

Number: WG27620



Llywodraeth Cymru
Welsh Government

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Consultation Document

Out-of-school education settings

Date of issue: 23 February 2016

Action required: Responses by 5 April 2016

Mae'r ddogfen yma hefyd ar gael yn Gymraeg.
This document is also available in Welsh.

Out-of-school education settings

Overview	The Department for Education and Public Services is seeking information to inform the development of the Welsh Government's proposals for requiring certain out-of-school education settings to register and be subject to risk-based inspections.
How to respond	Responses to this consultation should be e-mailed/posted to the address below to arrive by 5 April 2016 at the latest.
Further information and related documents	<p>Large print, Braille and alternative language versions of this document are available on request.</p> <p>The consultation documents can be accessed from the Welsh Government's website at www.gov.wales/consultations</p>
Contact details	<p>For further information: Independent Schools/Settings Team Schools Management and Effectiveness Division School Standards and Workforce Directorate Welsh Government Cathays Park Cardiff CF10 3NQ</p> <p>e-mail: SMED2@wales.gsi.gov.uk Tel: 0300 060 3300</p>
Data protection	<p>How the views and information you give us will be used</p> <p>Any response you send us will be seen in full by Welsh Government staff dealing with the issues which this consultation is about. It may also be seen by other Welsh Government staff to help them plan future consultations.</p> <p>The Welsh Government intends to publish a summary of the responses to this document. We may also publish responses in full. Normally, the name and address (or part of the address) of the person or</p>

organisation who sent the response are published with the response. This helps to show that the consultation was carried out properly. If you do not want your name or address published, please tell us this in writing when you send your response. We will then blank them out.

Names or addresses we blank out might still get published later, though we do not think this would happen very often. The Freedom of Information Act 2000 and the Environmental Information Regulations 2004 allow the public to ask to see information held by many public bodies, including the Welsh Government. This includes information which has not been published. However, the law also allows us to withhold information in some circumstances. If anyone asks to see information we have withheld, we will have to decide whether to release it or not. If someone has asked for their name and address not to be published, that is an important fact we would take into account. However, there might sometimes be important reasons why we would have to reveal someone's name and address, even though they have asked for them not to be published. We would get in touch with the person and ask their views before we finally decided to reveal the information.

Contents

1. Summary	2
2. Background	3
3. Why are we proposing change?	4
4. What are we proposing?	4
5. Scope of the call for information series of questions	4
6. Characteristics	5
7. Thresholds	6
8. Registration and inspection	7
9. Prohibited activities	8
10. Sanctions	9

1. Summary

1.1 The Welsh Government is considering proposing a system for the registration and risk-based inspection of certain out of school education settings.

1.2 Schools and childcare providers are regulated under child protection, education and/or childcare law. This helps to ensure that pupils are properly safeguarded, harmful practices such as corporal punishment are banned and requirements are in place to ensure background checks are carried out on staff. However, these particular safeguards are not mandatory in out-of-school education settings and as a result children may be more vulnerable to the risk of harm.

1.3 For example, independent schools¹ are required to register with the Welsh Ministers. In order to be registered these schools must meet 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. However, we know that there are independent settings operating in Wales, which do not meet the independent schools criteria, but which provide education, often in place of mainstream education - and sometimes in support of home education.

1.4 Similarly, we are aware of other settings providing education outside 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 can operate at any time of day), part-time schools as described in 1.3 above, or clubs.

1.5 There is currently no registration or inspection scheme in place for such settings. This document sets out the Welsh Government's current thinking on this issue and invites responses from interested parties.

1.6 We are considering proposing a registration and inspection scheme for certain out of school education settings. We do not want to impose unnecessary burdens. However, we want to enable action to be taken where settings are failing to safeguard and promote the welfare of children, which includes failing to protect them from harm.

1.7 For the avoidance of doubt, it is not proposed to regulate the education that parents provide in their own homes to their own children or to require those parents who provide such education to register ("home education"). However, we propose that settings which provide education outside of school in support of home education would fall within the scheme.

