



Department
for Education

Strengthening protections in unregistered alternative provision

Government consultation

Launch date 9 May 2024

Respond by 5 July 2024

Contents

Introduction	4
Who is this consultation for?	5
Issue date	5
Enquiries	6
Additional copies	6
The response	6
Respond online	6
Deadline	7
About this consultation	8
What is unregistered alternative provision?	8
What do we know about the quality of unregistered alternative provision?	8
Our consultation proposals are intended to improve practice and raise standards in unregistered alternative provision	9
What are the challenges that need to be addressed?	10
The scope of this consultation	13
About you	16
Chapter 1: The use of unregistered alternative provision as a time-limited intervention to complement education being provided in school	20
Background	20
Proposal and rationale	21
Technical details	22
Consultation questions	23
Chapter 2: New regulatory arrangements for unregistered alternative providers offering time-limited interventions to complement the education being provided in school	25
Background	25
Proposal and rationale	26
Technical details	28
Consultation questions	29
Chapter 3: Greater flexibility for local authorities to enable EOTAS special educational provision to be delivered in a single unregistered setting	31
Background	31

Proposal and rationale	32
Technical detail	33
Consultation questions	33
Chapter 4: The national regulation of unregistered alternative providers delivering special educational provision to children who are not on school admission registers	35
Background	35
Proposal and rationale	35
Technical detail	36
Consultation questions	37
Chapter 5: The new national standards for unregistered alternative provision	38
Background	38
Proposal and rationale	39
Proposed National Standards	40
Technical detail	42
Consultation questions	43
Additional questions	46

Introduction

The Government's [2022 Special Educational Needs and Disabilities \(SEND\) Review Green Paper](#), delivered through its [SEND and Alternative Provision Improvement Plan](#), committed to strengthening the protections for, and improving the outcomes of, children in unregistered alternative provision. This included a [Call for Evidence](#) to better understand the use of unregistered alternative provision by local authorities and schools.

Responses to the Call for Evidence have helped to shape this consultation. We are now seeking views on proposals to limit the amount of time that children can spend in unregistered settings. These proposals are aligned with the Improvement Plan principle that alternative provision should be used as an intervention, not a destination, to complement the education provided in mainstream and special schools. We also propose that all unregistered alternative providers would be subject to new, proportionate quality assurance frameworks, underpinned by national standards. We believe that, if implemented, this approach would help to protect those that this diverse sector supports and educates.

This consultation is not designed to cover all unregistered provision for children and young people, but to focus on the part of the sector where the need for quality assurance is most pronounced: unregistered alternative providers that offer education to children of compulsory school age¹.

¹ The Department for Education's [statutory guidance](#) defines alternative provision as education arranged by local authorities for pupils of compulsory school age who, because of exclusion, illness or other reasons, would not otherwise receive suitable education; education arranged by schools for pupils on a fixed period exclusion (known as suspension); and pupils being directed by schools to off-site provision to improve their behaviour.

Who is this consultation for?

People who work in schools (including mainstream, independent, special and alternative provision schools) who arrange or make decisions about unregistered alternative provision:

- Headteachers or those in other leadership positions (such as Designated Safeguarding Leads)
- Teachers
- School governors
- Support staff (including teaching assistants, pastoral care and family liaison officers, SENCOs)

People who work in local authorities who arrange or make decisions about unregistered alternative provision, including:

- Directors of Children's Services
- Relevant local authority leads (including attendance, inclusion, admissions, children missing education, SEND)
- Virtual School Teams
- Social workers and early help workers

People who operate or work in unregistered alternative provision, including:

- Those in leadership roles in unregistered alternative provision settings
- Those employed by unregistered alternative provision settings
- Organised bodies representing or collectively overseeing individual settings or groups of settings delivering unregistered alternative provision

Other professional parties with experience of supporting commissioners or working with unregistered alternative provision providers, including:

- Sector bodies
- Union representatives
- Think tanks

Children who have been placed in unregistered alternative provision (and their parents/carers), or groups representing children (and parents/carers of children) who have been placed in unregistered alternative provision.

Issue date

The consultation was issued on 9 May 2024.

Enquiries

If your enquiry is related to the policy content of the consultation you can contact the team at UnregisteredAP.CONULTATION@education.gov.uk.

If your enquiry is related to the DfE e-consultation website or the consultation process in general, you can contact the DfE Ministerial and Public Communications Division by email: Consultations.Coordinator@education.gov.uk, or by telephone: 0370 000 2288, or via the [DfE Contact us page](#).

Additional copies

Additional copies are available electronically and can be downloaded from [GOV.UK DfE consultations](#).

The response

The results of the consultation, and the Department's response will be [published on GOV.UK](#) in Autumn 2024.

Respond online

To help us analyse the responses, if possible please respond via the online system. Visit [Unregistered Alternative Provision - Department for Education - Citizen Space](#) to submit your response.

Other ways to respond

If for exceptional reasons, you are unable to use the online system, for example because you use specialist accessibility software that is not compatible with the system, you may request the form in an alternative format.

By email

- UnregisteredAP.Consultation@education.gov.uk

By post

Unregistered Alternative Provision Consultation
SEND and Alternative Provision Directorate
Department for Education
8th Floor
20 Great Smith Street
London
SW1P 3BT

Deadline

The consultation will close on 5 July 2024.

About this consultation

What is unregistered alternative provision?

Local authorities and schools can arrange alternative provision² and special educational provision³ in settings which are not schools or colleges. This is commonly known as unregistered alternative provision because, unlike schools or colleges, this type of provision is not subject to a national registration scheme or inspection framework.

The vast majority of those in unregistered settings have identified special educational needs (SEN). This fluid, diverse sector provides a range of flexible and bespoke full-time and part-time education and support for some of the most vulnerable, disadvantaged and disengaged children in the education system. It comprises of many localised and often small providers, delivering valuable training, vocational education and work experiences, which take place in a variety of settings including work environments or outdoors. The unregistered alternative provision sector also includes tutoring companies and online providers, some of which operate across multiple local authorities.

What do we know about the quality of unregistered alternative provision?

Commissioners value the highly flexible nature of unregistered alternative provision which can be tailored to meet individual needs and re-engage children in education. In the best areas, schools and local authorities commission and use unregistered alternative provision strategically. They demonstrate a detailed understanding of individual needs and make evidence-based referrals to local providers which are well-equipped to meet these needs and support re-engagement with education and regular attendance in school.

In these areas, unregistered alternative provision is an important intervention to supplement in-school education for those who need it the most, offering a wide range of specialised education and support. Bespoke placements with small, flexible unregistered providers can respond to individual needs that cannot be addressed in

² As outlined in the Department for Education's [statutory guidance](#) on alternative provision.

³ Section 61 of the Children and Families Act 2014 says, so far as is relevant here, that a local authority may arrange for any special educational provision that it has decided is necessary for a child for whom it is responsible to be made otherwise than in a school, if it is satisfied that it would be inappropriate for the provision to be made in a school. This is known as "education otherwise than in school" and is often abbreviated to EOTAS.

school, and placements in unregistered settings can sometimes help children to gain valuable qualifications that may not be readily available in their schools.

However, in recent years, the Education Select Committee, Ofsted, the Children's Commissioner and some local authority and school leaders have expressed concerns about the commissioning and oversight of placements in unregistered alternative provision. Responses to the Call for Evidence show that while there is good practice, in many areas the absence of adequate regulation is putting already vulnerable children's education and safety at risk.

