



Department
for Education

Out-of-school education settings

**Report on the call for evidence
conducted November 2015 to January
2016**

April 2018

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Background and summary of responses

The Department for Education ran a call for evidence on out-of-school education settings between 26 November 2015 and 11 January 2016, inviting interested education providers, local authorities, other organisations and individuals to help us broaden our evidence base relating to out-of-school education settings.

When referring to out-of-school education settings, we mean any institution providing tuition, training or instruction to children aged under 19 in England that is not a school, college, 16-19 academy or registered childcare provider¹.

The government is committed to safeguarding all children and protecting them from the risk of harm. Currently schools and childcare providers are regulated under child protection, education and/or childcare law and are subject to inspection. However, the same system of oversight does not exist for out-of-school education settings. Whilst there are many existing legal powers already in place to protect children attending these settings, the lack of specific regulation for, and coordinated oversight, out-of-school settings means there are concerns that children attending them may be more vulnerable to the risk of extremism and exposure to other forms of harmful practice. The Government's 2015 Counter-Extremism Strategy, while recognising the valuable contribution that many settings make to children's education and moral development, set out the intention to introduce a new system to enable intervention where concerns arise in settings which teach children intensively.

The call for evidence accordingly sought views on proposals for a regulatory system for out-of-school settings, the key features of which would include:

- A requirement on settings which fell within scope to register, providing basic information about their setting so that there is transparency about where settings are operating;
- A power for a body to inspect settings to ensure that children are being properly safeguarded; and
- A power to impose sanctions where settings are failing to safeguard and promote the welfare of children, which could include barring individuals from working with children and the closure of premises.

The call for evidence included a number of specific questions about how such a system might operate.

¹ Settings required to register as childcare providers are defined here: <https://www.gov.uk/register-childminder-childcare-provider/overview>

Participation

The call for evidence document and response form were published on www.gov.uk. The call for evidence was also communicated widely upon publication and throughout the period.

The call for evidence received 3,082 online response forms. Where we refer in this document to “respondents” we mean those individuals and organisations completing this response form. We also received over 15,000 representations via other methods including emails, letters and petitions. We refer to these individuals and organisations as “correspondents”, and have included a summary of their representations at the end of the section on ‘Question analysis’, at page 17.

Respondents were asked to identify themselves in relation to one of the following categories and the breakdown is as follows:

Options	Responses	
Faith group:	1687	54.7%
Parent:	604	19.6%
Other:	415	13.5%
Out-of-school setting:	212	6.9%
Community group:	53	1.7%
Local authority:	39	1.3%
Child/young person:	24	0.8%
Accreditation or support organisation for out-of-school settings:	22	0.7%
School or college:	21	0.7%
Registered childcare provider:	4	0.1%
Inspectorate:	1	0.0%
Total:	3082	100%

Question Analysis

Information about respondents and settings

Questions 1-10

Questions 1-10 sought information about respondents and on the types and characteristics of out-of-school settings that people are involved in or know about. This information has been used to increase our understanding of the out-of-school settings landscape.

We had a variety of submissions representing a wide range of interest groups and from a wide range of local authority areas. Over 50% of respondents identified themselves as representing faith groups.

We received information about settings including how many hours individual settings operate, how many children attend such settings, the premises in which settings are located and the subjects taught.

Question 11

Which settings that you are aware of subscribe to voluntary accreditation schemes with regard to curriculum development and/or safeguarding children? Please provide details of the schemes.

It is encouraging that many settings subscribe to voluntary accreditation schemes for curriculum development and safeguarding children. These include accreditation initiatives based upon best practice run by voluntary organisations and local authorities. Many settings mentioned that they have safeguarding policies in place, request Disclosure and Barring Service (DBS) checks for staff and volunteers, and receive training from local authorities or other umbrella bodies. There were fewer examples given of accreditation schemes which support curriculum development.

Question 12

Please give details of any positive benefits that you think out-of-school settings provide for children and the local community, including any case studies.

Many respondents emphasised that out-of-school settings can provide an important service to children in their area and the community as a whole. Some of the many benefits highlighted in the call for evidence include: faith education, academic benefits, cultural awareness, language learning, building self-esteem, encouraging children to become active citizens and promoting social integration.

