

Supplementary guidance:

inspecting safeguarding
in non-maintained
settings

Autumn 2017

The purpose of Estyn is to inspect quality and standards in education and training in Wales. Estyn is responsible for inspecting:

- ▲ nursery schools and settings that are maintained by, or receive funding from, local authorities
- ▲ primary schools
- ▲ secondary schools
- ▲ all-age schools
- ▲ special schools
- ▲ pupil referral units
- ▲ independent schools
- ▲ independent specialist colleges
- ▲ further education
- ▲ adult community learning
- ▲ local authority education services for children and young people
- ▲ teacher education and training;
- ▲ Welsh for adults
- ▲ work-based learning
- ▲ learning in the justice sector

Estyn also:

- ▲ provides advice on quality and standards in education and training in Wales to the National Assembly for Wales and others; and
- ▲ makes public good practice based on inspection evidence.

Every possible care has been taken to ensure that the information in this document is accurate at the time of going to press. Any enquiries or comments regarding this document/publication should be addressed to:

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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 inquiry.

For whom is it intended?

For all inspectors of non-maintained settings

From when should the guidance be used?

Autumn 2017

Date of publication: September 2017

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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 which can be found on Estyn's website at:

<https://www.estyn.gov.wales/sites/default/files/documents/Estyn%20Safeguarding%20Policy%202016%20En.pdf>

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://learning.gov.wales/docs/learningwales/publications/150114-keeping-learners-safe-en.pdf>

This guidance does not cover how inspectors should deal with allegations in respect of safeguarding received during an 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 in relation to safeguarding, and the requisite actions are outlined in this document. You can find a copy of the document on Estyn's website at:

<https://www.estyn.gov.wales/sites/default/files/documents/Estyn%20Safeguarding%20Policy%202016%20En.pdf>

Further advice and guidance

Inspectors who need advice or guidance should initially consult the 'on-going' queries log maintained on Sharepoint, and the FAQs section of on Estyn's website. This is because their query may have already been addressed in another setting. You can find the queries log here

<http://estynintranet/policy/Safeguarding/Safeguarding%20Documents/Inspection%20related%20Safeguarding%20queries.xls>.

Answers to frequently asked questions (FAQs) about evaluating a provider's arrangements for safeguarding can be found at:

<http://estynintranet/policy/Safeguarding/Safeguarding%20Documents/Forms/FAQs%20and%20Queries.aspx>

Where existing guidance is unclear or is not in place, inspectors should contact the relevant Sector Lead or Assistant Director with queries regarding the evaluation of setting's' 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:

- reasonable measures are taken to minimise risks of harm to children's welfare
- appropriate actions are taken 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

This is to enable children to have optimum life chances.

Everyone who works in education shares an objective to help keep children and young people safe. When inspecting a provider's safeguarding arrangements inspectors should consider how effective the setting is in the following:

- creating and maintaining a safe learning environment for children
- 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
- promote safe practice and challenge poor and unsafe practice within the provision
- identify instances in which there are grounds for concern about a child's welfare arising from home, community or setting, and initiate or take appropriate action to keep them safe
- contribute to effective partnership working between all those involved with providing services for children

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's pattern of attendance and engagement with the provision, which is able to identify quickly unexplained medical conditions, unusual absences, and disappearances
- children's health and safety and wellbeing, on and off-site
- bullying, including cyberbullying
- arrangements for meeting the needs of children with medical conditions
- promoting healthy relationships
- child sexual exploitation
- forced marriage
- preventing radicalisation and extremism
- trafficking
- signposting victims of abuse to appropriate help and support
- mandatory reporting duty for female genital mutilation
- 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

Safeguarding aspects within the framework

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 attitudes

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 includes:

- 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 child 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 Reporting 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 local authority report on the setting
- the previous inspection report
- the setting's policies for safeguarding and promoting welfare, including the child protection policy
- 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 number of children on the child protection register
- the number of refugees or asylum seekers
- the number of looked after children
- exclusions of children

Where pre-inspection evidence identifies possible safeguarding issues or poor management practice by the provider, inspectors should seek guidance from their sector AD and the safeguarding officer. Where an issue is considered reportable, Estyn's safeguarding policy must be applied.