Our consultation proposals are intended to improve practice and raise standards in unregistered alternative provision

All placements in unregistered alternative provision should be safe, good quality and meet each child's individual needs. These placements come at significant cost to the high needs budget, and we should be confident that children are achieving good outcomes, and that unregistered settings are providing good value for money.

Respondents to the Call for Evidence told us that it is not always clear how to commission and use unregistered alternative provision. We now want to consult on a range of proportionate proposals to clarify the circumstances in which unregistered alternative provision could be used effectively, to strengthen the national and local oversight of unregistered alternative provision, and to improve protections for the children that this sector supports and educates.

These proposals align with other recent developments in education policy, including the [SEND and Alternative Provision Improvement Plan](#), the [Online Schools Accreditation Scheme](#), updated guidance on [Out of School Settings](#), and Calls for Evidence on [Safeguarding in Schools and Colleges](#), [Children Missing Education](#) and [Elective Home Education](#). When combined, these changes are intended to improve the wellbeing, educational outcomes, safety and visibility of some of the most disadvantaged and vulnerable children in the education system.

What are the challenges that need to be addressed?

Unregistered alternative provision is being over-used to fill gaps in local specialised provision

Local authorities have a duty to ensure that there are sufficient school places to meet needs in their areas, including in alternative provision⁴. We believe that in some areas, due to an absence of specialised support for those with SEND, vulnerable children are being educated exclusively in unregistered alternative provision settings when their needs could be better met in school.

Going forward we believe that those requiring longer-term specialised support, including to address behavioural issues, should, wherever it is considered to be appropriate, receive this in school. The Government has committed to an additional £2.6 billion capital investment in high needs provision between 2022 and 2025. The majority of this funding will be provided to local authorities to support them to deliver new places and improve existing provision in mainstream and specialist settings, including special and alternative provision schools. We estimate that the funding provided to local authorities will help create over 40,000 new specialist SEND and alternative provision places.

On top of this, we have approved 20 new alternative provision free schools, increasing the total number of places created in this sector to 7,000. We are also delivering over 200 new special free schools and creating 21,000 places through the special free schools programme.

When combined with the investment in local authorities, this means, in total, the Government will have created over 60,000 new specialist school places since 2010. This is helping to increase capacity, following a decrease in pupils in special schools from 1997 to 2010.

The SEND and Alternative Provision Improvement Plan also includes a range of reforms to enhance the delivery of services to vulnerable children, including new SEND and alternative provision partnerships in every area, to strengthen the local planning of specialised support. Improvement Plan commitments to make mainstream schools more inclusive, with a greater focus on early intervention. As needs will be identified and supported early, this should allow schools to support those at risk of exclusion and reduce the number of expensive long-term placements, leading to improvements in children's wellbeing and outcomes. These reforms, and the additional capital investment

⁴ Local authorities have a duty under section 14 of the Education Act 1996 to ensure that sufficient schools are available for their area for providing primary and secondary education.

in high-needs places, will help to end the practice of unregistered alternative provision being used as a stopgap when children should instead be educated in school.

Vulnerable children are being placed in unregistered alternative provision settings indefinitely, with little or no oversight from local authorities or schools

When delivered as part of strategically designed local SEND and alternative provision systems, high-quality unregistered alternative provision can act as a hook back into regular attendance in school. However, our Call for Evidence highlighted that some local authorities are placing children who should be in school into unregistered settings, some of which are unsafe and low-quality, on an ongoing basis with no real plans for reintegration into school.

In chapters 1 and 2 of this consultation, we propose new measures which we believe prioritise the benefits of good-quality, time-limited placements in unregistered alternative provision, to supplement children's education while they attend school regularly. If implemented, this would mean that:

- unregistered alternative provision would be used primarily as a time-limited intervention to complement in-school education;
- local authorities and schools would only be permitted to commission time-limited placements in unregistered settings that meet new national standards and which are included in local approved lists of alternative provision; and
- local authorities would be required to quality assure unregistered alternative provision operating in their areas against the national standards.

In certain circumstances local authorities can arrange for any special educational provision necessary to meet a child's SEN to be provided otherwise than in school (known as "education otherwise than in school," or EOTAS). This special educational provision can be, and often is delivered by unregistered settings. In cases where the EOTAS includes a plan for these children to return to school, special educational provision delivered by unregistered settings can help with their reintegration.

Many of the children of compulsory school age receiving such provision do not appear on school admission registers. We believe that the proposals outlined in chapters 3 and 4 would, if implemented, further strengthen the protections for these children. In chapter 3, we want to test whether children receiving EOTAS might benefit from receiving all of their provision in a single alternative provision setting if this is considered appropriate by their local authorities, following consultation with their parents. Chapter 4 proposes the introduction of new national regulation and independent inspections of all unregistered settings providing special educational provision under EOTAS arrangements for children who are not on school admission registers.

We do not propose to change the statutory test to be applied by local authorities in deciding whether it is inappropriate for a child's special educational provision to be made in a school. That is out of scope of this consultation.

In areas without effective local quality assurance frameworks, there is a risk of harm to children in unregistered settings

All state-funded schools, including special and alternative provision schools, are inspected by Ofsted against the standards specified in its school inspection handbook⁵. Independent schools are also periodically inspected and must adhere to the Independent School Standards⁶. There are, however, no equivalent national standards for unregistered alternative provision. While quality assurance frameworks are in place in many local authorities, we are concerned that in those without them, there are clear safeguarding risks for those placed in unregistered settings.

The absence of national standards makes it difficult for school and local authority commissioners to assess the quality of unregistered settings when making important decisions on where to place children. Unregistered alternative providers have told us that a national standards framework would help them to demonstrate their effectiveness in meeting children's needs. Consistent, local authority-led oversight of the quality and safety of local unregistered settings against national standards would also remove the need for school commissioners to make duplicate checks on quality and safety, allowing them to focus more clearly on ensuring that placements in unregistered settings are meeting children's individual needs.

In chapter 5, we propose that all unregistered providers, including those delivering EOTAS, should adhere to new high-level national standards. Local authorities and schools would only be able to commission places in settings that comply with these standards. We believe that this would improve consistency and transparency for commissioners and providers and reduce the risk of harm to those placed in unregistered settings in areas where effective quality assurance frameworks do not currently exist.

We want to create standards that strike the correct balance. They must ensure that time spent in unregistered alternative provision is always in children's best interests, but they must also be proportionate so that all high-quality unregistered providers can meet them, irrespective of their offer or size. The proposed standards include fundamental child safeguarding requirements expected of any organisation delivering services to children and supervising them on their premises. We have also included quality

⁵ Measures to inspect the quality of alternative provision are outlined in paragraphs 292-297 of [Ofsted's Inspection Handbook for Schools](#).

⁶ [The Independent School Standards :: Independent Schools Inspectorate \(isi.net\)](#)

standards to ensure that the children are receiving a good education that is appropriate to their individual needs.

Implementing our proposals would take time. We would test them extensively, including through the use of a voluntary quality assurance framework before any changes become law

As outlined in each chapter, if we were to implement these proposals, this would require new and amended legislation and guidance, which would take time to produce and embed. We would want to continue to engage fully with the sector to ensure effective implementation whilst minimising any potential new burdens for commissioners and providers.

Alongside the written consultation, we would like to test our proposals in a series of events with existing providers and commissioners; those that have previously delivered or commissioned unregistered alternative provision; and areas which have decided not to use unregistered alternative provision. We would also like to hear from any local authorities that are hosting their own events with unregistered alternative providers over the consultation period and would be happy to discuss our proposals during these events.