1.8 For the purposes of this proposal, our current thinking is that we want settings that meet the following criteria to fall within the system:

- Any out-of-school education setting providing tuition, training or instruction to children under the age of 19 in Wales that is not home education or a school,

¹ Schools providing full time education to 5 or more children of compulsory school age, or one such child with a statement of special educational needs or who is looked after by the local authority. See <http://gov.wales/topics/educationandskills/schoolshome/independent-schools/?lang=en> for further information on the registration requirements.

college, registered childcare provider; (for these purposes 'school' means all schools whether maintained or independent and pupil referral units. 'School' also includes maintained nursery schools. 'College' means further education colleges and sixth form colleges);

and which:

- Provides 'intensive' tuition, training or instruction to children up to the age of 19 for a specified number of hours per week. Our current thinking is that this should be anything which entails an individual child attending for 6 hours or more per week. We also wish to capture settings providing 'intensive' tuition, training or instruction for 6 hours or more per week over particular periods of the calendar year only – such as during school holidays rather than every week.

1.9 In this document we refer to such settings as 'eligible out-of-school settings'.

1.10 We invite interested education providers, local authorities, other organisations and individuals to help us broaden our evidence base concerning out-of-school education settings. 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.

1.11 We welcome responses to inform how the proposal should be developed further to protect children who attend these settings from the risk of abuse, neglect and other kinds of harm and ensure a proportionate system of oversight is put in place to keep children safe.

1.12 Responses will inform our policy development with the aim of ensuring that our proposals are appropriate and proportionate. We do not want to impose unnecessary burdens. However, we want to enable action to be taken where settings are failing to safeguard and promote the welfare of children.

1.13 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 eligible settings and investigate concerns that arise.

2. Background

2.1 The Welsh Government is committed to safeguarding all children and protecting them from risk of harm, 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.

2.2 We recognise that out-of-school education settings can provide enriching activities and education for children in many subjects including arts, language, music, sports and religion. Such settings 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 eligible out-of-school settings fail to safeguard and promote the welfare of children.

3. Why are we proposing change?

3.1 Currently schools and childcare providers are regulated under child protection, education and/or childcare law. This helps to ensure that pupils are effectively safeguarded. 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 always mandatory in out-of-school education settings and as a result children may be more vulnerable to the risk of abuse, neglect and other kinds of harm.

3.2 The Welsh Government has already received reports of some part-time education centres which were teaching children in premises which raised a number of health and safety concerns, including inadequate means of escape in case of a fire. There were also concerns raised about the absence of background checks carried out on staff in these settings.

3.3 The mutual respect and tolerance of those with different faiths and beliefs is of paramount importance and here in Wales we have a long history of supporting these values. However, we also want to seek to ensure that those who work in positions of trust and influence with children and young people respect those of different faiths and beliefs and do not, in expressing their individual beliefs, promote intolerance against others. It is right to expect children to be in a safe environment and somewhere where they can learn our fundamental values of democracy, the rule of law, individual liberty and the mutual respect and tolerance of different faiths and beliefs.

4. What are we proposing?

4.1 We are considering proposing a registration and inspection system for the eligible out-of-school settings discussed in paragraph 1.8 above.

4.2 Under the proposed system:

- Eligible out of school education settings would be required to **register**, so that there is transparency about where settings are operating;
- There would be a power for a body to **inspect** eligible out-of-school settings to ensure that children are being properly safeguarded and their welfare suitably promoted; and
- There would be a power to impose **sanctions** where those eligible out of school 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.

5. Scope of the call for information series of questions

5.1 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. We want these types of out of school settings to fall within the proposed system

5.2 Given the focus on 'intensive' education, any settings providing ad-hoc classes, or regular classes of less than 6 hours per week would not be captured by the proposal. We propose that settings which provide 'intensive' education (for six or more hours per week) over set periods such as schools holidays rather than every week would however be within scope.

