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[Department
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Guidance

Unregistered independent schools and out-of-school settings: guidance for local authorities

Published 29 May 2025

Applies to England

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This guidance explains how to meet your responsibilities when dealing with unregistered independent schools. To do this, work with:

- the Department for Education (DfE)
- Ofsted
- safeguarding partners
- other agencies who help to safeguard children

It also explains how to work to ensure:

- children attending out of school settings are as safe as possible
- all children get a safe and suitable education

This guidance explains the relevance of your duties and powers to this work, but these are defined in separate statutory guidance and legislation. We have included links to relevant definitions.

You have a duty to safeguard all children in your local area. This applies regardless of the education or activity setting they attend.

You, the integrated care board and the chief officer of police in the relevant local authority area are the statutory safeguarding partners. This term is defined in The Children Act 2004, and your duties are explained in [statutory guidance on working together to safeguard children](#).

The act also defines ‘relevant partners’, in section 10. Make sure you know who these are, and understand when to work with them to improve the wellbeing of children in your area.

Defining unregistered independent schools

An unregistered independent school is any setting that both:

- meets the definition of independent school under [section 463 of the Education Act 1996](#), no matter what kind of setting it claims to be
- is not registered with the Secretary of State for Education

Defining out-of-school settings

Out-of-school settings (OOSS) are organisations or individuals that provide tuition, training, instruction, or activities to children in England without their parents' or carers' supervision, but are not:

- schools
- colleges
- 16 to 19 academies
- registered education settings providing alternative provision
- providers caring for children that are registered with Ofsted or a childminder agency

'School' means all schools, whether they are maintained, non-maintained, or independent. It includes:

- academies and free schools
- alternative provision academies
- pupil referral units
- maintained nursery schools

'College' means:

- further education colleges and sixth-form colleges, as established under the Further and Higher Education Act 1992
- institutions designated as being in the further education sector
- providers of post-16 education as set out in the Apprenticeships, Skills, Children and Learning Act 2009 (as amended): 16 to 19 academies, special post-16 institutions and independent training providers

[Alternative provision](#) is defined in statutory guidance. Settings that provide alternative provision to local authorities and schools will need to register as independent schools if they meet the relevant requirements.

Most providers caring for children under 8 years old must [register with Ofsted or a childminder agency](#), unless the law states otherwise.

DfE [guidance on after-school clubs, community activities and tuition](#) has more detail for providers on what an OOSS is.

Typical characteristics of out-of-school settings

OOSS typically operate outside normal school hours.

Some settings operate during the day, for example to support [elective home education](#).

OOSS include a diverse range of settings, including:

- supplementary and complementary schools
- tuition centres or private tuition
- sports clubs
- dance classes
- uniformed youth organisations – for example Brownies, or St John's Ambulance Cadets
- religious organisations offering education to children in their own faith

Context and risks

OOSS are not regulated under education or childcare law. They are not required to comply with a single, consistent set of statutory safeguarding standards.

Organisations must comply with relevant legislation where it applies to them, such as:

- vetting
- health and safety
- fire safety

Paid staff and volunteers need to know:

- their responsibilities for safeguarding and promoting the welfare of children

- how to respond to child protection concerns
- how to make a referral to local authority children's social care or the police

Risks in unregistered independent schools

Settings operating as unregistered independent schools can:

- deny children access to a suitable education
- potentially place children at risk of harm

Unregistered independent schools are illegal and operating outside the law. They are not subject to regular inspection against agreed standards.

[Ofsted continues to identify suspected unregistered independent schools](#). Some of these present themselves as OOSS.

It is a criminal offence to operate an unregistered independent school. [Section 96 of the Education and Skills Act 2008](#) sets out the offence.

Risks in out-of-school settings

Most OOSS have good safeguarding policies and practices. But they are not subject to the same scrutiny and safeguarding standards as schools, or other parts of regulated education and the childcare system.

There is no single legal framework that governs how they operate. Many are not inspected, overseen, or assessed by any regulatory agency.

This means safeguarding practices can be inconsistent across the sector. There may be a risk of harm to children in settings with poor safeguarding policies and processes.