If you would like to be involved in these events, please contact us at UnregisteredAP.Consultation@education.gov.uk by Friday 30 May. When doing this, please inform us of your role, and let us know about any specific issues or proposals that you would like to discuss.

Shaped by the responses to the consultation, our aim would be to publish voluntary non-statutory national standards and accompanying guidance which we would encourage local areas to implement and test before we consider introducing legislation to make the standards mandatory.

The scope of this consultation

Which placements, provision and settings does this consultation cover?

The routes into unregistered alternative provision for children of compulsory school age are varied and include:

- where local authorities are acting to meet their duty⁷ to provide suitable education for children who would not otherwise receive it because of permanent exclusion, illness or any other reason. This would include where local authorities have arranged alternative provision delivered by their own employees, for example one-to-one tuition;
- where local authorities have arranged for all of the special educational provision specified in section F of a child's education, health and care (EHC) plan to be delivered by an unregistered alternative provider or more than one provider (Education Otherwise Than in a School or EOTAS)⁸;
- where local authorities have arranged for part of the special educational provision specified in section F of a child's EHC plan to be delivered by an unregistered alternative provider or providers (Education Otherwise Than in a School or EOTAS)⁹, alongside a placement in a school named in Section I of a child's EHC plan;
- where schools have directed pupils off-site (and not to other schools) to improve their behaviour¹⁰, or have arranged alternative provision outside of schools for pupils who have been suspended¹¹; and
- education, in line with the above, arranged by English schools and local authorities in settings located outside of England.

We will be grateful for responses about any the above types of education from:

- parents and carers, and groups representing them;
- children or adults working with or representing children placed in unregistered alternative provision;
- SEND organisations;
- representatives of schools, including mainstream, special, independent or alternative provision schools;
- representatives of local authorities;
- individuals or organisations owning or operating unregistered alternative provision, or their representatives;
- individuals or organisations who have previously owned or operated unregistered alternative provision; and
- any others with an interest in unregistered alternative provision.

⁷ Section 19 of the Education Act 1996.

⁸ Under section 61 of the Children and Families Act 2014.

⁹ Under section 61 of the Children and Families Act 2014.

¹⁰ Section 29A of the Education Act 2002.

¹¹ Section 100 of the Education and Inspections Act 2006.

Which provision and settings are not covered by this consultation?

The consultation is not intended to cover how schools or local authorities use independent schools to provide alternative provision. It also does not cover:

- education and activities arranged by parents or carers either in school hours or out of school hours;
- extra-curricular placements or activities arranged by schools which take place during the school day, like offsite swimming lessons or music classes;
- providers of education and training exclusively for children and young people who are not of compulsory school age;
- Further Education Colleges delivering alternative provision for children of compulsory school age. These institutions are regulated and inspected by Ofsted, so are not in scope of the proposals in this consultation¹², and
- provision from other sectors which are already regulated (for example, occupational therapy, speech and language therapy, educational psychology and other regulated therapies).

¹² Ofsted inspects the quality of education for full-time 14–16-year-olds who are only registered with a Further Education College. Where a child of compulsory school age is registered with a school and is also receiving education or training in a Further Education College, that education or training is only considered as part of the inspection of the school at which they are on the attendance register (and is not inspected separately).

About you

1. What is your name?

2. Do you give consent for the Department for Education to contact you via email about your response?

Yes

No

(If yes, please provide your email address below)

3. Would you like us to keep your response confidential?

Please avoid including personal or identifiable information, such as children's names, when responding to the questions in this consultation.

Information provided in response to consultation, including personal information, may be subject to publication or disclosure under the Freedom of Information Act 2000, the Data Protection Act 2018 or the Environmental Information Regulations 2004.

If you want all, or any part, of a response to be treated as confidential, please explain why you consider it to be confidential.

If a request for disclosure of the information you have provided is received, your explanation about why you consider it to be confidential will be considered, but no assurance can be given that confidentiality can be maintained. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

The [Department for Education will process your personal data](#) (name and address and any other identifying material) in accordance with the UK General Data Protection Regulation (GDPR) and Data Protection Act 2018, and in the majority of circumstances, this will mean that your personal data will not be disclosed to third parties.

Yes

No

(If yes, please provide a reason)

4. In what capacity are you responding to this consultation?

(Please select all that apply)

- As a representative of a school / academy:
(Including mainstream, special, independent or AP schools)
 - A Headteacher or other leadership position
 - A teacher
 - A member of school support staff
 - A school governor
 - A Special Educational Needs Co-ordinator
 - Other (Please specify below)

- As a representative of a local authority:
 - A Director of Children's Services
 - A department lead or officer in a team that commissions unregistered alternative provision (such as SEND or in year admissions team)
 - A member of the Virtual Schools Team
 - A social worker or early help worker
 - Other (please specify below)

- As someone who delivers unregistered alternative provision (including tuition providers, online learning or non-school or other off-site settings):
 - In a leadership role in an unregistered alternative provision setting
 - An employee of an unregistered alternative provision setting
 - An organised body which represents or collectively oversees individual settings or groups of settings which provide unregistered alternative provision
 - Other (please specify below)

- Other professional party with experience of supporting commissioners or working with unregistered alternative provision providers (please specify below)
 - As a representative of a parent or a child who is or has received unregistered alternative provision.
 - A parent or carer of a child who is or has received education at an unregistered alternative provision setting
 - Another individual or group representing parents or children placed in unregistered alternative provision.
 - Other (please specify below)

5. What is the name of your organisation/school/representative body?

6. In which local authority area is your organisation/school/representative body located? (Please specify below)

7. If you are responding on behalf of a school or college, please specify the type of school: (Please select all that apply)

- | | |
|---|---|
| <input type="checkbox"/> Mainstream school | <input type="checkbox"/> Primary |
| <input type="checkbox"/> Alternative provision school | <input type="checkbox"/> Secondary |
| <input type="checkbox"/> Special school | <input type="checkbox"/> All through school |
| <input type="checkbox"/> Independent school that provides alternative provision | |
| <input type="checkbox"/> Independent special school | |
| <input type="checkbox"/> Further education college | |
| <input type="checkbox"/> Other | |

(If Other, please specify below)

8. If applicable, please also provide us with your school's Unique Reference Number.

(Please specify below)

- Prefer not to say
 Not applicable

9. If you are responding on behalf of an unregistered alternative provider, how many children does your organisation currently support?

- 1 child
 2-5 children
 6-10 children
 11-15 children
 16-25 children
 26-50 children
 Over 50 children

10. If you are responding on behalf of a local authority, is unregistered alternative provision currently delivering education to children in your area?

- Yes

- No
- I don't know

11. If you answered Yes to question 10:

a) Approximately how many unregistered alternative providers are delivering education to children in your area?

(Please specify)

b) Does your local authority currently compile and/or publish a list of approved unregistered alternative provision?

- Yes, we compile and publish a list
- Yes, we compile a list but we don't publish it
- No, we don't compile or publish a list
- I don't know

Chapter 1: The use of unregistered alternative provision as a time-limited intervention to complement education being provided in school

Background

The Government believes that, wherever possible, children should be in school, full-time. For most children of compulsory school age, full-time education takes place in mainstream primary and secondary schools, but for those who may require specialised support to meet their needs, education can be delivered through part-time and full-time placements in alternative provision and special schools.