Question 13

Do you have any concerns about any of the settings you know about? These might be general or specific and in relation to safeguarding, extremism, physical punishment or suitability of premises. Please provide as much detail as possible.

There were 2410 responses to this question.

	Total	Percent
Yes	109	4.5%
No	2222	92.2%
Don't know	79	3.3%

The majority of respondents stated that they had no concerns about the out-of-school settings they know about, while a small minority of respondents stated that they did have concerns or did not know. Of those respondents who raised concerns, most expressed them in broad terms about out-of-school settings as a whole or the potential for there to be concerns about activities taking place in such settings; while others took the opportunity to express concerns about the impact of the proposed policy to regulate out-of-school settings. A few respondents gave details of specific concerns in settings relating to safeguarding including unsuitable staff, inappropriate forms of punishment and discipline, unsafe premises, extremism and the inadequate preparation of children for life in modern Britain. Where appropriate, specific concerns have been investigated further.

Question 14

We are keen to understand more about what advice and assistance is available to out-of-school settings and what additional support would be welcome. Please provide as much detail as possible.

Many respondents indicated that advice is available from their local authority or through a relevant umbrella group, including advice from faith organisations. On additional support that would be welcomed, many respondents requested funding to help finance resources, equipment and venue hire. Some respondents stated that there is no free advice or safeguarding training available and that they would welcome these being provided through local authorities. There were also requests for best practice guidance to be made available to allow settings to support each other in driving improvement. Some respondents requested additional support in areas such as behaviour management and understanding the English education system.

Registration of settings

Question 15

Do you agree that intensive education is where a child attends a setting for more than between 6 to 8 hours per week? Please provide details of whether further reference should be made to the frequency of that attendance (e.g. number of times during a week or number of weeks over a year etc.), including views on how to ensure settings do not simply amend their provision to evade regulation.

There were 2490 responses to this question.

	Total	Percent
Yes	359	14.4%
No	1820	73.1%
Don't know	311	12.5%

Nearly three quarters of respondents disagreed with the statement that intensive education is where a child attends a setting for more than between 6 to 8 hours per week. The remaining quarter of responses were divided almost evenly between those who agreed with the statement and those who did not know.

Many respondents did not feel that intensive education should be solely defined by the number of hours. Respondents indicated that, in addition to the number of hours, the activity on offer should also be considered. They suggested that certain activities in settings captured by the proposed threshold would not constitute 'intensive education'. Respondents also suggested exempting seasonal activities such as holiday clubs, as these would only meet the threshold for a very small proportion of the year. While several respondents argued that the proposed threshold is too low, there were also suggestions, predominantly from local authorities, that there should not be a minimum threshold and that all out-of-school settings should be regulated regardless of the hours of operation.

Question 16

Do you agree that private providers of alternative provision catering exclusively for children who have been referred to them by local authorities and/or schools should be exempt from the requirement to register? We welcome views on whether it would be appropriate to exclude any other providers with reference to any of their defining characteristic, for example their educational offer, physical premises, affiliations with professional bodies, etc.

There were 1994 responses to this question

	Total	Percent
Yes	669	33.6%
No	734	36.8%
Don't know	591	29.6%

Responses to this question had a roughly even distribution across the three possible answers. One third of respondents agreed that private providers of alternative provision catering exclusively for children referred by local authorities and/or schools should be exempt from the requirement to register, while slightly more than a third disagreed and slightly less than a third did not know.

Respondents agreeing with the question often commented that providers should be trusted, and that existing legislation is sufficient to ensure that they are providing an adequate learning environment for the children referred to them.

Respondents that disagreed with the question often said that given these providers are responsible for potentially vulnerable children, this should increase – rather than decrease – the need for such settings to be registered, with some suggesting that the settings should be regulated and inspected in the same way as mainstream schools.

Question 17

Do you agree that settings meeting the proposed threshold should be required to register with their local authority?