DfE [research on multi-agency working](#), and other reports, have identified examples of poor safeguarding practice in settings.

These include unsafe premises, such as:

- a lack of fire risk assessment where appropriate

- structurally unsafe buildings

They include unsafe practices, such as inappropriate:

- children's changing facilities or arrangements
- transport and collection arrangements
- public access to OOSS spaces
- behaviour management and exclusion
- safeguarding policies or procedures

They include peer-on-peer issues, such as:

- bullying
- sexual abuse

They include unsafe staff – for example, staff who are:

- not checked as fit to work with children
- untrained, or inexperienced, to work with children

They include cases of inappropriate adult behaviour with children, such as:

- verbal or physical abuse – most commonly physical chastisement
- inappropriate sexual behaviour, including reports of child sexual abuse
- grooming
- inappropriate use of social media, such as staff befriending and private messaging children

When an out-of-school setting is an unregistered independent school

OOSS should not offer full-time provision that could potentially prevent a child from attending a lawfully operating school.

An OOSS is operating illegally as an unregistered school if it operates full-time and provides education to any of:

- 5 or more children of compulsory school age
- 1 or more children of compulsory school age with an education, health and care plan
- 1 or more looked after children of compulsory school age

This is true whether this was intended or not.

Safeguarding children in out-of-school settings: proactive steps to take

You should:

- take steps to understand the range of activity and settings in your area
- act appropriately and proportionately to make sure children are properly safeguarded

Conditions for lease, hire and funding agreements, and contracts

You can help to promote good safeguarding practices by making them a condition of any lease or hire agreement of local authority premises. The hirer should meet the DfE guidance for out of school settings as a minimum.

You could also make those practices a requirement of any funding agreement with the local authority, for example:

- the holiday activities and food programme
- wraparound childcare funding
- breakfast clubs
- young futures hubs

You could consider, where appropriate, that any contract to deliver services includes the Prevent duty principles. These should be in a suitable form.

Support for settings

Consider offering support to settings, to help them develop good safeguarding practices. You could:

- share DfE guidance and e-learning on [keeping children safe in OOSS](#)
- arrange, or tell settings about, safeguarding training courses
- encourage settings to register with voluntary accreditation schemes, such as Ofsted's voluntary childcare register
- create or help to build networks of OOSS, which can share best practice
- support settings to apply for DBS checks and other relevant checks
- establish a point of support that providers can contact for safeguarding advice, or expand an existing one

Support for families

You have a duty to give parents information about services and facilities in your area. This is defined in [section 12 of the Childcare Act 2006](#).

You also have a duty to publicise information on positive leisure time activities. This is defined in [section 507B of the Education Act 2006](#).

Taking these steps, if you can, will help you to meet these duties and support families to access safe OOSS.

How you can help families

Share DfE's [guidance for parents on after-school clubs, community activities and tuition: what safeguarding arrangements to expect from your provider](#).

If parents and carers use OOSS during typical school hours, as part of their home education arrangements, the educational offer is unlikely to be all they need to meet their duty to secure a suitable full-time education for their child. Tell them this.

Help parents to identify providers that meet minimum safeguarding requirements. For example:

- give links to existing, local quality mark schemes, where relevant

- give information about which OOSS are accredited by umbrella bodies, or hold a safeguarding quality mark

Share information about settings with parents and carers. You could do this as part of your work to meet your duties to:

- give parents information on the provision of childcare
- give parents information on services or facilities that may benefit them
- publicise information on positive leisure time activities and facilities for them

Naming relevant agencies

The statutory guidance on [working together to safeguard children](#) outlines safeguarding partners' power to enlist relevant agencies.

Name the relevant agencies you need to work with you in your published safeguarding arrangements. Include all local education and childcare providers working with children up to the age of 18, including:

- alternative provision
- pupil referral units
- further education

These agencies could include some, but not all, OOSS.

Not all types of OOSS are named in the relevant agency regulations. You can still include any OOSS in your local safeguarding arrangements by agreement with those organisations.

Any organisations you identify must act in accordance with local multi-agency safeguarding arrangements. This includes:

- giving assurance that relevant agencies have appropriate, robust safeguarding policies and procedures in place
- sharing information about safeguarding issues or concerns affecting children in their organisation

How naming out-of-school settings can help

Many OOSS will have a crucial role to play in safeguarding and promoting children's

welfare.