A small number of children may sometimes need some or all of their education to be met outside of school settings, with bespoke types of education or support which may not be available in mainstream, alternative provision or special schools. In many areas, this is being offered in short-term or part-time placements in unregistered alternative provision, in line with the Government's vision of alternative provision being an intervention, not a destination¹³. When delivered effectively, these time-limited interventions can improve behaviour and engagement in education, prepare children to regularly attend mainstream education, reintegrate disengaged pupils and in some cases offer qualifications that may not be available in schools.

However, we are concerned that some local authorities and schools are placing children into unregistered alternative provision on a full-time basis, either in one placement or in multiple placements, when their needs could and should be met in school. Call for Evidence responses also identified cases where local authorities are placing children full-time in unregistered alternative provision while remaining on school admission registers, even when there may be no intention for the children to attend the schools at which they are registered.

In some areas, children are being placed exclusively in unregistered alternative provision on reduced-hour timetables when they should be receiving full-time education. The reduced timetables mean that these settings, which might otherwise meet the definition of independent schools and thus be required to register as independent schools, are able to avoid this requirement, and therefore do not have to comply with the Independent School Standards¹⁴. This is leading to those being placed in these

¹³ As outlined in the [SEND and Alternative Provision Improvement Plan](#).

¹⁴ The Education Act 1996 together with the Education and Skills Act 2008 requires any non-maintained school providing full-time education to five or more compulsory school aged pupils, or one or more compulsory school aged pupil with an EHC plan or who is looked after by a local authority, to register as

unregulated settings receiving a limited education compared with their peers in schools, instead of the enhanced education and support they require.

Proposal and rationale

We propose that placements for children of compulsory school age in unregistered alternative provision should be time-limited. Local commissioners should only be able to place children in unregistered settings for short, intensive periods of support before they return to full-time education in school; or in longer-term part-time interventions while attending school for the majority of their time (with the exception of those requiring EOTAS, as explained in subsequent chapters).

These time-limited placements can either be:

- short-term, for 12 weeks or less, and for up to five days a week, with the pupils returning to their schools at the end of that period; or
- longer-term part-time, for up to two days, or four sessions, per week¹⁵, with the pupils spending the rest of their time attending school. Multiple longer-term placements with different providers may be used but the combined total must not exceed two days or four sessions per week.

All children accessing these time-limited placements would remain on the admission register of their schools throughout. In line with existing requirements, schools, local authorities and providers would collaborate to ensure that attendance during these time-limited placements is closely monitored¹⁶. We would also expect there to be plans for successful reintegration into full-time school when each placement has concluded.

This approach clarifies that the purpose of unregistered alternative provision is as an intervention and not a destination, while allowing flexibility for commissioners to determine the best types of bespoke support for each child. This should result in high quality provision, commissioned to best meet children's needs, and which provides good value for money.

When commissioning additional support, schools and local authorities should consider all available options, including whether the provision can be delivered directly by

an independent school. The Department has published [guidance on the regulation of independent schools](#).

¹⁵ A school day is divided into two sessions, a morning session and an afternoon session, which are separated by a break in the middle of the day.

¹⁶ In line with the DfE statutory guidance [Working together to improve school attendance](#), schools should ensure that they have arrangements in place for providers of educational activity to notify them of any pupil absences.

schools through their own staff. The Call for Evidence highlighted good practice where alternative provision and hospital schools were providing one-to-one tuition for children experiencing social, emotional or mental health issues that affected attendance. This often took place initially at home, enabling the children to remain connected with their schools, and more able to reintegrate effectively into mainstream education when the placements concluded. We would like to encourage more local areas to consider these types of arrangements when developing their SEND and alternative provision Local Area Inclusion Plans.

The only exception to unregistered alternative provision being used as a time-limited intervention would be for a small number of cases where it has been determined that it would be inappropriate for children with SEN to receive their special educational provision at a school¹⁷. In some cases, a longer period of receiving this provision in unregistered settings may be required. We want to ensure that unregistered alternative providers can continue to be able to provide the best possible education and support for this very vulnerable cohort, and we have outlined our proposals for EOTAS placements, including those not remaining on their schools' admission registers, in chapters 3 and 4.

Technical details

To achieve this proposal, we would amend the commissioning powers and duties for schools and local authorities.

Schools

Section 29A of the Education Act 2002 gives the governing body of a maintained school the power to direct pupils off-site for the purpose of receiving educational provision which is intended to improve the behaviour of the pupil.

Procedural safeguards for when a governing body uses this power are set out in the Education (Educational Provision for Improving Behaviour) Regulations 2010.

Section 29(3) of the Education Act 2002 gives the governing body of a maintained school the power to direct pupils off-site for the purpose of receiving any instructions or training included in the secular curriculum of the school.

Section 100 of the Education and Inspections Act 2006 states that governing bodies of maintained schools and proprietors of academy trusts are under a duty to arrange for

¹⁷ As outlined in footnote 2, this is known as "Education Otherwise Than at School" which is often abbreviated to EOTAS.

the provision of suitable full-time education for pupils who have been excluded from school for a fixed period of time (i.e. a suspension).

We propose making amendments to the above legislation (as is deemed necessary) and further changes to the legislative framework and statutory guidance (as necessary) to stipulate that unregistered alternative provision can only be used in these circumstances on a part-time or time-limited basis for children of compulsory school age.

Local authorities

Section 19 of the Education Act 1996 states that local authorities are responsible for arranging suitable full-time education for permanently excluded children, and for other children who – because of illness or other reasons – would not receive suitable education without such provision. This applies to all children of compulsory school age resident in the local authority area who are not receiving a suitable education. This could apply where the child is on a school admission register (regardless of the type of school) but is not attending school.

We propose making an amendment which stipulates that local authorities can only use schools (including alternative provision or special schools), accredited online education providers, or provision for 14–16-year-olds in Further Education colleges when fulfilling their section 19 duties for children not on a school admission register. In line with the Improvement Plan principle that alternative provision should be an intervention and not a destination, this amendment would mean that local authorities would not be able to place children directly into unregistered settings unless they are already on school admission registers. Where a local authority is required to find suitable education for a child on a school admission register, for example children with medical needs, then local authorities can use time-limited placements in unregistered alternative provision or consider alternative provision provided by a school.

Consultation questions

These questions are about our proposals for placements in unregistered alternative provision to be time-limited, and for those in short-term and/or longer-term part-time placements to remain on school admissions registers.

- 1. Do you agree or disagree that short-term time-limited placements in unregistered alternative provision should be 12 weeks or less, and for up to five days a week, with agreed plans for all pupils to return to their schools at the end of that period?**

Yes agree/no disagree/don't know. [Please explain if you disagree].

- 2. Do you agree or disagree that longer-term time-limited placements in unregistered alternative provision (for over 12 weeks) should only be part-time, for up to 2 days or 4 sessions per week, with the pupils spending the rest of their time attending school?**

Yes agree/no disagree/don't know. [Please explain if you disagree].

- 3. Do you agree or disagree that local authorities should no longer be able to place children who are not on a school admission register in unregistered alternative provision in order to meet their section 19 duties?**

Yes agree/no disagree/don't know. [Please explain if you disagree].

Chapter 2: New regulatory arrangements for unregistered alternative providers offering time-limited interventions to complement the education being provided in school

Background

In this chapter, we propose that all unregistered alternative providers offering the time-limited interventions for children of compulsory school age outlined in the previous chapter, will have to be included in local authority quality-assured approved lists to make their provision available to commissioners.

