



Department
for Education

Unregistered independent schools and out of school settings

**Departmental advice for collaborative
working between the Department for
Education, Ofsted and local authorities**

March 2018

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Summary

About this departmental advice

This advice note is non-statutory guidance for local authorities setting out how the Department for Education, Ofsted and local authorities can work collaboratively to help ensure that children attending unregistered independent schools and out of school settings, are safe and are receiving a suitable education.

Review date

This advice will be reviewed before December 2019.

Introduction

1. The government is committed to keeping children safe in and out of school. Parents are responsible for ensuring their children receive a suitable full-time education and the government is committed to providing high quality institutions for children to access.
2. Over recent times, we have seen a rise in the number of institutions operating outside the regulatory regime as unregistered independent schools; this involves a criminal offence and conduct that may be putting children at risk of harm, denying them a suitable education, and limiting their life chances. Tackling unregistered independent schools is a priority – and one that involves joint working and collaboration. This note considers how local authorities, DfE and Ofsted in particular, can work together to help ensure that children are safe and are receiving a suitable education.

Unregistered independent schools

3. An ‘independent school’ is defined¹ as a school that is not maintained by a local authority or is not a non-maintained special school, and at which full-time education is provided (a) for five or more pupils of compulsory school age or (b) for at least one pupil of that age who is looked after by a local authority (within the meaning of section 22 of the Children Act 1989) or has a statement of special educational needs or an education, health and care plan.
4. Independent schools in England must be [registered by the Secretary of State for Education](#)², the independent schools regulator, before operating. **It is a criminal offence to conduct an independent school that is not registered.** If convicted, a person could be subject to an unlimited fine and/or imprisonment up to six months.
5. The Government is taking decisive action to tackle the recent increase in the number of unregistered independent schools operating. We have supported Ofsted to establish a team of inspectors to identify and investigate potential unregistered independent schools. These inspectors are responsible for collecting evidence to support potential prosecutions by the Crown Prosecution Service, where appropriate and subject to consent from the Secretary of State. Inspectors will also invite local authority officers to accompany them on inspections, particularly where concerns have been identified or are suspected about the welfare of children or the condition of the premises. They will also follow up any concerns found with the relevant authorities following inspections.
6. We have also raised the profile of this issue, publishing a [statement on how the DfE regulates independent schools](#) together with a [policy statement on prosecuting unregistered independent schools](#). These statements have been shared with local

¹ Under section 463 of The Education Act 1996

² Further guidance on independent school registration and the independent school standards can be found [here](#).

authorities, independent schools, associations representing independent schools, and other stakeholder bodies, and have been reflected in Ofsted's inspection framework.

7. Prosecuting those conducting an unregistered independent school is the strongest legal sanction against a breach of the registration requirement. Prosecutions (and the potential for prosecution) are important in protecting children and supporting greater compliance with the regulatory requirements. Even if a conviction is secured, we will rely on support from local authorities and others agencies to intervene where there are concerns about the safeguarding arrangements or the suitability of education at the school in question.
8. Close inter-agency working is essential; local authorities are key partners in achieving our overall aims working alongside others including the Charity Commission, Health and Safety Executive, Police etc. There are a range of powers held by local agencies that may be deployed, subject to specific circumstances, which may be of use in un-registered schools and out-of-school settings. Ofsted and the relevant local authority have achieved some significant successes in securing the closure of illegal and unsafe settings in this way.

Local authority role in unregistered independent schools

9. Local authorities have overarching responsibility for safeguarding and promoting the welfare of all children and young people³, regardless of the types of educational settings they attend (including those who are home educated and attend no outside educational setting). Local authorities can play a crucial role in supporting the identification and disruption of unsafe and illegal education settings, and in supporting and protecting children and families using them. Where Ofsted has information relating to illegal schools, they will inform the lead inspector of the local authority children's services so that this can inform a possible line of enquiry in any forthcoming local authority inspection.
10. Local authorities can act in the following ways (and the underpinning powers and duties are set out in further detail at Annex 1):
 - a. **Identifying settings.** From local presence on the ground, and bearing in mind responsibilities under the Prevent duty⁴, the local authority will be aware of settings operating in its area that provide education to children and may well be the first party to identify settings that are potentially operating as unregistered independent

³ [Working together to safeguard children: a guide to inter-agency working to safeguard and promote the welfare of children](#), HM Government, March 2015

⁴ Under [section 26 of the Counter Terrorism and Security Act 2015](#), and paragraph 51 of related [statutory guidance](#)

schools. We ask local authorities to notify the DfE and/or Ofsted of such institutions promptly, which Ofsted can then investigate if appropriate⁵.

