

# Supplementary guidance: inspecting safeguarding in non-maintained settings

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Autumn 2015  
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**What is the purpose?**

This provides further guidance for inspectors to use for reference during inspection alongside the sector guidance for inspection, to support specific lines of enquiry.

**For whom is it intended?**

For all inspectors of non-maintained settings

**From when should the guidance be used?**

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## Introduction

This supplementary guidance aims to support inspectors as necessary in evaluating settings' safeguarding arrangements when carrying out inspections. It should be used for reference during inspection alongside Estyn's Policy and Procedures for Safeguarding and Estyn's Inspecting Safeguarding Frequently Asked Questions (FAQs) which can be found on Estyn's website.

This guidance has been updated following the publication of:

**Welsh Government Guidance Circular 158/2015 Keeping learners safe: the role of local authorities, governing bodies and proprietors of independent schools under the Education Act 2002**

<http://wales.gov.uk/topics/educationandskills/publications/guidance/keeping-learners-safe/?lang=en>

This guidance does not deal with how inspectors should deal with allegations about safeguarding received during inspection. Inspectors must be familiar with Estyn's Policy and Procedures for Safeguarding, which covers children, young people and vulnerable adults. All inspectors should be aware of what to do in the event of receiving allegations about safeguarding and actions are outlined in that document. You can find a copy of the document on Estyn's website at

<http://www.estyn.gov.wales/sites/default/files/documents/Estyn%20Safeguarding%20Policy%202015%20En.pdf> .

### Key telephone numbers

Inspectors should contact the relevant Sector Lead or Assistant Director with queries regarding the evaluation of schools' safeguarding arrangements.

In the event of concerns or queries in relation to receiving safeguarding allegations, the following telephone numbers are available:

**Estyn's Lead Officer for safeguarding: 02920 446482 (also available out of office hours)**

**Estyn's Deputy Officer for safeguarding: 02920 446484 (also available out of office hours)**

**Estyn's main office (during office hours): 02920 446446**

## Definition of safeguarding

All settings have statutory duties to operate in a way that takes into account the need to safeguard and promote the welfare of children.

The arrangements that settings have in place need to ensure that settings:

- take reasonable measures to minimise risks of harm to children's welfare
- take appropriate actions to address concerns about the welfare of a child or children, working to agreed local policies and procedures in full partnership with other local agencies

**Safeguarding and promoting the welfare of children** is concerned with:

- protecting children from abuse and neglect
- preventing impairment of their health or development
- ensuring that they receive safe and effective care

By doing this, it enables children to have optimum life chances.

Everyone who works in education shares an objective to help keep children and young people safe by contributing to:

- creating and maintaining a safe learning environment for children and young people
- identifying where there are child welfare concerns and taking action to address these, where appropriate, in partnership with other agencies
- the development of children's understanding, awareness, and resilience through the curriculum

Achieving this objective requires systems designed to:

- prevent unsuitable people from working with children and young people
- promote safe practice and challenge poor and unsafe practice
- identify instances in which there are grounds for concern about a child's welfare, and initiate or take appropriate action to keep them safe
- contribute to effective partnership working between all those involved with providing services for children and young people

**Child protection** is a part of safeguarding and promoting welfare. This refers to the activity, which is undertaken to protect specific children who are suffering or are at risk of suffering significant harm as a result of abuse or neglect.

**Safeguarding** covers more than the contribution made to child protection in relation to individual children. It also encompasses issues such as:

- the safe recruitment, supervision, training and management of staff
- how staff manage children's behaviour
- how well the provider monitors children pattern of attendance and engagement with the provision and can identify quickly unexplained medical conditions, unusual absences, and disappearances
- children's health and safety and wellbeing, on and off-site
- bullying
- arrangements for meeting the needs of children with medical conditions
- trafficking
- drugs and substance misuse
- e-safety.