Many areas already have well-established quality assurance frameworks, with local authorities, schools and providers working collaboratively to produce approved lists of local unregistered alternative provision, which are measured against clear, locally defined standards. These frameworks assist local authorities and schools to meet their commissioning responsibilities and enable unregistered alternative providers to demonstrate compliance with the standards before their services can be used.

Alongside this, in the best areas, local authorities provide other types of highly valued support. Many facilitate training for unregistered alternative providers on key areas such as safeguarding, regulation, finance, and continuing professional development. Some also organise networking events for local providers to meet and share ideas to improve collaborative practice.

While there is much good practice nationally, the Call for Evidence highlighted that, in some areas, systemic cohesion like this was lacking, resulting in children being placed in unregistered settings that are not appropriate for their educational needs. In too many cases, routine health and safety or safeguarding checks are not being undertaken including daily checks on pupil attendance. In these areas, insufficient oversight of unregistered alternative provision is putting vulnerable children's education and safety at risk.

Call for Evidence respondents were also concerned about systemic duplication of checks on provision. Providers told us that the individual schools and local authorities were carrying out near-identical checks on their provision. This can place excessive demands on their limited administrative resources, adding little value, and adversely affecting their ability to focus on supporting children. They told us that they would prefer these checks to be administered by the same body.

We also heard about examples of poor-quality oversight of unregistered alternative provision by schools. While schools know their pupils best, we believe that some do not have sufficiently well-developed commissioning expertise to assess whether the

provision is meeting their pupils' needs. In areas with quality assurance arrangements in place, local authorities are using their commissioning experience to support schools. Schools value this, and we want to see this type of practice happening more frequently across the country.

Some local authorities have told us that they would like to introduce quality assurance frameworks for unregistered alternative provision. However, for the frameworks to be effective they need schools to inform them when they are arranging interventions and to provide feedback. While this does happen in some areas, there is currently no requirement for all schools to report in this way.

Proposal and rationale

We want to build on current best practice, where local authorities and schools work together to create local area approved lists of unregistered alternative provision. We believe that local authorities would be best placed to determine whether unregistered settings were meeting the new national standards, and we propose that they would be responsible for the quality assurance of all unregistered alternative provision settings offering time-limited interventions in their areas. This would mean that:

- a) all unregistered alternative provision would be required to meet the national standards (set out in chapter 5) before they can be added to, and then remain on, local authority approved lists of unregistered alternative provision;
- b) all local authorities would compile and publish up to date lists of unregistered alternative providers in their areas which have met the national standards. This would include core information about each provider to inform commissioning choices, such as the types of education and support being delivered, and the types of settings in which the provision is taking place;
- c) local authority and school commissioners would only be able to commission time-limited interventions for pupils on school admission registers in unregistered settings that are included on approved lists;
- d) the local authority oversight would also include any unregistered alternative providers delivering special educational provision for EOTAS where pupils remain on school admission registers. The arrangements for oversight of EOTAS provision for children who are not on school admission registers are outlined in chapters 3 and 4; and
- e) the effectiveness of each local authority's quality assurance of unregistered alternative provision would be evaluated during Ofsted and the Care Quality Commission's local area SEND inspections¹⁸.

¹⁸ [Area SEND inspections: framework and handbook - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/publications/area-send-inspections-framework-and-handbook)

We believe that local authorities are best placed to provide oversight and quality assure the unregistered alternative providers that deliver time-limited interventions in their areas. We wish to explore how the new local area SEND and alternative provision partnerships, currently being piloted through the SEND and alternative provision change programme, might support local authorities to develop and procure quality assured frameworks of unregistered alternative provision.

The local authorities in which the settings are located would be required to undertake the necessary checks on all aspects of the provision and ensure that they are adhering to the new national standards. This local authority-led oversight of unregistered alternative provision would improve systemic cohesion and provide reassurance for schools that these time-limited placements are meeting their pupils' needs.

The quality assurance of unregistered settings operating in each area would therefore be overseen by one body: the local authority. This means that unregistered alternative providers would no longer be subjected to repeated, differing quality assurance processes with individual commissioners.

Local authorities would be responsible for assessing safeguarding, health and safety, and the quality of education in all unregistered alternative provision operating in their areas. This means that schools and neighbouring local authorities would not need to carry out duplicate checks for placements they commission in these unregistered settings. Ofsted would continue to evaluate the commissioning of unregistered alternative provision during school inspections and would be able to focus more closely on whether the settings are offering good quality support to complement the education that pupils are receiving in school, and that they are supporting pupils to reintegrate into school at the appropriate time¹⁹.

While schools would not need to carry out checks that duplicate those made by local authorities, they would be required to assure themselves of the suitability of each placement. By focussing more clearly on whether placements in unregistered alternative provision are meeting children's needs, schools could in turn support their local authority's role as the quality assurer of unregistered alternative provision. To strengthen this further, we are proposing that schools will be required to routinely inform their local authority about placements they have commissioned in unregistered settings and provide feedback on their pupils' progress, and evidence of reintegration into full-time education, at the end of every time-limited placement.

This approach would lead to a clearer separation of functions between quality assurance of the settings (undertaken by local authorities) and the quality assurance of

¹⁹ Measures to inspect the quality of off-site alternative provision are outlined in paragraph 292 of [Ofsted's Inspection Handbook for Schools](#).

the interventions (undertaken by schools). In circumstances where local authorities have a role in commissioning time-limited placements (for example where children with EHC plans are receiving some of their education in a school and some in an unregistered setting), local authorities and schools will both need to be satisfied that any interventions being delivered by unregistered alternative providers are meeting children's individual needs.

We are concerned that in some local authorities, excessive localised regulation may be impeding the availability of good quality unregistered alternative provision. We want to minimise regulatory burdens and we believe that a clear framework, consistent with new national standards, will help local authorities to carry out proportionate checks on the quality of any unregistered alternative providers offering services in their areas.

To support local authorities in their quality assurance role, we propose that this will be subject to independent inspection as part of the Ofsted and the Care Quality Commission's local area SEND inspection framework. We would expect these inspections to assess the effectiveness of each local authority's quality assurance framework as a whole, including whether checks on unregistered providers are proportionate and in line with our expectations.

This local authority-led oversight would include any EOTAS special educational provision specified in EHC plans and delivered by unregistered alternative providers to pupils remaining on school admission registers. In these circumstances, including where the duration of any EOTAS special educational provision may exceed the time limits proposed in the previous chapter, we would expect local authorities to have regulatory oversight of the unregistered settings delivering the provision. Children receiving EOTAS special educational provision in unregistered settings who are not on school admission registers will not benefit from this additional oversight. We therefore propose differing regulatory arrangements for this cohort in chapters 3 and 4 of this consultation.

Technical details

If our proposals are accepted, we would amend legislation (as necessary) to:

- a) require local authorities to ensure that any unregistered alternative providers in their areas are complying with the new regulatory standards before joining a list of approved providers for time-limited placements (or EOTAS provision (which is not so time-limited) where the pupil remains on a school admission register);
- b) require local authorities to publish and maintain a list of approved unregistered alternative providers operating in their areas, which includes core information about each approved provider, their provision and the setting(s) in which their provision is taking place;

- c) amend local authority and school placement powers (set out in the technical section of chapter 1) to ensure that all placements with unregistered alternative providers are commissioned from local authorities' lists of approved provision; and
- d) require schools to inform local authorities whenever they commission time-limited placements in unregistered alternative provision, and when each placement ends.

