deliberate and sustained action...to introduce an intolerant and aggressive Islamic ethos"² in schools and we are aware that some individuals involved in the so-called 'Trojan Horse' schools are involved in out-of-school settings.

² Birmingham Schools: Education Commissioner's report - <https://www.gov.uk/government/publications/birmingham-schools-education-commissioners-report>

- 2.4. This proposal is not about regulating the education that parents provide their children in their homes. The government continues to respect the rights of parents to home educate their children, whether at home or in a combination of other settings, provided a suitable full-time education is being arranged. It is also not about regulating religion or infringing people's freedom to follow a particular faith or hold particular beliefs. The mutual respect and tolerance of those with different faiths and beliefs is one of our fundamental British values, alongside democracy, the rule of law and individual liberty. Through this proposal, we are seeking to ensure that those who work in positions of trust and influence with children and young people respect those with different faiths and beliefs and do not, in expressing their individual beliefs, promote intolerance against others.
- 2.5. We recognise that out-of-school education settings can provide enriching activities and education for children in many subjects including arts, language, music, sport and religion. There are many examples of settings which create a positive environment for children to flourish, engage in new opportunities, and interact with their peers. We are also aware that many settings engage with schools and take part in local or national schemes to ensure that they provide safe places for children to learn. We are aware of examples of excellent provision in out-of-school settings. We want these settings to continue to provide children with learning opportunities whilst putting in place a system which enables intervention in those cases where out-of-school settings fail to safeguard and promote the welfare of children. It is right to expect children to be in a safe environment and somewhere which does not teach children views which undermine our fundamental British values of democracy, the rule of law, individual liberty and the mutual respect and tolerance of different faiths and beliefs.
- 2.6. The key features of such a system would include:
- A requirement on settings providing intensive education **to register**, so that there is transparency about where settings are operating;
 - A power for a body to **inspect** settings to ensure that children are being properly safeguarded; and
 - A power to impose **sanctions** where settings are failing to safeguard and promote the welfare of children, which **could include barring individuals from working with children and the closure of premises.**
- 2.7. This system would apply to settings providing intensive tuition, training or instruction to children, likely to be defined as those which a child attends for more than a specified number of hours a week. Given the focus on 'intensive' education any settings providing ad hoc classes, or regular classes below a specified time threshold (see paragraph 3.7 below), would not be captured by this proposal.

- 2.8. Since the out-of-school education sector is diverse and operates outside the oversight of local and national government our evidence base is less strong than it is for regulated education institutions. This call for evidence will help the Department for Education determine the scope and potential impact of our registration and inspection proposal.
- 2.9. We are particularly interested to hear from: local authorities; parents and young people who use these settings; and those who set up and work or volunteer in these settings. We also particularly welcome any information about existing studies and research on out-of-school settings.
- 2.10. Section 3 provides an outline of the proposals and the questions fall broadly under the headings of 'characteristics', 'thresholds', 'registration and investigation', 'prohibited activities', and 'sanctions' which are detailed below.

3. Scope of the call for evidence

- 3.1. Following the recent announcements by the Prime Minister and in the Counter-Extremism Strategy that settings providing intensive education outside of school should be registered so that they can be inspected, and so that intervention is possible when children are at risk, the Department for Education welcomes responses to inform how the proposal set out below should be developed further. Whilst the announcements were made in the context of countering extremism, we are concerned more broadly about the wider welfare of children who attend these settings and ensuring a proportionate system of oversight is put in place to keep children safe from harm.
- 3.2. People refer to settings providing education outside of school in a number of ways. Such settings are sometimes called supplementary or complementary schools (i.e. those offering support or education in addition to mainstream or core learning and which operate after school hours and on the weekends). They can also take the form of tuition or learning centres (which could often be used in place of mainstream education and support home education and which can operate at any time of day), part-time schools, or clubs. In this document we will use the general term “out-of-school settings” to capture the full range of provision defined in paragraph 1.2.

Characteristics

- 3.3. Children attend a wide range of out-of-school settings to access educational support in a range of core curriculum subjects, for a faith-based or cultural education, or for enrichment activities. A great many out-of-school settings will be providing an invaluable service to children in their area and the community as a whole.
- 3.4. We are aware that settings vary considerably – for example around their size, their subject offer, their teaching methods and languages of instruction, whether run for profit or by community and/or voluntary organisations, their physical location (whether formal or informal, whether in leased premises or in a residential setting) and so on. We would like to know more about the full range of settings and their characteristics: the number of settings in each local authority; hours of operation per week; hours each student attends per week; numbers of staff/volunteers; numbers of students; the types of premises they operate from; subjects taught; and the positive benefits of accessing such provision.
- 3.5. We are aware that many settings are part of a wider association or umbrella body which can provide basic safeguarding standards to which to adhere. Many settings will also subscribe to local or national voluntary accreditation schemes to provide parents with confidence in the provision. We are keen to understand

more about what advice and assistance is available to settings to provide support where needed, and what additional support would be welcome.