The Welsh Government has issued specific statutory requirements about many of these issues. There may also be other safeguarding issues that are specific to the local area or population.

Where there are statutory requirements, settings should already have in place policies and procedures that satisfy those and comply with any guidance issued by the Welsh Government. Similarly, arrangements about matters on which the Welsh Government has issued guidance should be evidenced by policies and procedures that are in accordance with that guidance or achieve the same effect.

## **Estyn's Common Inspection Framework**

Estyn's Common Inspection Framework places high priority on safeguarding and promoting the welfare of learners, and it will always be a line of inquiry

### **Reporting on safeguarding**

Key Question 1 is concerned with outcomes and it is in two parts. The first is about the standards that children achieve. The second part is about wellbeing and includes:

1.2.1 participation and enjoyment in learning, including behaviour and attendance

It is here that inspectors will evaluate and report on the impact of the setting's provision for safeguarding and promoting the welfare of children.

Most of the comments on the setting's provision for safeguarding and promoting welfare will be in Key Question 2, which is about provision, especially in the section of this key question about care, support and guidance (2.3). The care, support and guidance section contains:

- 2.3.1 provision for health and wellbeing encouraging sustainability and including spiritual, moral, social and cultural development
- 2.3.2 safeguarding arrangements
- 2.3.3 additional learning needs

The aspects of safeguarding and promoting the welfare of children that can be found in 2.3.1 **provision for health and wellbeing, encouraging sustainability and including spiritual, moral, social and cultural development** include:

- child protection
- health and safety
- bullying
- healthy eating and drinking
- children with medical conditions
- first aid
- safety on educational visits
- internet safety
- issues specific to a local area
- setting security
- the management of children discipline including physical intervention and restraint

Section 2.3.3 **safeguarding arrangements** concentrate on the effectiveness of the setting's policies and procedures for safeguarding. Inspectors should assess carefully not only whether these documents exist, but their quality and crucially, how well they are applied. It also includes the consideration of the setting's policy and procedures for child protection.

The needs of children with medical conditions will be included in section 2.3.3 **additional learning needs**.

**Key Question 3** is about leadership and management. This includes:

- strategic direction and the impact of leadership
- the role of the registered person or responsible individual/s

A setting's leaders and managers should be clear about their statutory responsibilities regarding safeguarding and the steps they are taking to develop good practice beyond the statutory minimum. The registered person or responsible individual/s is accountable for ensuring that the setting has effective policies and procedures in place in accordance with the Welsh Government's guidance, and is monitoring the setting's compliance with this. It is the registered person's responsibility or responsible individual/s to ensure that

safe recruitment checks are carried out in line with statutory requirements. There is further information on this in Annexes 1 and 2.

Inspectors should assess carefully how well the registered person or responsible individual/s monitor and evaluate all the aspects for safeguarding. If the setting does not have effective policies and procedures for safeguarding and promoting the welfare of children, and does not take sufficient steps to ensure these are adhered to, this will influence judgements made about the quality of leadership and management in the setting.

## **Guidance for inspectors in judging the effectiveness of safeguarding**

### **Pre-inspection evidence**

Inspectors will use a wide range of evidence. Before the inspection, in relation to safeguarding and promoting welfare, the lead inspector will consider:

- the setting's self-evaluation report, especially the sections on 1.2 and 2.3
- discussions with the local authority advisory teacher and CSSIW inspector
- the previous inspection report, if applicable
- most recent CSSIW report on the setting
- the setting's policies for safeguarding and promoting welfare, including the child protection policy
- observations of children during the inspection and discussions with them
- responses to the parents' questionnaires, especially the questions about encouragement to be healthy and take exercise, being safe and receiving the additional support for any particular needs
- written information from parents or other partners
- any complaints Estyn may have received

Inspectors should take particular account of the setting's context, including information on the:

- the number of children on the child protection register
- the number of refugees or asylum seekers
- the number of looked after children
- exclusions of children

## Planning the inspection

Safeguarding will always be a line of inquiry. The reporting inspector will need to allocate time to gather enough evidence to support their judgements. They may include questions specific to safeguarding and promoting welfare at meetings with:

- the lead practitioner/chair of management committee/ registered person, responsible person/s proprietor
- staff
- parents
- children

Inspectors may also arrange to meet with the designated person with responsibility for child protection, if not the lead practitioner.