Consultation questions

These questions are about our proposals in chapter 2, for local authorities to quality assure the time-limited interventions in unregistered alternative provision outlined in chapter 1.

- 4. Do you agree or disagree that all unregistered alternative provision offering time-limited interventions should be required to comply with new national regulatory standards?**

Yes agree/no disagree/don't know. [Please explain if you disagree]

- 5. Do you agree or disagree that local authorities should be responsible for quality assuring all unregistered alternative providers offering time-limited interventions in their areas?**

Yes agree/no disagree/don't know. [Please explain if you disagree]

[for those who agree with question 5]

- 6. Do you agree or disagree that commissioners from schools and other local authorities should not be required to carry out checks (for example on suitability of staff) on any unregistered alternative provision setting that is included in local authorities' approved lists?**

Yes agree/no disagree/don't know. [Please explain if you disagree]

- 7. Do you agree or disagree that all local authorities should be required to compile, publish, and make available to commissioners, up to date lists of approved unregistered alternative providers, with core information about each provider?**

Yes agree/no disagree/don't know. [Please explain if you disagree]

- 8. Do you agree or disagree that schools should be required to inform local authorities about any time-limited interventions they have commissioned in unregistered alternative provision?**

Yes agree/no disagree/don't know. [Please explain if you disagree]

9. Do you agree or disagree that the proposals in this chapter should be applicable to children with EOTAS special educational provision who appear on school admissions registers?

Yes agree/no disagree/don't know. [Please explain if you disagree]

Chapter 3: Greater flexibility for local authorities to enable EOTAS special educational provision to be delivered in a single unregistered setting

Background

If implemented, the proposals set out in chapters 1 and 2 would mean that local authorities and schools will no longer be able to arrange ongoing, full-time education in unregistered settings.

There is, however, a small cohort of compulsory school-aged children with special educational needs for whom ongoing placements in non-school settings may be appropriate. Section 61 of the Children and Families Act 2014 allows local authorities to arrange any special educational provision that they have decided is necessary to be made otherwise than in a school, if they are satisfied that it would be inappropriate for the provision to be made in a school. This is known as “education otherwise than in school” and is often abbreviated to EOTAS.

As noted in the previous chapter, some children with special educational provision under EOTAS arrangements can continue to attend school part-time. In such instances, these children will remain on their schools’ admissions registers. However, local authorities may also determine that it would be inappropriate for children to attend a school, and that instead all of their special educational provision should be delivered through EOTAS arrangements. These children would not appear on school admission registers, although the EOTAS provision can include a plan for them to return to a school.

We received a small number of responses to the Call for Evidence regarding children in receipt of EOTAS. Parents and local authorities told us that in some cases children who receive special educational provision through EOTAS arrangements are not able to receive all of their special educational provision from a single setting, even when they feel that arrangement would best meet the children’s needs. The provision instead is being split across different settings, or the children are receiving sub-optimal education offers.

We would like to use this consultation to help us better understand the delivery of EOTAS by unregistered settings. We would then be able to consider whether there may be a case for greater flexibility to enable more children in receipt of EOTAS to receive all of their special educational provision in a single setting. We want to test fully the circumstances when this arrangement – as opposed to several providers delivering the special educational provision for children in receipt of EOTAS – would best meet these children’s needs.

Institutions providing full time education for at least one pupil of compulsory school age with an EHC plan are required to register as independent schools and meet the Independent School Standards²⁰. Most children with EOTAS will have EHC plans. Some local authorities and unregistered providers have told us that the requirements to register as independent schools and meet the Independent School Standards present a barrier to children receiving all of their EOTAS special educational provision from single unregistered settings when that would best meet their needs.

The Independent School Standards are intended to safeguard pupils, including vulnerable children with EHC plans, by giving them regulatory protections around issues such as safeguarding, accommodation and the quality of education. This is important for the many children with EHC plans who receive valuable SEND support in registered independent schools. These particular safeguards are not applicable to unregistered alternative provision, but we know that good quality providers delivering bespoke EOTAS support have measures in place to ensure that the children are safe and that the education meets their specific needs. However, feedback from providers indicates that if we were to require them to meet all the conditions of the Independent School Standards, for example delivering a broad curriculum, this would work against some of the qualities that lend themselves to effective support for those requiring EOTAS.

Proposal and rationale

We do not propose to change the statutory test to be applied by local authorities in deciding whether it is inappropriate for a child's special educational provision to be made in a school.

We do however want to seek views on:

- a) whether there are barriers affecting local authorities' abilities to arrange for all of a child's special educational provision under a section 61 EOTAS arrangement to be delivered in a single setting;
- b) if the main barrier is the requirement to register as an independent school, and the consequent need to comply with the Independent School Standards, whether the law should ensure that the delivery of all of a child's EOTAS special educational provision will not be the trigger for the alternative provider being classified as an independent school.

While we would like to explore whether greater flexibility is desirable in this context, we do not want to remove any existing safeguards. If greater flexibility is desirable, we would propose that any providers delivering this type of provision for children with

²⁰ [The Independent School Standards - Guidance for independent schools \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)

EOTAS who have EHC plans, and who are not on school admission registers, would not be required to register as independent schools and meet the conditions of the Independent School Standards. Instead, they would be subject to the new national regulatory arrangements proposed in the next chapter and would have to comply with the proposed new national standards for unregistered alternative provision outlined in chapter 5.

Any unregistered settings delivering all of a child's EOTAS special educational provision, and other types of education, would continue to be required to register as independent schools if they meet the other registration thresholds. An unregistered institution delivering full-time education to five or more pupils, or one or more with an EHC plan or who is looked after by a local authority is required to register as an independent school²¹. We propose that any children who have EHC plans and who are receiving all of their EOTAS special educational provision in a single setting would not be considered for registration purposes in the numbers of children attending these settings.

Technical detail

To implement the proposals outlined in this chapter, we would need to amend legislation so that an unregistered alternative provider is not an independent school for the reason that it provides all of the special educational provision in an EOTAS arrangement for a child of compulsory school age, under an EHC plan.

Consultation questions

The responses to these questions will help us to find out about the barriers affecting the ability of local authorities to arrange for EOTAS special educational provision to be delivered in a single unregistered setting; and whether unregistered alternative providers delivering this this type of provision could be exempted from the requirement to register as independent schools, and the consequent need to comply with the Independent School Standards.

10. Do you agree or disagree that children should be able to receive any special educational provision specified under EOTAS arrangements from a single unregistered alternative provider?

²¹ The Education Act 1996 together with the Education and Skills Act 2008 requires any non-maintained school providing full-time education to five or more compulsory school aged pupils, or one or more compulsory school aged pupil with an EHC plan or who is looked after by a local authority, to register as an independent school. The Department has published [guidance on the regulation of independent schools](#).

Yes agree/no disagree/don't know. Please explain, including the specific circumstances where this would be appropriate.

[For those who agree with question 10]

11. Do you agree that any providers delivering this type of special educational provision should be exempt from registering as independent schools (unless they meet other requirements to register as independent schools)?

Yes agree/no disagree/don't know. Please explain, including the specific circumstances where this would be appropriate.

12. What are the barriers which currently impede local authorities' ability to arrange all of a child's EOTAS special educational provision (i.e. section 61 EOTAS arrangements) in a single unregistered setting?