5.3 As indicated elsewhere, it is also not proposed to regulate home education. However, we propose that settings which provide education, tuition or instruction outside of school in support of home education would fall within the scheme.

5.4 We also propose to exclude settings run by providers of alternative provision (which don't meet the 'independent school' criteria) which cater exclusively for children who have been referred to them by local authorities or schools.² This is on the basis that schools and local authorities are responsible for quality assuring alternative provision in their areas and for ensuring that children are placed in the right provision.

6. Characteristics

6.1 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.

6.2 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. For the avoidance of doubt we do not intend to legislate in respect of home education. However, if a person is providing education in a home setting to children other than those for which they have parental responsibility we do propose that such arrangements could fall within this scheme. 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

² Referrals are considered arrangements made under section 19 of the Education Act 1996; and section 29(3) of the Education Act 2002.

types of premises they operate from; subjects taught; and the positive benefits of accessing such provision.

6.3 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.

7. Thresholds

7.1 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 a modern and tolerant Wales and to actively contribute to society. We want to be sure that teaching is compatible with and does not undermine our long held values of mutual respect and tolerance. 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.

7.2 We're currently considering that intensive education to be anything which entails an individual child attending a setting for 6 hours or more per 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 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. We propose such settings to come within scope.

7.3 Independent schools are required to register with the Welsh Government 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 that cater exclusively for children who have been referred to them by local authorities and schools. This is on the basis that schools and local authorities are responsible for quality assuring alternative provision in their areas and for ensuring that children are placed in the right provision.

7.4 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. This may include settings which provide intensive education for a set period of time, such as in school holidays, rather than all year round. 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.

7.5 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.

8. Registration and inspection

8.1 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 publicly 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.

8.2 Any setting meeting the threshold would be required to register with their local authority and would be subject to investigation where concerns were reported and if appropriate intervention. 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. This may also support local authorities and Safeguarding Children Boards in fulfilling their legal duties in safeguarding children in their area.

8.3 We recognise 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 do not believe this will be onerous as we would expect all settings would have the required information readily available in any event. 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.

8.4 As noted 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. Existing eligible out-of-school settings would be given a reasonable period within which to register. There will be no fee for registering. 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.

8.5 We are interested in views on how the registration requirement will operate in practice and the implications for providers and local authorities.

8.6 We welcome views on which body is best placed to undertake the investigation function for out of school settings. We recognise the need to ensure that the investigating

body has the necessary powers, as well as sufficient and appropriate resources, to carry out this role.

8.7 It is proposed that inspections will be risk-based, with the trigger either being in response to specific concerns raised by children, parents and the community, or by the inspection body sampling particular settings, whether by type or regions. There would be no routine inspection of all providers that meet the threshold for registration; nor would there be an assessment of the quality of education or judgement of the standards of teaching. This risk-based approach is targeted, proportionate and focuses on those settings where there are concerns about failure to safeguard and promote the welfare of children.

8.8 We are keen to hear views on the proposed system to inspect and investigate concerns in out-of-school settings.

9. Prohibited activities

9.1 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 eligible out-of-school settings provide a safe environment. 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.

9.2 Based on the concerns that have been previously raised about out-of-school settings, we propose that the prohibited activities would be focussed 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'³. 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 our values of mutual respect and tolerance, or which promotes extremist views⁴.

³ 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 day period or between 2am and 6am where this provides direct face to face contact with children).

⁴ Extremism is defined in the UK 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. The call for the death of our armed forces is also regarded as extremist.

- Corporal punishment. We propose to ensure that corporal punishment is not a practice adopted in eligible out-of-school settings

9.3 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.

10. Sanctions

10.1 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.

10.2 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.

10.3 We welcome views on the most appropriate sanctions and which body/bodies should have powers to act. We are also keen to hear views on whether existing levers and powers should be strengthened.