Thresholds

- 3.6. Wherever children access learning, particularly where they spend a lot of time in an out-of-school setting, we want to be confident that they are safe and are being taught in a way which prepares them for life in modern Britain and to actively contribute to society. We want to be sure that teaching is compatible with, and does not undermine, fundamental British values. We want to be proportionate in our approach to securing oversight in out-of-school settings. This is why we propose to focus resources on where children receive intensive tuition, instruction or training out-of-school, which are closer in nature to other regulated settings and which potentially have greater impact on children, and might pose a greater risk to children.
- 3.7. Intensive education could be considered anything which entails an individual child attending a setting for more than between 6 to 8 hours a week, bearing in mind that this could be over an hour every day after school or on one or both days of the weekend. Some children are also accessing part-time schools or tuition centres in place of mainstream school for between 2 to 5 hours a day during the week where they gain much of their education in mainstream curriculum subjects. We are aware that some settings do not operate on a regular or weekly basis, but might establish themselves to provide 'intensive' education but less frequently, or for a fixed period of time, for example during school holidays or in the run up to exams.
- 3.8. Independent schools³ are required to register with the Department for Education which involves meeting regulatory standards including around the quality of education provided; welfare, health and safety of pupils; suitability of proprietors and staff; and school premises. Independent schools are also subject to routine inspections. The proposed threshold would capture a number of settings which do not meet the requirements for registering as independent schools but which provide education, whether in a broad or narrow range of subjects often in support of home education. Some private providers of alternative provision may also be captured by this threshold and we propose to exclude those settings

³ Schools providing full-time education to 5 or more children of compulsory school age, or one such child who has an Education and Health Care plan, a statement of special educational needs or who is looked after by the local authority. See <https://www.gov.uk/independent-school-registration> for further information on the registration requirements

which cater exclusively for children who have been referred to them by local authorities or schools⁴.

- 3.9. We welcome views on defining a threshold for settings to fall within scope of this proposal with reference to the number of hours which children attend, regardless of the number of hours the setting operates. We would also welcome views on whether it would be appropriate to exclude any providers from the proposed additional oversight and regulation based on any of the other defining characteristics of the setting (e.g. the learning offer, location, number or age of children attending, etc.), and opinions on how to ensure settings do not simply amend their provision to evade regulation.
- 3.10. We will seek to ensure that our threshold is proportionate and that it can be varied over time to respond to any emerging or changing risks.

Registration and inspection

- 3.11. A registration scheme provides transparency and visibility of settings which in turn can benefit both the provider and parents who send their children to these settings. Information on the setting would be publically available and accessible to parents, which has the potential, particularly for small local providers, to increase the demand for their services. Parents of children who attend these settings will have increased confidence that, where there are welfare concerns, actions can be taken.
- 3.12. Any setting meeting the threshold would be required to register with their local authority and would be eligible for investigation, and if appropriate, intervention where concerns were reported. Local authorities would have access to information on registered settings operating in their area enabling them to collaborate with and better support providers by offering or signposting them to advice, guidance and training. A number of local authorities have suggested this would also support them in fulfilling their legal duties around safeguarding children in their area, regardless of where they are being educated; children missing education; and ensuring that children are receiving a suitable education.
- 3.13. Recognising that this would create a new burden on providers, many of which may be small and run by volunteers, we would ensure the registration requirement would be light-touch where settings would provide basic details on the proprietors, location, education offer and numbers of children. We are considering the merit of creating a portal to facilitate registration which would have the benefit of ensuring settings provide information in a consistent format.

⁴ Referrals are considered arrangements made under section 19 of the Education Act 1996; section 100 of the Education and Inspections Act 2006; Section 29A of the Education Act 2002; and section 29(3) of the Education Act 2002.

The registration process itself is anticipated to be light-touch and straightforward, with no minimum pre-conditions, but there would be an expectation that new providers register before operating (and existing settings would be given a reasonable period within which to register). Providers operating below the determined hours' threshold would not be required to register, although we will consider whether there is scope for them to do so on a voluntary basis to both raise their profile and potentially access additional support being provided in their area. Such providers operating below the threshold would not be subject to any inspection.