There were 2532 responses to this question

	Total	Percent
Yes	365	14.4%
No	1859	73.4%
Don't know	308	12.2%

Almost three quarters of respondents to this question disagreed with the statement that settings meeting the proposed threshold should be required to register with their local authority. The remaining quarter of responses were divided almost evenly between those that agreed with the statement and those that did not know.

Many respondents who agreed with the question suggested that settings meeting the proposed threshold should be required to register in order to improve knowledge of safeguarding practices and ensure the safety of children attending these settings. Some

added that registered settings that do not meet proposed standards, or which fail to register, should be sanctioned or closed down. While a number of respondents agreed in principle that settings meeting a set threshold should be required to register, they indicated that the current proposed threshold of between 6 to 8 hours should be raised. Others said that the registration process should avoid imposing financial burdens on smaller settings.

Of the respondents disagreeing with the question, many said that registration of out-of-school settings with the local authority would be equivalent to state regulation of religion. They raised concerns over the impact of regulation on some groups' freedoms to teach particular values or beliefs.

Question 18

Do you agree that, when registering, settings should provide details about the proprietor, location(s), education offer and numbers of children? Please provide details of any further information that settings should provide

There were 2158 responses to this question

	Total	Percent
Yes	652	30.2%
No	1247	57.8%
Don't know	259	12.0%

Almost a third of respondents to this question agreed that settings should provide details about the proprietor, location(s), education offer and numbers of children when registering with their local authority. Over half of respondents disagreed with this statement and the remainder did not know.

Many respondents that agreed said that the safety of children should be a top priority for all out-of-school providers and that they should therefore be required to provide this information. The majority of these respondents also listed additional information that should be provided including further information on safeguarding practices, including information on the safeguarding policy of the setting as well as a record of the DBS checks on staff.

Of those respondents that disagreed, some felt that providing this information would be too burdensome for providers, particularly smaller providers who may not have the infrastructure to support this administrative task. Respondents also raised concerns about how settings would be able to provide accurate information, noting that many out-

of-school settings do not necessarily have regular attendance figures as attendance fluctuates from week to week and throughout the year.

Inspection of settings

Question 19

Do you agree that settings required to register should be eligible for investigation and possible intervention where concerns arise? Please provide comments

There were 2248 responses to this question

	Total	Percent
Yes	711	31.6%
No	1223	54.4%
Don't know	314	14.0%

Almost a third of respondents to this question agreed that settings required to register should be eligible for investigation and possible intervention where concerns arise. Over half of respondents disagreed with this statement and the remainder did not know.

Many respondents who agreed felt that this would be important to ensure that children are effectively safeguarded.

Respondents who disagreed with this question felt that existing laws are already in place to tackle issues raised in the call for evidence and therefore additional powers are not needed. There were also calls for further clarification around what would trigger an investigation.

Question 20

Do you agree that Ofsted should be able to investigate concerns that arise in out-of-school settings that meet the proposed threshold for registration? Please provide comments

There were 2526 responses to this question

	Total	Percent
Yes	375	14.8%
No	1884	74.6%
Don't know	267	10.6%

Three quarters of respondents to this question disagreed that Ofsted should be able to investigate concerns that arise in out-of-school settings that meet the proposed threshold for registration. 15% of respondents agreed with this statement, and just over 10% of respondents did not know.

Some respondents who agreed with this question stated that Ofsted would be the appropriate organisation as they would increase standards in these settings. While some agreed that Ofsted could build on its existing experience in tackling unregistered independent schools, many noted that inspectors would require specialist training, specifically in faith-related issues, when taking on this role.

Respondents who disagreed with this question expressed concerns about Ofsted's capacity, expertise and neutrality in dealing with such settings. A number of respondents stated that if inspection is necessary, it should be carried out by organisations other than Ofsted such as local authorities, the police or social services.

Question 21

What impact do you think the proposed system for registration and inspection will have on out-of-school settings? Please provide as much detail as possible.

Many respondents felt that the impact of the proposed system would limit religious freedoms and have a disproportionately negative effect on faith groups. There were also concerns that some smaller settings might be forced to close because the changes would create additional burdens. There were concerns that the proposals might discourage volunteers and in turn further reduce provision. In contrast, some respondents felt that regulation would provide positive benefits including improving standards and general safeguarding within out-of-school settings.