Where OOSS participate in multi-agency safeguarding hubs or multi-agency child exploitation meetings, you can actively seek contributions from them to hear their unique perspective.

OOSS often have more informal interactions with children or young people, so they can make unique and valuable contributions.

The staff and volunteers working with children in these settings will often play an important role in:

- building relationships
- identifying concerns
- providing direct support to children

They can also often be the first trusted adult who a child reports abuse to.

Engaging out-of-school settings

Aim to engage with OOSS who are named as relevant agencies, to make sure they understand:

- the local multi-agency safeguarding arrangements and information sharing processes
- their specific role and responsibilities in the multi-agency safeguarding arrangements

You can work with them to, for example:

- make safeguarding policies and procedures
- monitor how effective these policies and procedures are
- raise awareness of safeguarding issues in the community
- undertake serious case reviews when a child dies or is seriously injured through abuse or neglect
- collect and analyse data about all child deaths in the local area

An OOSS which you name as a relevant agency may need additional support to

engage in multi-agency safeguarding arrangements than other safeguarding partners, because of the breadth and diversity of OOSS.

This is more likely, for example, where settings are small or run by volunteers. These settings may:

- have less knowledge or experience of multi-agency safeguarding arrangements, or working with statutory bodies
- have less time to do the work – for example, if someone involved has a separate full-time job, or is on a limited hours contract
- lack staff or general resources

Identifying settings of concern

Be aware of settings operating in your area, including those that provide tuition, activities, training or instruction to children.

Aim to identify and tackle settings of concern proactively. You may be the first agency to identify settings that:

- do not have appropriate safeguarding arrangements
- are potentially operating as unregistered independent schools

You can use various processes to identify settings of concern.

You can establish or strengthen processes for people to report concerns about settings. For example, you can:

- raise awareness of how to report concerns
- establish a new referral mechanism, such as a dedicated mailbox
- highlight existing multi-agency referral processes

You can look for basic information online. For example, you can use this to find out if there is evidence that settings have safeguarding policies and procedures.

You can make checklists or other systems to audit or assess out of school provision on markers of safety. Use the guidance on keeping children safe during community activities, after-school clubs and tuition to find the minimum safeguarding

expectations for providers.

You can make or strengthen processes to get information from schools and share information among different local authority teams, if you get information that a setting may be unsafe or unsuitable. This applies if, for example:

- a school finds out a child attends a setting where they regularly get injured
- a children's social care team finds out a child attends a setting which gives them cause for concern

Consider whether settings are:

- implementing the practices we recommend in our [guidance on keeping children safe in OOSS](#)
- taking other steps to safeguard the children in their care

Tell schools, and other local authority teams, how you judge that a setting is concerning.

You can also use self assessments to identify safeguarding issues. OOSS who are commissioned or contracted to provide services on behalf of local authorities may be required through terms and conditions to self assess the effectiveness of what they are doing to safeguard children in their discharge of their duties under [section 11 of the Children Act 2004](#).

Ofsted inspections of unregistered independent schools

Ofsted has a team of inspectors who identify and investigate potential unregistered independent schools.

They may invite your officers to accompany them on inspections, particularly if they identify concerns about:

- safeguarding
- the welfare of children in attendance
- the condition of the premises

Identifying concerns about extremism

Make sure you:

- have effective policies and procedures to safeguard individuals susceptible to radicalisation
- can show you have these policies and procedures in place

Consider whether children are at risk of being radicalised.

Take steps to make sure your facilities, event spaces and publicly-owned venues are not used to facilitate the spread of extremist narratives that can be reasonably linked to terrorism.

Your responsibility on this is defined in [statutory guidance on the Prevent duty](#).

Dealing with settings of concern

Work with safeguarding partners and other agencies to safeguard and promote the welfare of all children in your local area, regardless of which educational settings they attend.

The safeguarding partners' duties are outlined in the statutory guidance on working together to safeguard children.