- b. **Clarifying registration requirements.** Where local authorities have contact with an institution that may be operating as an unregistered independent school, it is vital that (a) they do not give the setting any impression that it is acceptable to operate unregistered and (b) that they convey to those operating the setting that it is a criminal offence to do so. Local authorities should make clear that registration is a matter for DfE and that those responsible for the setting should contact the DfE's Unregistered Schools Team⁶ if operating, or intending to operate, as an independent school for further information and advice.
- c. **Disrupting unsafe settings and tackling concerns identified.** Local authorities should consider whether to engage one or more of a range of other powers, outside of their education and safeguarding powers, to address any concerns raised about settings or the children within them. For example, local authorities have a range of powers around health and safety, planning, fire etc.
- d. **Supporting prosecutions.** Local authorities may be a key partner in any prosecution of a person conducting an unregistered independent school in their area. Under the Criminal Procedure and Investigations Act Code of Practice, officials from Ofsted (as investigators) have a duty to pursue all reasonable lines of inquiry and as a consequence, may seek access to material held by a local authority which might be relevant to a prosecution. For example, a local authority may have information of interest relating to previous contact they have had with the institution as well as any information on the setting or the children attending it. Early engagement with the DfE and Ofsted over any person being investigated is therefore essential so that relevant material held by the local authority is identified, disclosed and processed by Ofsted in a timely manner, and last minute requests are avoided at a later point in proceedings. Given that such disclosure is for the purpose of a criminal investigation, this should be done confidentially and using secure means.
- e. **Safeguarding children.** Local authorities have a duty to investigate⁷ where they have reasonable cause to suspect that a child who lives or is found in their area is suffering, or likely to suffer, significant harm. They must make, or set in train, whatever enquiries they consider necessary to enable them to decide whether they should take any action to safeguard or promote the child's welfare. Where, in the course of enquiries being made, the local authority concerned, or any person authorised by the authority to act on their behalf in connection with those

⁵ Inspectors from Ofsted have powers to inspect suspected unregistered independent schools under s97 of the Education and Skills Act 2008. It is a criminal offence to intentionally obstruct an inspector carrying out an inspection under section 97.

⁶ registration.enquiries@education.gov.uk; or Unregistered Schools Team, Department for Education, Bishopsgate House, Feethams, Darlington, DL1 5QE

⁷ Section 47 of the Children Act 1989

enquiries, is either refused access to the child concerned or is denied information as to the child's whereabouts, the authority must apply for an emergency protection order (section 44 of the Children Act 1989), a child assessment order (section 43), a care

order or a supervision order (section 31) unless they are satisfied the child's welfare can be satisfactorily safeguarded otherwise.

f. ***Supporting families to ensure children are receiving a suitable education.***

Where unregistered independent schools are identified, it is likely to be in the children's best interests, in terms of both education and safety, for them to move as quickly as possible into properly regulated schools. Parents have ultimate responsibility to secure a suitable education for their children⁸, and where this is not being provided, the local authority can be instrumental in facilitating the movement of children into maintained schools, academies, or registered independent schools, both through the exercise of the formal school attendance functions⁹ or through co-operation with parents and independent schools. Where children live in other local authority areas, the local authority where the setting is located should share information with those other authorities and encourage them to take similar action to secure alternative school places for the children.

Out-of-school settings

11. Many children attend out-of-school settings to supplement the education that they receive in school (supplementary schools); and some attend such settings for longer periods as part of home education arrangements (part-time tuition centres). Sometimes, what on first sight may appear to be an unregistered independent school turns out, on closer inspection, to be an out-of-school setting or a setting, which for some other reason does not satisfy the criteria to be registered as an independent school.
12. Out-of-school settings are not regulated in a comparable way to full-time education settings. Such settings are not required to register with any authority, and they are able to operate in whatever form they like so long as they comply with relevant legislation (e.g. around health and safety etc.).
13. Local authorities still have a role in supporting out-of-school settings and all the powers and duties set out in Annex 1 apply equally in relation to these settings and children attending them. [Statutory guidance provided to local authorities in relation to their Prevent duty](#) states that local authorities should be taking steps to understand the range of activity and settings in their area and take appropriate and proportionate steps to ensure that children attending such settings are properly safeguarded.

⁸ Section 7 of the Education Act 1996

⁹ By school attendance functions we mean Section 436A and section 437(1) of the Education Act 1996; and pupil registration regulations [SI 2006/1751](#) as amended [SI 2016/792](#)

Where appropriate, Ofsted will also raise any concerns with the relevant authority where they have inspected an establishment suspected of operating as an unregistered independent school but which does not meet the criteria for registration and found to be operating part-time.