Prohibited activities in settings

Question 22

Question 22 was comprised of five sub-questions that asked respondents what the focus of prohibited activities should be.

- a. Do you agree that the prohibited activities should focus on the failure of out-of-school settings to adequately ensure the safety of the children in their care, as set out in paragraph 3.19?**

There were 2040 responses to this question

	Total	Percent
Yes	1030	50.5%
No	643	31.5%
Don't know	367	18.0%

Just over half of respondents to this question agreed that prohibited activities should focus on the failure of out-of-school settings to ensure the safety of the children in their care is adequate. Just under a third disagreed, and the rest did not know.

Respondents who agreed with the question stated that because the safety of children should be the top priority for all out-of-school providers it follows that settings should be open to inspection. Many respondents noted the importance of maintaining an up-to-date record of the young people in their care together with valid emergency contact details for these individuals and accurate attendance records.

Respondents who disagreed with the question said that children's safety in out-of-school settings is already covered by existing health and safety legislation, with accompanying powers already in place for local authorities and other agencies to place sanctions on inadequate provision. Some respondents commented that children's safety in out-of-school settings should be treated separately from concerns about radicalisation and undesirable teaching.

b. Do you agree that the prohibited activities should focus on the appointment of unsuitable staff, as set out in paragraph 3.19²?

There were 2068 responses to this question

	Total	Percent
Yes	944	45.6%
No	771	37.3%
Don't know	353	17.1%

Nearly half of respondents agreed that the prohibited activities should focus on the appointment of unsuitable staff. Over a third disagreed with this statement, and the rest did not know.

Half of the respondents who agreed with the question added that DBS checks and vetting should be carried out on all staff and volunteers working and seeking to work in out-of-school settings.

All of the respondents who disagreed with the question stated that existing laws are sufficient to prohibit the appointment of unsuitable staff in out-of-school settings. Some respondents commented that a clearer definition of unsuitable staff is required for it to be included under prohibited activities.

c. Do you agree that the prohibited activities should focus on accommodating children in unsafe premises, as set out in paragraph 3.19?

There were 1921 responses to this question

	Total	Percent
Yes	1119	58.2%
No	524	27.3%
Don't know	278	14.5%

Almost three fifths of respondents agreed that the prohibited activities should focus on

² Paragraph 3.19 set out the areas around which the prohibited activities would be focused. This included the appointment of unsuitable staff, with reference to the definition of 'regulated activity' and it being an offence to knowingly employ someone who has been barred from such activity. Broadly speaking, regulated activity relating to children is considered to be: teaching, training, instruction, care or supervision of children, which carried out by the same person frequently and unsupervised.

accommodating children in unsafe premises. Over a quarter disagreed with this statement, and the rest did not know.

Respondents who agreed with the question stated that safe and secure premises for accommodating children should be a top priority in out-of-school settings and these settings should be treated as rigorously as mainstream educational settings.

While most respondents agreed that unsafe premises should not be permitted to accommodate children, some were concerned about the financial burdens the proposals would place on smaller providers. Respondents who disagreed with the question stated that children’s safety in out-of-school settings is already covered by existing health and safety legislation, with accompanying powers already in place for local authorities and other agencies to place sanctions on inadequate provision.

d. Do you agree that the prohibited activities should focus on undesirable teaching, including teaching which undermines or is incompatible with fundamental British values, or which promotes extremist views, as set out in paragraph 3.19?

There were 2487 responses to this question

	Total	Percent
Yes	518	20.8%
No	1603	64.5%
Don't know	366	14.7%

Just over one fifth of respondents agreed that the prohibited activities should focus on undesirable teaching, including teaching which undermines or is incompatible with fundamental British values, or which promotes extremist views. Slightly under two thirds of respondents disagreed with this statement, and the rest did not know.

Respondents who agreed with the question stated that all providers of out of school education should support, or at least not inhibit, children’s ability to live in modern Britain. Some added that more detailed training and guidelines should be provided to ensure that instruction is provided in line with fundamental British values.