Planning the inspection

Safeguarding will always be an area for inquiry. The reporting inspector will need to consider how effectively the setting has evaluated safeguarding and promoted welfare in their self-evaluation report. This will help establish the extent to which safeguarding policies and procedures are properly implemented and monitored. In the light of this evaluation, and any emerging specific lines of inquiry, the reporting inspector will need to allocate time to gather enough evidence to support the inspection judgements. This may include asking questions specifically relating to safeguarding and promoting welfare at meetings with:

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

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

Inspection activity

When inspecting settings in relation to safeguarding, inspectors will evaluate the following:

- whether the setting has produced an up-to-date self-evaluation which evaluates its safeguarding and child protection duties, including e-safety activity, and how well it sets out areas of strength and areas for improvement
- how well the setting implements and monitors its policies and procedures in order to improve how it safeguards and promotes the welfare of children in accordance with Welsh Government's statutory guidance found in Keeping Learners Safe
- whether all staff are clear about their responsibilities and what they need to do to protect children and whether all staff have received relevant child protection and safeguarding training, including 'Prevent' duties
- how well the registered person/responsible person oversees the setting's safeguarding procedures
- whether all safeguarding related records are up to date, including accident logs, incidents of physical intervention, child protection referrals, safe recruitment and DBS checks, and safeguarding training
- there are consistent approaches to the management and reporting of safeguarding incidents and behaviour management issues within the setting, which are supported by clear policies and procedures, and which include the management of internet and social media related incidents

- adequate arrangements for developing children's awareness and understanding of how to be safe including safety on line

Reporting on safeguarding

Inspectors will report on whether the setting's arrangements for safeguarding children meet requirements.

Where the setting's arrangements meet requirements, inspectors should include the following statement in the main evaluation for 2.3

'The setting's arrangements for safeguarding children meet requirements and give no cause for concern.'

Where inspectors judge safeguarding arrangements in settings to be incomplete, ineffective, or not compliant with statutory requirements and /or learners are not safe, it is important that these issues, are properly recorded in the reporting JF and brought to the attention of the provider. Where the disclosure of the exact nature of these concerns would create additional risks to the wellbeing of children, inspectors should include the following statement in the main evaluation in 2.3:

'The setting's arrangements for safeguarding children do not meet requirements and give serious cause for concern.'

In these cases, the report must contain a recommendation that the setting address the safeguarding / wellbeing issues identified during the inspection.

The RI should issue a wellbeing letter detailing the exact nature of the safeguarding / wellbeing concerns. The Inspection Co-ordinator will guide the RI through the process and manage the drafting of the letter with the appropriate Assistant Director.

Where inspectors judge that drawing attention to the exact nature of a concern would not expose pupils to additional risks, inspectors can make reference to the concern in their main evaluation for 2.3.

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, and consequently a wellbeing letter should not be issued to the provider. 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 years. .

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 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, 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)

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 and settings 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.
- The CSSIW website states that 'all care staff, including registered managers, registered persons and responsible individuals must hold a current DBS certificate. In some cases (staff in children's homes, adoption services, children's day care and child minding) these need to be undertaken every three years.'

An employer can only ask for a barred list check for those staff undertaking regulated activity. It's 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 who are employed by an agency should be CRB or DBS checked by their employer, for example the health board or local authority.

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.

Moving between settings 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 "health care")
- Occasional or temporary services, (not teaching etc.) e.g. maintenance at a school
- Volunteers supervised at a reasonable level

Annex 3: Handling allegations of abuse against staff Welsh Government Circular 009/2014

Settings should have procedures for dealing with allegations and 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 safeguarding person

The procedures should also identify the person to whom referrals should be made in their absence; or in cases where the designated safeguarding person is the subject of the allegation or concern.

Procedures should also include contact details for the Local Authority Officer with 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 working at the 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 online safety that is relevant and regularly up to date?
- 2 What mechanisms does the setting have in place to support children and staff facing issues with online safety?
- 3 How does the setting educate and support parents and the whole setting community with online safety?
- 4 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 respected by all?
- 5 Describe how your setting supports young children to understand the importance of e-Safety.
- 6 Describe how you are preparing to implement the Citizenship strand of the Digital Competence Framework.