- 3.14. We are interested in views on how the registration requirement will operate in practice and the implications for providers and local authorities.
- 3.15. Any setting eligible for registration would fall within scope for concerns around prohibited activities (see paragraph 3.19) to be investigated and acted upon by the relevant authorities. **We propose that Ofsted undertake the investigative function for out-of-school settings.** Ofsted have much experience in inspecting and investigating in the education sector and they also register and inspect childcare providers. We recognise the need to ensure Ofsted have the necessary legislative powers, as well as sufficient and appropriate resources, to carry out this role.
- 3.16. It is proposed that inspections are risk-based, with Ofsted either acting in response to specific concerns raised by children, parents and the community, or by sampling particular settings, whether by type or region. Ofsted would not routinely inspect all providers which met the threshold for registration; nor would they be tasked with looking at the suitability of education or judging the quality of teaching. This risk-based approach is targeted, proportionate and focuses on those settings which are failing to safeguard and promote the welfare of children.
- 3.17. We would be keen to hear views on the proposed system to inspect and investigate concerns in out-of-school settings.

Prohibited activities

- 3.18. We expect all settings providing services to children to act in the best interests of children and provide high quality services in a safe environment. Safeguards are already in place in schools and in childcare provision to ensure children are kept safe and there are standards for schools around both the quality of teaching and the spiritual, moral, social and cultural development of pupils. We want to be proportionate in our approach to ensuring out-of-school settings provide a safe environment. As mentioned in paragraph 3.13, settings would not be required to demonstrate compliance with a set of minimum standards in order to register. We would be clear about a set of activities that would be prohibited in out-of-school settings that met the threshold for registration. Concerns raised about

any of these prohibited activities could be reported to the investigative body and inspection could result in action being taken.

3.19. Based on the concerns that have been previously raised and reported about out-of-school settings, the prohibited activities would be focused around the following areas designed to keep children safe and promote their welfare:

- Failure to adequately ensure the safety of the children in their care, for example, failing to maintain basic records and emergency contact details for the children in attendance.
- Appointing unsuitable staff. Teaching, if not supervised, falls within the definition of 'regulated activity'⁵. For example, it is an offence to knowingly permit individuals who are barred from working with children to engage in regulated activity, or to work in regulated activity while barred.
- Accommodating children in premises that are unsafe and pose a threat to their safety or welfare.
- Undesirable teaching, for example teaching which undermines or is incompatible with fundamental British values, or which promotes extremist views⁶.
- Corporal punishment. We propose to ensure that corporal punishment is not a practice adopted in out-of-school settings, regardless of the number of hours which children attend the setting.

3.20. We welcome views on whether these prohibited activities appropriately capture the range of concerns that could arise and that should be reported and investigated in settings providing intensive education.

⁵ This is defined in the Safeguarding Vulnerable Groups Act 2006. Broadly speaking, regulated activity relating to children is considered to be: teaching, training, instruction, care or supervision of children (except if the person undertaking the activities is under regular supervision) if carried out by the same person frequently (i.e. once a week or more) or the period condition applies (i.e. that the activity takes place on more than 3 days in a 30 period or between 2am and 6am where this provides direct face to face contact with children).

⁶ Extremism is defined in the government's [Counter-Extremism Strategy](#) (published on 19 October 2015) as the vocal or active opposition to our fundamental values, including democracy, the rule of law, individual liberty and the mutual respect and tolerance of different faiths and beliefs. We also regard calls for the death of members of our armed forces as extremist.

Sanctions

- 3.21. Where an investigation finds evidence of prohibited activities, this will trigger intervention and the application of sanctions as appropriate. Sanctions would include, in particular:
- Powers to stop people from working with children in, or managing, an out-of-school setting, along the lines of existing powers to bar teachers and governors in schools; and
 - Powers to require premises that pose the greatest safeguarding risk to children to cease to be used for specified purposes.
- 3.22. We anticipate relying on existing levers and powers where they are available. For example, if criminal activity was found, this would be referred to the police; and health and safety concerns would be referred, in the first instance, to the local authority. However, a referral in these terms may result in further action being taken to secure the immediate safety of the children concerned by deploying the new proposed powers. A failure to register where the threshold is met would be grounds for taking action. We welcome views on the most appropriate sanctions and which body/bodies should have powers to act.



Department
for Education

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