Respondents who disagreed with the question stated that they believed the terms “undesirable teaching”, “fundamental British values” and “extremist views” are too ambiguous. Many expressed concerns that without fixed or specific definitions, the scope of these terms could be used to prohibit teaching of some of the views and beliefs of mainstream religious groups. Some argued that focusing prohibited activities on such subjective terms could lead inspectors to abuse their powers and turn the inspectorate into the state regulator of religious instruction.

e. Do you agree that the prohibited activities should focus on corporal punishment, as set out in paragraph 3.19?

There were 1952 responses to this question

	Total	Percent
Yes	1124	57.6%
No	589	30.2%
Don't know	239	12.2%

Nearly three fifths of respondents agreed that the prohibited activities should focus on corporal punishment. Just under one third disagreed with this statement, and the rest did not know.

Respondents who agreed with the question stated that safeguarding of children against violence is crucial in all settings and should be enforced.

Respondents who disagreed with the question said that children's protection against corporal punishment is already covered by existing legislation, with accompanying powers already in place for local authorities and other agencies to place sanctions where violations occur. Some respondents commented that children's safety in out-of-school settings should be treated separately from concerns about radicalisation and undesirable teaching. Others stated that corporal punishment is not prevalent in out-of-school settings and further safeguarding provisions are therefore unnecessary.

Question 23

Are there additional activities that should be prohibited?

Thirty five respondents recommended additional activities be added to the specified prohibited activities. There was no consensus on the types of activities but suggestions included the failure to adequately ensure the welfare of children; gender discrimination; curtailing freedom of expression; and failure to comply with equalities duties.

Sanctions on settings

Question 24

We welcome views on the proposed sanctions and which body/bodies should have powers to act.

The majority of the 158 respondents who commented on this question stated that they thought sanctions are already adequate within existing law and there is no need for the proposed sanctions. A number of respondents felt that local authorities should be given powers to act. It was also suggested that religious groups could provide their own bodies to be given powers to act on concerns.

Question 25

Are there any particular groups or people for who the impact of these proposals will be significant? If so, how might these proposals be mitigated or amended in your view to better reflect our duty under section 149 of the Equality Act 2010 to have regard to the need to eliminate discrimination, harassment, and victimisation, to advance equality of opportunity, and to foster good relations between different groups?

The majority of the 208 respondents who commented on this question expressed concerns that about the impact of these proposals on faith groups. These concerns often related to the perceived impact of the proposal to prohibit undesirable teaching on religious expression. We will continue to work closely with faith communities and other organisations to understand more clearly the issues that affect different types of out-of-school settings.

Analysis of additional responses

In addition to the consultation forms submitted, we received and recorded over 15,000 free-form written responses by email and post. Almost half of these were identical automatically generated emails received as part of a CitizenGo petition, it was therefore considered unnecessary to read all of the CitizenGo petition emails in full.

Of the remaining free-form paper and email responses, all were read in full and we undertook a detailed analysis on a 10% stratified sample. We used this method to ensure that the proportion of different categories of responses in the sample matched the proportion of different categories of responses received.

The main themes from correspondents were similar to those raised in the online consultation response forms. The primary cause for concern was around the effect that the proposed regulation would have on out-of-school settings being able to exercise religious and other freedoms. In keeping with the themes in the consultation responses, many of the correspondents commented that the proposed policy would result in the state becoming a regulator of religious teaching in these settings and that the enforcement of fundamental British values may inhibit the religious teaching that currently takes place within them. Linked to this, a high number of correspondents commented that the definitions set out in the call for evidence – such as the definitions of fundamental British values, extremism and undesirable teaching – are not sufficiently precise. Many also expressed doubts about the suitability of Ofsted to inspect religious settings against these definitions. A sizeable number of correspondents suggested that there is no evidence of a link between out-of-school settings and the threat of extremism. Concerns were also raised over the financial burden the proposed regulation would impose both on the out-of-school settings within scope and on Ofsted. Many correspondents argued that existing legislation around safeguarding is sufficient to regulate these settings.