14. Many local authorities actively work with out-of-school settings in their area to improve outcomes for children by providing or arranging safeguarding training, and offering or signposting settings to voluntary accreditation schemes. Where they become aware of any concerns about the children attending such settings, local authorities may have cause to act under safeguarding duties irrespective of the number of hours that a child attends.
15. Local authorities should also consider how they could support families accessing out-of-school settings, particularly those who may be unaware that the educational offer at the setting is unlikely to constitute all that is necessary to meet the parents' duty to secure a suitable full-time education for their children¹⁰. For instance, where appropriate, local authorities can support parents by actively encouraging them to access properly regulated schools for their children instead.
16. Some local authorities may also run home education schemes and may want to point families home educating to these; or provide information and guidance for parents on the types of issues they might wish to consider when selecting an out-of-school setting for their child, for example around premises, teaching, and recruitment. The DfE will work with local authorities to support the provision of more guidance for parents. We will also consult later this year on a voluntary code of practice for out-of-school settings, explaining what providers need to do in order to run a safe setting; and so that parents know they are meeting the standards we expect and their legal obligations.
17. As with unregistered independent schools, close inter-agency working is vital to ensuring the safety and welfare of children. As set out in paragraph 8, there are a range of powers held by local agencies, which it may be possible to utilise in these settings where concerns have been identified – for example, around health and safety, premises regulations and general safeguarding provisions.
18. The DfE intends to boost the capacity to identify and tackle concerns in out-of-school settings where they arise, by supporting and working with a number of local authorities to demonstrate the benefits of different approaches to inter-agency working. Through this approach, the DfE will look to share and spread best practice on how existing legal powers – held by local authorities, government, and a range of local agencies – can best be utilised, alongside community engagement and outreach to intervene in settings of concern; and will also use it to develop an evidence base for rolling out a national approach. The DfE will make the findings from this work available to local authorities at the earliest opportunity.

¹⁰ Section 7 of the Education Act 1996

Annex: Guide to the relevant legislation and powers

Safeguarding

1. The Children Act 1989 includes specific duties in relation to children in need and children suffering, or likely to suffer, significant harm, regardless of where they are found. In particular:
 - a. The duty under section 17 is a general duty on local authorities to safeguard and promote the welfare of children within their area who are in need¹¹ by providing a range and level of services appropriate to their needs;
 - b. The duty under section 47 is a duty on local authorities to make, or cause to be made, such enquiries as they consider necessary to enable them to decide whether they should take any action to safeguard or promote the child's welfare where they have reasonable cause to suspect that a child who lives, or is found, in their area is suffering, or likely to suffer significant harm. Under this duty, a local authority making such enquiries must (with a view to enabling them to determine what action, if any, to take with respect to the child) take such steps as are reasonably practicable to obtain access to the child or to ensure that access to him/her is obtained, on their behalf, by a person authorised by them for the purpose, unless they are satisfied that they already have sufficient information with respect to the child. Where, in the course of enquiries being made, any officer of the local authority concerned or any person authorised by the authority to act on their behalf in connection with those enquiries is either refused access to the child concerned or is denied information as to the child's whereabouts, the authority must apply for an emergency protection order (section 44), a child assessment order (section 43), a care order or a supervision order (section 31) with respect to the child unless they are satisfied that his welfare can be satisfactorily safeguarded without their doing so.
2. The Children Act 2004
 - a. Section 11 requires local authorities in England to make arrangements for ensuring that: (i) their functions are discharged having regard to the need to safeguard and promote the welfare of children; and (ii) any services provided by another person pursuant to arrangements made by the local authority in the discharge of their functions are provided having regard to that need¹².

¹¹ Under section 17(10) of the Children Act 1989, a child is taken to be in need if (a) the child is unlikely to achieve or maintain, or to have the opportunity of achieving or maintaining, a reasonable standard of health or development without the provision for him of services by a local authority under Part 3 of the Children Act 1989; (b) the child's health or development is likely to be significantly impaired, or further impaired, without the provision for the child of such services; or (c) the child is disabled.

¹² The reference to functions of the local authority does not include functions to which section 175 of the Education Act 2002 applies, i.e. functions as set out in schedule 36A to the Education Act 1996.