The reporting inspector will need to consider how well the setting has evaluated safeguarding and promoting welfare in their self-evaluation report. This will help establish the extent to which safeguarding policies and procedures are properly implemented and monitored.

## Inspection activity

Inspection activity should include:

- scrutiny of policies and procedures, their existence and the extent to which they are properly implemented, in particular the policies for safeguarding, child protection, health and safety, bullying, internet safety, risk assessment on trips, behaviour management and the use of physical intervention
- checking child protection and safeguarding training (including refresher training) records
- evaluating any disciplinary records, sanctions records and records of any physical interventions
- evaluating reports to the registered person/ responsible person/s about any safeguarding issues
- evaluating how well registered person/ responsible person/s ensure effective policies and procedures in place to safeguard and promote the welfare of children in accordance with Welsh Government guidance, and monitors compliance with them. This includes checking procedures for safe recruitment of staff, including records of CRB/DBS checks
- interviewing the designated person with responsibility for child protection
- considering the setting's procedures to ensure the security of the site and buildings.

It is important for inspectors to establish if **all** staff are aware of the setting's policies and procedures, for example by asking staff in the setting about the setting's child protection procedures.

## Judging safeguarding

Inspectors need to consider the range of activities that the setting has in place to ensure the safety of its children. The setting **must** conform with legal requirements as a starting point and they **should** follow any guidance from the Welsh Government and CSSIW.

The fundamental question is whether inspectors are satisfied that children are safe in the setting. Safeguarding is likely to be a serious cause for concern if there are issues such as:

- staff are unclear about their responsibilities and what they need to do to protect children
- there are poor approaches to safe recruitment for paid and volunteer staff, such as incomplete records or missing CRB/DBS and barred list checks and references
- there are ad hoc or inconsistent approaches to the management and reporting of safeguarding incidents and behaviour management issues within the setting
- there are inadequate arrangements for children with medical conditions
- there are inadequate arrangements for supervising visitors or volunteers who do not have CRB or DBS and barred list checks
- the setting does not deal with bullying effectively

When safeguarding arrangements are incomplete, not effective, do not comply with statutory requirements and /or learners are not safe, it is important that these issues, once identified, are properly recorded, and brought to the attention of the registered person/ responsible person. The RgNI must include a comment in the report, and a recommendation to address these issues.

In these cases, the RgNI should issue a safeguarding / health and safety letter. The Inspection Co-ordinator will guide the RgNI through the process and manage the drafting of the letter with the appropriate Assistant Director.

Where matters are **minor** and **easily remedied**, and are not considered significant, there is no need for a comment and/or a recommendation in the final inspection report. However, it should be recorded in the inspection JF, and given as feedback to the leader and registered person / responsible person as soon as possible.

## **Annex 1: Disclosure and Barring Service (DBS) checks, repeat checks and portability**

The Protection of Freedoms Act 2012 came into effect on 10 September 2012 with further changes coming into force on a staged basis over the next few of years. Therefore, the Safeguarding Vulnerable Groups Act 2006 and The Safeguarding Vulnerable Groups Act 2006 (Prescribed Criteria and Miscellaneous Provisions) Regulations 2009 introduced in October 2009 continue to apply during this period, except in those areas specifically repealed by these changes.