Next Steps

The Government remains committed to safeguarding all children and protecting them from the risk of harm, however they are educated, including children in out-of-school settings. It is clear from the responses and representations received to our call for evidence that there was broad support for this overarching aim, and the objective of enabling action to be taken in out-of-school settings where there are concerns. It is equally clear that we must ensure that we do not undermine the valuable contribution that many settings are making, by placing unnecessary regulatory burdens on them, or limiting parents' choices on how to educate their children.

We launched our call for evidence following a commitment in the government's Counter-Extremism strategy to enable intervention in out of school settings. We have always been clear, however, that our aim is to protect children from all types of harm, and not just from the harm caused by extremism. At the same time, the threat from extremism has not abated: on the contrary, recent high profile cases have shown the significant harm that extremist ideologies can pose to our society and shared values. The Government has demonstrated its commitment to tackling extremism with the recent appointment of the Lead Commissioner for Countering Extremism, Sara Khan, who will play a key role in the ongoing fight to counter extremism in the UK. It is now more important than ever that we take action, and that government and communities work together to tackle this threat. This includes ensuring our children are educated in a safe environment, free from extremist and radicalising influences, and exposure to other harmful practices.

There are many legal powers already in place to protect children in out-of-school settings; and many out-of-school settings do a great job in providing enriching activities in many subjects – including arts, language, music, sport and religion – and do so in a safe environment. However, we want to ensure that this is true for all out-of-school settings. We want those settings already doing a good job to be able to continue doing just that, providing our children and young people with valuable learning opportunities, whilst addressing concerns about settings which are not appropriately safeguarding and promoting the welfare of children. We have listened to, and carefully considered, the wide ranging views and representations made in response to our call for evidence, to determine the best way to achieve this.

We want to ensure any future system of regulation that we may introduce appropriately targets the small minority of settings which may be exposing children to harmful practices, without causing undue burdens on the sector as a whole. We believe it is equally important that we ensure any future system carefully takes into account the differences within such a diverse sector, where settings vary considerably in terms of their characteristics, and types of activity and education they offer. This system should ultimately build on and complement existing legal powers to ensure that any new regulation adds the most value, making the current safeguarding regime more effective.

For this reason, we have decided not to pursue the model proposed in our call for evidence but instead intend to develop further the evidence base for a national approach, including future legislation where gaps in existing powers are identified.

The Government has already announced as part of its Integrated Communities Strategy Green Paper (published 14 March 2018), its intention to boost existing 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 multi-agency working, and share best practice on different ways of working together to intervene in settings of concern**. Our intention is to make up to £3 million of funding available to selected areas for this work, so that we may support a number of local authorities to test innovative models of multi-agency working. This will enable us to share and spread best practice across the country on how existing legal powers (including, for example, health and safety, premises regulations, and general safeguarding provisions) can be best utilised alongside community engagement and outreach to intervene where there are concerns about the welfare of children.

Through this continued work with communities we will not only seek to **develop the evidence base for designing and rolling out a national approach, but also use the evidence generated to identify any gaps in existing powers, which we would seek to address through future legislation**, when opportunity allows.

Alongside this, we will **consult on a voluntary code of practice, later this year, to set out clear standards for providers**, explaining what they need to do in order to run a safe setting. This code of practice would cover what providers should be doing to meet their existing legal obligations that would be applicable generally, as well as setting out best practice on issues such as child welfare, health and safety, governance, suitability of staff, teaching and financial management.

We will also **work with local authorities to provide more guidance for parents to support them in making informed choices** when considering out-of-school settings for their children; and the steps they can take where they might have concerns, so that they can be confident their child is in a safe learning environment.

Taken together, these measures will have a positive and rapid impact on identifying and tackling those small number of settings of concern, whilst also generating best practice across the sector nationally. They will give parents choosing out-of-school settings increased confidence that their children will be taught in a safe environment. Our continued engagement with communities, particularly that with local authorities seeking to demonstrate the benefits of multi-agency working, will also ensure that we ensure any future system of regulation is effective – complementing existing powers, to add the most value to current safeguards, whilst carefully accounting for the differences across this broad and diverse sector.



Department
for Education

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