If you identify safeguarding concerns at a setting:

- intervene swiftly and proportionately
- notify the relevant bodies in line with legislation

The type of intervention will vary, depending on the concern you identify.

Consider how to use the full range of powers available to you to reduce the risks to children.

Intervening if you have concerns about extremism

If you have concerns about extremism relating to an education setting in England, you can report it using the [report extremism in education online portal](#).

Responding if Ofsted suspects an unregistered independent school in your area

If Ofsted has inspected a setting and suspects it is operating as an unregistered independent school, they will tell you there is a potential unregistered independent school in your area.

Ofsted will also alert you if they identify specific safeguarding risks in the setting.

Always act appropriately on any identified safeguarding concerns at a potential unregistered school. Do not delay because an Ofsted investigation is pending or in progress.

If you do not take appropriate action, Ofsted will notify the lead inspector of the local authority children's services. This can inform a possible line of enquiry in any Ofsted inspection of your local authority.

Intervening at an unregistered independent school

If you suspect an unregistered independent school is operating report it to Ofsted, and your own safeguarding team, at the same time.

Your team must take prompt action. They must not wait for Ofsted to carry out their investigation before addressing any safeguarding concerns.

In these cases, also involve local authority teams responsible for elective home education and children missing education.

Some of the children may be attending as part of their parents' home education arrangements, or receiving their sole education in the setting.

Make arrangements to identify children of compulsory school age in your areas who are not either:

- in school

- receiving a suitable education

Your duty to do this is defined in [section 436A of the Education Act 1996](#).

Intervening at an out-of-school setting

If you identify safeguarding concerns in an OOSS, report them to the local authority safeguarding team, and other safeguarding partners as appropriate.

The partners are likely to vary, depending on the nature and severity of the concerns you identify.

For example, if there is a health and safety concern, you might need to involve the Health and Safety Executive, or fire and rescue services.

Clarifying registration requirements

When you identify a setting that is offering education or activities to children, work out if it is an OOSS, or if it needs to be registered with a regulatory body.

Most settings offering provision for children under 8 must be registered with Ofsted or a Childminder Agency, unless they are [exempt from registration](#).

Settings that operate as charities and meet the [registration requirements](#) must register with the Charity Commission.

Settings that meet the definition of an independent school must register with the Secretary of State for Education.

Make sure you are aware of the criteria for independent school registration.

What to do if you think an institution is an unregistered independent school

If you are in contact with an institution that you suspect may be operating as an unregistered independent school, [tell Ofsted promptly](#). Ofsted will then investigate if appropriate.

In some cases, Ofsted may inspect an establishment suspected of operating as an unregistered independent school, but find it does not meet the criteria for registration or prosecution. If Ofsted find other concerns, they will tell you and any other relevant agencies.

It may be appropriate for you to offer to work with the setting, after you make any appropriate referrals. This is to build a trusting relationship and support them in improving their safeguarding practices, as an initial step. The decision to do this depends on the nature of the risk identified.

Make sure you tell settings:

- to use the DfE independent school registration guidance, to assure themselves they are operating lawfully
- that conducting an unregistered school is a criminal offence
- that registration is a matter for DfE, and those responsible for the setting should contact DfE if they are operating, or intend to operate, as an independent school

They can contact DfE's independent education and schools safeguarding division by:

- using the [application form to register an independent school](#)
- emailing registration.enquiries@education.gov.uk
- writing to Bishopsgate House, Feethams, Darlington, DL1 5QE

What to do if you identify an unsafe setting

If you identify a setting of concern, assess the risk posed to children in its care.

If you have reasonable cause to suspect that a child who lives or is found in your area is suffering, or is likely to suffer, significant harm, you have a duty to investigate it.

You also have a duty to make, or start, any enquiries you need to decide if you need to take any action to safeguard or promote the child's welfare.

You, or anyone you authorise to act on your behalf, also have a duty if you or they are either:

- refused access to the child
- denied information about their whereabouts

In those cases apply for one of these, unless you are satisfied that the child's welfare can be safeguarded without it:

- an emergency protection order
- a child assessment order
- a care order
- a supervision order

These duties are defined in [section 47 of the Children Act 1989](#).