The following changes were put in place in September 2012:

- a new definition of “regulated activity” to focus on work which involves close and unsupervised contact with vulnerable groups
- activities and work that have been taken out of the definition of “regulated activity” will still be eligible for Enhanced DBS checks
- the repeal of ‘controlled activity’
- the repeal of registration and continuous monitoring
- the repeal of the provision of additional information
- the implementation of a minimum age (16) at which someone can apply for a DBS check
- a more rigorous ‘relevancy’ test for when the police release information held locally on an enhanced DBS check

On 1 December 2012, the CRB and ISA merged to form the Disclosure and Barring Service. The DBS is responsible for administering three types of checks:

- **Standard** – a check on the Police National Computer (NPC) records of convictions, cautions, reprimands and warnings
- **Enhanced** – a check on the PNC as above plus also other information held by the police that is considered relevant by the police
- **Enhanced with barred list information** – for people working in regulated activity with children. This adds checks of the DBS children’s barred list to the enhanced check

During 2013, the Government launched a new Update Service. This enabled individuals to register once for a DBS check, which will then be automatically updated and available for organisations to check. However, there are aspects of the old system, which are not changing, these are:

- employers must make appropriate referrals to the DBS
- employers must not allow someone whom they know has been barred by the DBS to undertake regulated activity
- employers may undertake checks for anyone employed in activities which fall within the pre-September definition of regulated activity, as they remain eligible for enhanced DBS checks, whether or not they fall within the post-September definition of regulated activity (but they will no longer be eligible for barred list checks if they

do not fall within the new definition of regulated activity)

During 2013, the DBS launched its Update Service. Employees are now able to register once for a DBS check, which is then automatically updated and available for organisations to check. However, if an employer wishes, they can carry out a new check, as long as the post is covered by the definition for regulated activity.

Previously there has been widespread misunderstanding about when and how frequently to undertake checks. The following sets out the current position in relation to schools as to when checks need to be in place before an employee can start work.

- CRB checks were strongly recommended for all employees who have regular contact with children if they were employed after March 2002. However, the only requirement for those appointed before this date was that they must have been List 99 checked.
- CRB checks became mandatory for the entire maintained schools' workforce from 12 May 2006 (September 2003 for independent schools). Employees who took up post from this date must have an enhanced CRB disclosure.
- **No further checks are required** for any staff unless the person has a break in service of more than three months. There is no statutory requirement for staff to have routinely updated checks, although some employers may require this as policy. There is also no statutory requirement for staff employed before March 2002 to have retrospective CRB or DBS checks as long as they have been in continuous service. In this context, continuity means no break of service of longer than three months. However, prior to 2002, there was a requirement for all staff who work with children and young people to have to been checked against List 99, and evidence of this should be checked.

An employer can only ask for a barred list check for those staff undertaking regulated activity. It is a criminal offence to ask for a barred list check for any other role.

### **Visiting staff**

Staff such as educational psychologists, health visitors, advisory teachers and inspectors should CRB and DBS and barred list checked by their employer.

It is sufficient for settings to seek written confirmation that all appropriate checks, have been carried out for these people (most commonly on appointment) and by whom (most commonly the relevant human resources department). Settings should then confirm the identity of these visitors.

Part-time staff may use the same CRB or DBS check for two or more posts as long as they are at a similar level **and** the setting has satisfied themselves about their veracity and appropriateness.

### **Moving between setting and local authorities**

Providers should contact their CSSIW inspector to check whether a new CRB or DBS check is required when practitioners move between settings and/ or local authorities.

## **Annex 2: Regulated activity as defined by the Protection of Freedoms Act 2012**

The full, legal definition of regulated activity is set out in Schedule 4 of the Safeguarding Vulnerable Groups Act 2006, as amended (in particular by the Protection of Freedoms Act 2012).

Regulated Activity still excludes family arrangements, and personal, non-commercial arrangements.