School attendance

3. The Education Act 1996

- a. While it is for parents to ensure that their children receive a suitable full-time education, section 437(1) provides that local authorities must intervene if it appears that parents are not securing a suitable education for a child. In the event that a child is being home educated and the parent has failed to satisfy the local authority that the child is receiving suitable education, the local authority must make a school attendance order requiring the child to be registered as a pupil at a named school (unless they consider it inexpedient for the child to attend school). A parent can be prosecuted for not complying with a school attendance order.
- b. Section 436A requires local authorities to make arrangements to enable them to establish the identities, so far as it is possible to do so, of children in their area who are not at school and are not receiving a suitable education (commonly known and referred to as 'children missing education' (CMEs)). The department strengthened the Education (Pupil Registration) (England) Regulations 2006¹³ to ensure that more information is shared which will support local authorities in carrying out this duty. Statutory guidance on children missing education explains the changes which mean that for all non-standard transitions, all schools are required to: inform their local authority every time they are about to remove a pupil from the register; inform their local authority of the pupil's destination school and home address if the pupil is moving to a new school; and, when a school registers a new pupil, provide information about the pupil's address and previous school. Furthermore, local authorities have discretion to request information on standard transition cases.

Prevent

4. Counter Terrorism and Security Act 2015

Under section 26, local authorities must, in the exercise of their functions, have due regard to the need to prevent people from being drawn into terrorism. In addition, under section 29, they must have regard, in carrying out the duty in section 26, to any guidance issued by the Secretary of State. The statutory Prevent Duty guidance states at paragraph 51 that local authorities should take steps to understand the range of out-of-school settings in their areas and take appropriate and proportionate steps to ensure that children attending such settings are properly safeguarded (which should include considering whether children attending such settings are at risk of being drawn into extremism or terrorism). It goes on to say that in assessing the risks associated with such settings, local authorities should have regard to whether the settings subscribe to voluntary accreditation schemes and any other evidence about the extent to which the providers are taking steps to safeguard the children in their

¹³ [The Education\(Pupil Registration\) \(England\) Regulations 2006](#) were amended by [the Education \(Pupil Registration\) \(England\) \(Amendment\) Regulations 2016](#) which came in to force on 1 September 2016

care. The guidance also states that, where safeguarding concerns arise, local authorities should actively consider how to make use of the full range of powers available to them to reduce the risks to children, including relevant planning and health and safety powers.

Protection of children – Emergency Services

5. Police/Fire - Other local powers of entry

- a. The local authority may seek to work with the local police force, which will have a wide range of powers necessary to fight crime, tackle offending and safeguard children. Clearly, the operation of an unregistered independent school is illegal but it could also trigger a range of critical safeguarding issues that could involve the police to exercise their powers to enter premises and protect persons. The use of such powers is largely governed by the Codes of Practice issued under the **Police and Criminal Evidence Act 1984** (PACE Act). Specifically, section 32(2)(b) of PACE Act enables a constable to enter and search any premises, to find evidence of an indictable offence for which a person has been arrested. Entry is only allowed into the premises where the person was arrested or was immediately before being arrested, and may only take place if the constable has reasonable grounds to believe that there is evidence relating to the indictable offence in question.
- b. Section 25 of the **Criminal Justice and Police Act 2001** also enables a constable to enter premises affected by a closure order under section 21 of that Act, and if necessary using reasonable force, for the purposes of securing compliance with the order. An order under section 21 would be made by a justice of the peace on the application of the local authority or police constable, following a hearing.
- c. The **Fire and Rescue Service Act 2004** provides **Fire and Rescue Authorities** (FRAs) with a power to do anything reasonably believed to be necessary – including entering a premises or a place by force without the owner/occupier's consent – if they reasonably believe a fire to have broken out or be about to break out, for the purpose of extinguishing or preventing the fire or protecting life or property, or if they think an emergency of another kind has occurred. Under the Act, they also have a power to enter, although not by force, premises to obtain information needed to protect life and property in the event of a fire in its area. If an officer exercises a power of entry, they may take with them any other persons and equipment they consider necessary and require any person present on the premises to provide them with any facilities, information, documents or records, or any other assistance, that they may reasonably request.

In addition, FRAs have a statutory duty to enforce the provisions of the **Regulatory Reform (Fire Safety) Order 2005** (FSO), in the majority of premises to which the FSO applies. The FSO applies to non-domestic premises in England and Wales and requires a responsible person to assess the risk from fire to employees and other relevant persons and to implement and maintain such general fire precautions as are needed to comply with its provisions. Under the **National Framework**, each FRA is required to

have a locally determined risk-based inspection programme and management strategy in place for ensuring compliance with the FSO in its area. The FSO gives fire safety inspectors the power to enter a premises, without force, to audit compliance with the provisions of the FSO and, if necessary, to take action to ensure compliance.



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