[Free text]

Chapter 4: The national regulation of unregistered alternative providers delivering special educational provision to children who are not on school admission registers

Background

Local authorities are responsible for the children receiving special educational provision under EOTAS arrangements. When the EOTAS is being delivered in unregistered settings, we would expect local authorities to collaborate with the providers to ensure that children attend the provision at the required times, and that their progress against agreed objectives is reviewed regularly.

In chapter 2, we propose that unregistered settings that deliver time-limited interventions, including to those with EOTAS special educational provision who are on school admission registers, would be subject to local authority quality assurance arrangements. The schools that these children attend are subject to national regulation and inspection. The children would therefore benefit from the day-to-day oversight of being on school admission registers, including where schools must verify children's attendance when they are receiving off-site provision.

However, those receiving all of their special educational provision as part of EOTAS arrangements (either in multiple unregistered settings or, as proposed in the previous chapter, with single unregistered alternative providers), would not be on school admission registers and would not benefit from the same protections. Given the vulnerabilities of this cohort, and the lack of additional oversight from not attending a school, we want to test whether there is a case for providing additional safeguards by separating the commissioning of the EOTAS provision by local authorities from the regulatory oversight of these placements.

Proposal and rationale

We propose that:

- a) all unregistered alternative providers delivering special educational provision under EOTAS arrangements for children not on a school admission register would be required to register with the Department;
- b) all unregistered alternative providers wishing to register with the Department would need to comply with the new national standards outlined in chapter 5; and
- c) all providers that are registered with the Department would be subject to periodic national inspections by an independent body appointed by the Department.

We would expect that most of the provision arranged in chapters 1 and 2 would be arranged by schools. In limited circumstances local authorities would also be able to commission these types of time-limited interventions and would have regulatory oversight of the unregistered alternative providers delivering them. In these circumstances, including when the interventions are part of EOTAS special educational provision, we believe that it would be proportionate for local authorities to both arrange the provision and quality assure the settings delivering it. This is because the children benefitting from these interventions would remain on school admission registers and would therefore continue to receive some of their education in regulated settings.

In cases where local authorities decide that it would be inappropriate for children to receive any of their special educational provision in a school, these children would be outside of the scope of our proposed framework for local authority-led quality assurance frameworks and would therefore not have the same levels of oversight afforded to those on school admission registers. If unaddressed, this would mean those receiving EOTAS provision and who are not included in school admission registers would be the only compulsory school-age children accessing state-funded education in settings not subject to regulation and independent inspection. We believe that there is a case for strengthening protections for these children by separating the commissioning of individual provision from the regulation of the settings, and by ensuring that the settings offering this type of support are independently inspected.

We would allow any new providers three months to demonstrate compliance with the national standards before being formally registered with the Department. Where providers are not found to be meeting national standards, they would be considered by the Department to be unsuitable, and the commissioning local authority would be required to find other suitable special educational provision at the earliest opportunity.

We recognise that operating separate regulatory systems for unregistered alternative provision, and specifically for children subject to EOTAS arrangements, could cause confusion for commissioners and providers. To avoid duplication, any unregistered providers which are registered with the Department would not need to be included in the local authority quality assurance processes outlined in chapter 2. Once they have demonstrated compliance with the new national standards, they would automatically be able to join their local authorities' lists of approved provision if they wish to do so.

Technical detail

The Government would introduce new primary legislation to:

- a) require any unregistered alternative providers delivering special educational provision under an EOTAS arrangement for a child of compulsory school age and not on a school admission register to register with the Department within three months of the placement start date; and

- b) enable a named body, commissioned by the Secretary of State, to undertake independent periodic inspections of all the new settings that are registered with the Department.

Consultation questions

These questions are about the proposed national registration arrangements, outlined in chapter 4, for unregistered alternative providers delivering EOTAS special educational provision to children of compulsory school age who do not appear on school admission registers.

- 13. Do you agree or disagree that any unregistered alternative providers delivering EOTAS special educational provision for children not on school admission registers should be required to register with the Department?**
Yes agree/no disagree/don't know [Please explain if you disagree]

[For those who agree with question 13]

- 14. Do you agree or disagree that any unregistered alternative providers delivering this type of EOTAS special educational provision, and which are registered with the Department, should be subject to periodic independent national inspections?**
Yes agree/no disagree/don't know [Please explain if you disagree]

[For those who agree with question 13]

- 15. If you agree with question 13, do you agree or disagree that local authorities should be able to place children receiving this type of special educational provision in unregistered alternative provision for up to three months, until the provider has been registered with the Department?**
Yes agree/no disagree/don't know [Please explain if you disagree]

[For those who disagree with question 13]

- 16. Do you agree or disagree that any unregistered alternative providers delivering this type of special educational provision should instead be covered by the local authority registration arrangements proposed in chapter 2?**
Yes agree/no disagree/don't know [Please explain]

Chapter 5: The new national standards for unregistered alternative provision

Background

We have proposed in previous chapters that all unregistered alternative providers would need to adhere to new national standards in order for their provision to be made available to local authority and school commissioners. This chapter outlines the scope of those standards, which if implemented are intended to help to ensure the safety and quality of education provided to all children placed in unregistered alternative provision.

Unregistered alternative providers told us through the Call for Evidence that they want to demonstrate compliance with national standards, as this helps to validate their practice and provides assurance to commissioners. The majority of unregistered alternative providers agreed that placements in unregistered settings should only be commissioned from provision that has met consistent national standards.

Providers were also clear that it would not be beneficial for unregistered settings to be measured against the same regulatory requirements as state-funded or independent schools. This is because the purpose of unregistered alternative provision is fundamentally different to that of schools. This sector offers a unique, diverse range of tailored educational opportunities, adding value to local SEND offers and supplementing in-school education with specialised interventions that are not available elsewhere. Sometimes this takes place in classrooms but it can also be delivered in work environments, outdoors, online or via tutoring in family homes.

We agree that requiring this diverse sector to comply with standards expected of schools, particularly the requirements around offering a broad curriculum, would severely limit its ability to provide specialist interventions tailored to address specific needs. Unregistered alternative providers warned us that requiring compliance with school standards would lead to some offering provision for which they do not have the required levels of expertise; and that many would no longer be able to deliver these valuable, specialised interventions that are not available elsewhere.

As set out in chapter 2, many local authorities have developed their own localised quality assurance frameworks, with proportionate, standardised processes for measuring the quality of unregistered alternative provision. These bespoke frameworks support local authorities and schools in meeting their commissioning duties and draw upon relevant elements of statutory departmental guidance on safeguarding and the commissioning of alternative provision. These frameworks are variable, with some more detailed than others, but all typically include safeguarding, health and safety and admissions standards. Some go further and include checks on whether the education is high quality and appropriate for local children's needs.

We recognise that overly prescriptive standards might restrict local authorities' abilities to ensure that unregistered settings are adequately meeting the needs of the children in their areas. However, we believe that our proposals put the best interests of children at the fore by balancing the need for adequate safeguards to be in place, while recognising that more extensive requirements will be harder for some providers to meet.

Proposal and rationale

We have built on existing best practice to develop a proposed set of national standards for unregistered alternative provision. They would be applicable to all unregistered alternative providers supporting compulsory school-age children, including those in the local authority-led frameworks for time-limited interventions outlined in chapter 2, and those registering with the new national regulatory framework for settings delivering EOTAS special educational provision proposed in chapter 4. The standards cover five main themes:

- safeguarding and the wellbeing of children;
- health and safety;
- admissions, guidance and support;
- the quality of education; and
- the outcomes of children.