**The new definition of regulated activity** relating to children comprises of:

- (i) **Unsupervised activities:** teach, train, instruct, care for or supervise children, or provide advice/guidance on well-being, or drive a vehicle only for children
- (ii) **Work for a limited range of establishments** ('specified places'), with opportunity for contact: for example, schools, children's homes, childcare premises. **Not work** by supervised volunteers

Work under (i) or (ii) is regulated activity only if done regularly. Regular means carried out by the same person frequently (once a week or more often), or on 3 or more days in a 30-day period (or in some cases, overnight).

The government has provided statutory guidance about supervision of activity, which would be regulated activity if it were unsupervised.

- (iii) Relevant personal care, for example washing or dressing; or health care by or supervised by a professional
- (iv) Registered child-minding and foster-carers.

### **What is no longer a regulated activity when working with children?**

- activity supervised at reasonable level
- health care not by (or directed or supervised by) a health care professional
- legal advice
- 'treatment/therapy' (instead of 'health care');
- occasional or temporary services, (not teaching and so on), for example maintenance at a school
- volunteers supervised at a reasonable level

### **Annex 3: Handling Allegations of abuse against staff**

Settings should have procedures for dealing with allegations against all staff and volunteers should understand what to do if they receive an allegation or have concerns about another member of staff.

The procedures should make it clear that **all allegations should be reported immediately**, normally to the designated child protection officer or registered person/responsible person.

The procedures should also identify the person to whom referrals should be made in their absence or in cases where the child protection officer or registered person/responsible person is the subject of the allegation or concern.

Procedures should also include contact details for the appropriate Local Authority Officer who has the responsibility for providing advice and monitoring professional abuse cases and the relevant CSSIW inspector. The Local Authority Officer and relevant CSSIW inspector should be informed of **all** allegations that come to a setting's attention and appear to meet the criteria set out below.

A member of staff is alleged to have:

- behaved in a way that has harmed a child, or may have harmed a child
- possibly committed a criminal offence against or related to a child or
- behaved towards a child or children in a way that indicates he or she would pose a risk of harm if they work regularly or closely with children

The above procedures relate to members of staff who are currently working in any setting, regardless of whether the setting is where the alleged abuse took place.

Allegations against a member of staff who is no longer in a setting should be referred to the police.

## **Annex 4: Online safety**

### **Possible questions for leaders and managers**

- 1 How do you ensure that all staff receive appropriate training on e-Safety that is relevant and up to date?
- 2 How does the setting educate and support parents and the whole school community with e-Safety?
- 3 Does the setting have e-Safety policies and acceptable use policies in place? How does the setting know that they are clear and understood and followed by all?
- 4 Describe how your setting supports young children to understand the importance of e-Safety.

### **Possible questions for staff**

- 1 Have you had any training that shows the risks to you and your children's online safety?
- 2 Are there policies in place that clearly demonstrate safe and responsible internet practice for staff and pupils? Have you read these? Have you discussed them in a staff meeting or in a training event?
- 3 Are there sanctions in place to enforce the above policies?
- 4 Are there clear reporting mechanisms with a set of actions in place for staff or pupils who feel they are being bullied online?

## **Annex 5: Site security**

It is the responsibility of leaders and managers to ensure that the setting and its building are safe. These arrangements will vary from setting to setting depending on the nature of the site.

We expect the setting to:

- carry out a thorough risk assessment of the site
- make appropriate arrangements to manage those risks appropriately
- tell their employees about the risks and measures to be taken to manage the risks
- ensure that adequate training is given to employees on health and safety matters

## **Annex 6: Preventing radicalisation and extremism**

Section 26 of the [Counter-Terrorism and Security Act 2015](#) and the accompanying [Prevent duty guidance](#) under section 29 of the Act impose a duty on schools to prevent people from being drawn into terrorism. Although this legislation does not apply directly to all registered childcare providers in Wales, inspectors should ensure that settings are actively promoting diversity, fairness and tolerance. It is also good practice for settings to consider how, under their safeguarding procedures, they would deal with concerns about a child who displayed an inappropriate attitude to other children and staff.