Possible questions for staff

- Have you had any training that shows the risks to your and children's online safety?
- Are there policies in place that clearly demonstrate good and safe internet practice for staff and children? Have you read these? Have you discussed them in a staff meeting or training event?
- Are there sanctions in place to enforce the above policies?
- Do all staff understand what is meant by the term cyber-bullying and the effect it can have on themselves and children?
- Are there clear reporting mechanisms with a set of actions in place for staff or children who feel they are being bullied online?
- How well prepared are you to implement the Citizenship strand of the Digital Competence Framework?

In a good setting we should expect positive answers to all of the above. It would demonstrate a setting's commitment to eSafety if all staff had received some awareness training outlining what the current risks are and what resources are available to help them keep children and themselves safe online.

Annex 5: Preventing radicalisation and extremism

From 1 July 2015, schools, must have 'due regard to the need to prevent people from being drawn into terrorism'. This is set out in Section 26 of the Counter-Terrorism and Security Act 2015 and the accompanying Prevent duty guidance under section 29 of the Act. Although settings are not specifically included in the 2015 Act, it is regarded as good practice for them to have due regard for preventing people from being drawn into terrorism.

The context of the setting will affect the extent to which inspectors will need to consider the setting's work in this area. However, it is good practice for every setting to comply with the duty and inspectors should satisfy themselves that the provider is aware of the duty and acting appropriately.

Possible questions to consider:

- Does the provider's safeguarding policy take account of the duty to protect children and young people from radicalisation and extremism?
- Has the provider assessed the potential risk of radicalisation and extremism in their local area? Is the risk assessment available and is it being implemented?
- Are there clear protocols for ensuring that any visiting speakers are suitable and appropriately supervised?
- How well does the provider co-operate with the police and local authorities where relevant?
- Do staff, responsible person/registered person understand what radicalisation means and why people may be vulnerable to being drawn into terrorism as a consequence of it?
- Are relevant members of staff aware of what measures are available to prevent people from becoming drawn into terrorism and how to challenge the extremist ideology that can be associated with it?
- Has the provider ensured that appropriate training has been given to staff? The provider's approach to training should take account of the level of risk in their local area.
- Does the provider know how to obtain support for children who may be being exploited by radicalising influences?
- Does the setting give due regard to developing tolerant attitudes

Annex 6: Security

Site security and site safety

It is the responsibility of the lead practitioner/registered person / responsible person / proprietor to ensure that the setting's site 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 setting site, for example taking account of site security, public rights of way, traffic management arrangements and the condition of all buildings
- 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 7: Safeguarding Intelligence and inspections

Advice to RIs and team inspectors on the importance of taking account of any intelligence held by Estyn regarding parental complaints against a provider, and any safeguarding matters in the management of an inspection (issued May 2016)

When preparing for inspection, the IC will inform the Reporting Inspector (RI) if there is any relevant safeguarding intelligence, or complaints about the provider held by Estyn. This is so that the RI may use this information to inform lines of inquiry. This information is helpful and may alert the RI that parents may raise concerns during the inspection. Where the IC has indicated that there is safeguarding intelligence the RI must contact Estyn's Safeguarding Officer for a briefing, and the safeguarding officer will suggest a suitable line of inquiry.

The RI is also able to use the provider's self-evaluation report and the parent questionnaires to inform their lines of inquiry for wellbeing and safeguarding. Where pre-inspection evidence in any sector identifies possible safeguarding issues or poor management by the provider, seek guidance from your sector's Assistant Director and the Safeguarding Officer. Where any new issue is potentially referable, the RI must apply Estyn's safeguarding policy.

During the inspection, if Estyn receives any relevant information about a safeguarding matter, Estyn's safeguarding officer will inform the RI and agree how to deal with the matter. The RI must ensure they record any evidence relating to any safeguarding lines of inquiry from interviews, observations or file reading in their JF, as this may be needed for any subsequent correspondence arising after the inspection. If the RI or another team member records any confidential information this should be passed to Estyn's Safeguarding Officer for secure filing. Inspectors should not record the detail of this confidential information in the JF but should record that the material has been passed to Estyn's Safeguarding Officer along with a note of the relevant case number.

Remember

An incident may come to light after an inspection, and Estyn may be asked to account for what it knew at the time and the actions it either took, or did not take. In the case of serious injury or death, this accountability could be through a Serious Case Review. Your recording in your JF, and any confidential information stored in the safeguarding files will be relevant here, so make sure you note the important stuff.