Contact relevant safeguarding partners. Identify which agencies you should engage promptly. For example, if the setting is a charity, it may be appropriate to tell the Charity Commission about the risks identified and work together to resolve them. This is alongside engaging with the setting and the local Children's Safeguarding Partnership.

Other agencies that may be appropriate to contact depending on the context include the police, fire and rescue service, or Health and Safety Executive.

You can work with multi-agency partners to intervene even if an unsafe setting does not meet the independent school registration requirements.

Partners to work with

Make sure you know about processes for investigating and acting against settings of concern with relevant partners and agencies.

The Local Authority Designated Officer is responsible for managing allegations against adults who work with children. This involves working with police, children's social care employers and other relevant safeguarding professionals.

Police have the power to investigate suspected criminal activity. These include possible crimes considered to be child abuse and neglect.

If a police officer has reasonable cause to believe a child may suffer significant harm, the child can be kept in or removed to suitable accommodation. This power is defined in [section 46 of the Children Act 1989](#).

The police have the power to inspect the premises of suspected unregistered schools. This is defined in [section 97 of the Education and Skills Act 2008](#).

The police's other relevant powers to enter and search premises are defined in:

- [section 8 of the Police and Criminal Evidence Act 1984](#) (PACE)
- [section 17 of the PACE](#)
- [section 18 of the PACE](#)
- [section 32\(2\)\(b\) of the PACE](#)
- [section 25 of the Criminal Justice and Police Act 2001](#)

The Fire and Rescue Service has the power to gain access to public buildings to check fire safety, through prevention and protection measures.

They also have powers to enter premises in some circumstances.

Their relevant powers are defined in the [Fire and Rescue Services Act 2004](#).

Fire and rescue authorities also have a statutory duty to enforce the [Regulatory Reform \(Fire Safety\) Order 2005](#), in the majority of premises which it applies to.

Ofsted can investigate if educational provision:

- is correctly registered as a school
- adheres to applicable legislation

The Disclosure and Barring Service (DBS) have the power to bar individuals from working in regulated activity with children.

The Charity Commission for England and Wales registers and regulates charities. They can investigate their governance, where there is evidence of serious misconduct or mismanagement.

The commission's powers are defined in the [Charities Act 2011](#). Their [regulatory and risk framework](#) sets out their regulatory approach.

The Health and Safety Executive is the national regulator for workplace health and safety. Tell them if you identify a health and safety risk, where appropriate. [The Health and Safety \(Enforcing Authority\) Regulations 1998](#) set out where the Health and Safety Executive is the correct enforcing authority.

Offering support

You may offer support to settings to reduce safeguarding risks – for example:

- giving guidance or training on good practice
- having a local badging provision (certification or kite mark)
- giving access to DBS checks to promote safer recruitment
- using financial incentives – for example:
 - only granting access to funding such as the [holiday activities and food programme](#), or subsidised local authority rents, to OOSS who evidence adequate safeguarding practices
 - stopping access to funding for those who are found to be unsafe, where it is a condition of funding agreements
- giving venue owners model hire and letting agreements to use with OOSS – and including safeguarding requirements, so venue owners can terminate the contract if the setting is found to be unsafe

Supporting prosecutions

You, or a multi-agency partner, may find evidence that someone has breached a criminal threshold during an investigation. You may then have a role to play in a prosecution.

For example, if a person is suspected of conducting an unregistered independent school, Ofsted officials may ask for access to relevant material you hold.

You may have relevant information about:

- previous contact you have had with the institution

- the setting
- the children attending the setting

Engage with DfE and Ofsted early on, so Ofsted can identify, disclose and process relevant material promptly, and avoid making last minute requests.

Make any disclosure confidentially, and use secure means.

General data protection regulation does not prevent the lawful sharing of information to keep children safe. Concerns about sharing information must not obstruct the promotion and protection of children's safety and welfare.

Prosecuting someone who runs an unregistered independent school is the strongest legal sanction against a breach of the registration requirement that the Secretary of State for Education can take. So if you have a role in a prosecution, treat it as a priority.

Your duties and powers

Safeguarding

Statutory guidance: working together to safeguard children

The [statutory guidance on working together to safeguard children](#) explains the duties which you and other agencies have to work together to safeguard children in your area.

We have explained the relevance of the statutory guidance to tackling settings of concern, in the 'How to tackle settings of concern' section of this guidance.

The Children Acts, 1989 and 2004

You have a general duty to safeguard and promote the welfare of children in your area who are in need. This is defined in [section 17 of The Children Act 1989](#).

When doing this, you should work with:

- your statutory safeguarding partners – the chief officer of police and the integrated care board

- relevant agencies – other appropriate organisations and agencies

This is defined in [The Children Act 2004](#).

We have explained how to name relevant agencies, and what that means for those agencies, in the ‘Safeguarding children in out of school settings: proactive steps’ section of this guidance.

There is a list of organisations that meet the criteria to potentially be named as a relevant agency. This is in [The Child Safeguarding Practice Review and Relevant Agency \(England\) Regulations 2018](#).

You also have relevant duties under [section 47 of the 1989 act](#). We have explained how to meet these in the ‘What to do if you identify an unsafe setting’ section of this guidance.

If a child is suffering or likely to suffer significant harm, you or an authorised person can apply for a court order to put the child:

- in your care, or the care of a designated local authority
- under your supervision, or the supervision of a designated local authority

The court’s power is defined in [section 31 of the 1989 act](#). If the child is not getting a suitable education, that could contribute to meeting the threshold requirement to prompt an order. Our [guidance for local authorities on elective home education](#) has more information on this.

You have a duty to make sure your functions, and services that you contract out to others, are discharged having regard to the need to safeguard and promote the welfare of children. This is defined in [section 11 of the 2004 act](#).

School attendance

You have a duty to serve a school attendance order if it appears that a child is not receiving a suitable education. This is defined in [section 437 of the Education Act 1996](#).

You have a duty to make arrangements to identify children not receiving education. This is defined in [section 436A of the same act](#). We have explained the relevance of this, in the ‘intervening at an unregistered independent school’ part of the ‘How to

tackle settings of concern' section of this guidance.

There is [statutory guidance which sets out how to meet your duties on children missing education](#).

Schools have a duty to tell you when pupils go through non-standard transitions. You have discretion to ask for information on standard transition cases. These are outlined in the statutory guidance.

We have also published [guidance for local authorities on elective home education](#).

Counter-terrorism and security

You have a duty to have due regard to the need to prevent people being drawn into terrorism.

This is the Prevent duty. It is defined in [section 26 of the Counter-Terrorism and Security Act 2015](#).

Prevent has a crucial role in helping education settings safeguard learners from extremism and radicalisation.

The Secretary of State is given power to issue guidance about the exercise of this duty in [section 29 of the same act](#).

The Prevent duty statutory guidance sets out how you, and other specified authorities, should meet this duty.

We have explained some steps you can take to help you to meet the Prevent duty in this guidance. These are in the:

- 'Conditions for lease, hire and funding agreements, and contracts' part of the 'Safeguarding children in out-of-school settings: proactive steps to take' section
- 'Identifying concerns about extremism' part of the 'How to identify settings of concern' section
- 'Intervening when there are safeguarding concerns' part of the 'How to tackle settings of concern' section

You should continue to understand your Prevent duty requirements as part of your wider safeguarding responsibilities. These are outlined in [Keeping children safe in](#)

[education](#) .

Health and safety

You and the Health and Safety Executive have a split power to enforce health and safety regulations.

You have a duty to ensure premises are safe.

You can use health and safety inspectors to enforce health and safety law, where appropriate.

Your duties and powers are defined in:

- [section 18 of the Health and Safety at Work etc. Act 1974](#)
- [the Enforcing Authority \(Health & Safety\) Regulations 1998](#)

Planning

Local planning authorities are responsible for taking necessary enforcement action, in the public interest, in their administrative areas. Planning officers' powers are defined in the [Town and Country Planning Act 1990](#).

Food standards and safety

Your authorised officers have powers to enter and inspect premises to ensure they are:

- complying with food law
- making food that is safe to eat

These powers are defined in:

- [section 14 of the Food Standards Act 1999](#)
- [section 32 of the Food Safety Act 1990](#)

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