We would like to create a set of standards that reflect the unique nature of the unregistered alternative provision sector, and which all high-quality providers can meet irrespective of the types of education or training they provide, or their size. We recognise that many unregistered alternative providers have limited administrative resources, and we would continue to work with the sector to ensure that our proposals are not burdensome, so that good-quality unregistered alternative provision is available everywhere.

The proposed standards include fundamental child safeguarding requirements expected of any organisation delivering services to children and supervising them on their premises. We have also included quality standards to ensure that the children are receiving a good education that is appropriate to their individual needs.

The standards would be applicable to the broad spectrum of education delivered by differing types of unregistered settings: from online, one-to-one and group tuition to more vocational options like hair and beauty, farming or vehicle maintenance. The proposed combination of themes allows for a reasonable, proportionate approach and we believe that these standards are consistent with and would help schools and local

authorities meet their commissioning responsibilities, as set out in the Department's statutory guidance on alternative provision²². They are intended to:

- set clear and consistent expectations for all unregistered alternative providers;
- support commissioners in monitoring children's attendance or progress; and
- ensure that all children placed in unregistered settings are safe and receiving high-quality education.

If implemented, we believe that the standards would add transparency for unregistered alternative providers on how they are expected to deliver their services. Consistent national standards will also remove the need for providers who work with several local authorities to comply with multiple and variable quality assurance frameworks.

Some local authorities have their own existing quality assurance frameworks, assessed against their own local standards, which may be more expansive than our proposals. We believe that it is important for there to be consistency, and for all provision to be measured against the same high-level national standards. If implemented, after an introductory period, our national standards would replace existing local standards, and we would require all local authorities to refer to these standards when quality assuring their frameworks. We would make clear that local authorities should not consider our proposals as minimum standards, nor should they make additions to them or create their own, more detailed localised standards. Adhering to one set of national standards would ensure clarity for providers and commissioners and minimise burdens on providers.

Mandating the national standards and the regulatory frameworks proposed earlier in this consultation would require new primary legislation. If we proceeded with this, we would first publish a voluntary framework with non-statutory national standards and accompanying guidance, which we would encourage local areas to implement and test before the requirements become mandatory.

Proposed National Standards

1. Safeguarding and the wellbeing of children

- a) All staff and proprietors have appropriate recruitment checks including an enhanced Disclosure Barring Service check, which are recorded on a single central register, and persons failing to meet those checks are not employed.
- b) Appropriate policies and procedures to safeguard children are in place and are accessible to relevant parties.

²² [DfE statutory guidance on alternative provision](#).

- c) Staff are aware of the content of safeguarding policy and procedures and implement them effectively.
- d) Robust procedures are set out for recording and escalating concerns and the actions taken.
- e) Access to the site is restricted to registered learners, the organisation's own staff, and supervised visitors.
- f) There is a safeguarding lead at the setting who has received appropriate, documented training.
- g) Where appropriate, children with needs relating to health, disability or a special educational need should have individualised plans in place to help meet their needs.

2. Health and Safety

- a) A health and safety policy is in place that is understood and implemented by all staff.
- b) First Aid equipment and/or facilities are readily available and there are arrangements for access to a qualified first aider.
- c) A system is in place and in use for recording health and safety and first aid incidents.
- d) All specialist equipment used by children, staff or volunteers at the setting has undergone individual risk assessment and additional health and safety checks consistent with industry standards.
- e) Staff hold appropriate qualifications or have received appropriate training in the use of specialised equipment including, where appropriate, supervising or training others in its use.
- f) The setting has all appropriate insurance cover, including public liability insurance.
- g) Fire drills take place regularly, at least once a year, and a record is kept.

3. Admissions, guidance and support

- a) Admission and referral procedures are clear and well supported.
- b) The setting maintains records including information supplied by schools on admission, induction records, personal education plans or other learning plans, additional health needs, EHC plans, behaviour reports and risk assessments.
- c) All learners participate in an induction process that will help them understand their rights and responsibilities and health and safety procedures.
- d) The setting records pupil attendance for each session, and there is a clear process in place to notify the commissioner of any absence within 30 minutes of the session start time.
- e) Processes are in place with commissioner(s) for checking on the health and wellbeing of absent learners.

- f) The setting records pupil behaviour and progress and shares information routinely with schools and parents, and/or with the local authority if the child is not on a school admission register.

4. The quality of education

- a) Staff providing education have the appropriate skills and qualifications to deliver programmes.
- b) Planning for learning shows lesson/session plans identify the knowledge, skills and understanding that different groups of learners will achieve.
- c) Regular and thorough assessment and review of progress takes place.
- d) The setting promotes to learners the importance of attendance, punctuality and good behaviour and has a strategy to address non-compliance.

5. The outcomes of children

- a) There is a process for setting and monitoring learner progress to support reintegration where appropriate, and for taking action if progress is not on track.
- b) Learner underperformance is addressed through appropriate intervention and support.
- c) There is a process to assess regularly whether the provider is effective in delivering the commissioned service.

Technical detail

In order to implement these proposals, the Department would introduce new legislation that would give the Secretary of State the power to publish national standards. All alternative providers subject to the local quality assurance arrangements proposed in chapter 2 or the national regulatory arrangements in chapter 4 would need to comply with these standards in order to make their services available to commissioners of alternative provision.

Costs for local authorities and providers in meeting and administering the national standards

The proposals set out in this consultation reflect current practice in many areas, where commissioners and providers are collaborating on quality assurance frameworks and ensuring that commissioning responsibilities for unregistered alternative provision are delivered within existing budgets. We expect that the introduction of national standards may result in savings for providers that have to administer checks from multiple individual schools and local authorities. Similarly, we would expect this to reduce the burdens on schools, as they would no longer need to carry out checks on safeguarding, health and safety, and on the quality of the education. Instead they can focus on

whether the placements are meeting their pupils' needs. Local authorities with existing quality assurance frameworks and varying local standards may find that alignment with our proposed standardised regulatory approach may lead to longer-term cost savings when compared with their approaches.

If we proceed with these proposals, ahead of any implementation, we would consider whether local authorities or national regulators might charge providers to join local approved lists, or to register with the Department. At this stage we want to focus on what the costs are likely to be rather than who should meet them, so we have not included specific questions on this in the consultation. However, we would like commissioners and providers to consider this policy option in the events which will take place during the consultation period.

We have included questions in the consultation to help us understand the extent of any additional costs. If we proceed with the proposals, we would also test them with a new voluntary framework and national standards before they become mandatory; and publish a new burdens assessment²³, to establish the scale of any potential costs before legislating.

Consultation questions

These questions are about the new national standards proposed in chapter 5. The standards would be applicable all unregistered alternative providers, including those covered by the local authority registration arrangements proposed in chapter 2 and the national registration arrangements proposed in chapter 4.

17. Do you agree or disagree that there should be mandatory national standards which would be applicable to all providers of unregistered alternative provision?

Yes agree/no disagree/don't know [if no disagree, please explain]

18. Do you agree or disagree with the five themes of the proposed standards?:

a) Safeguarding and the wellbeing of children

Yes agree/no disagree/don't know [if no disagree, please explain]

b) Health and safety

Yes agree/no disagree/don't know [if no disagree, please explain]

c) Admissions, guidance and support

Yes agree/no disagree/don't know [if no disagree, please explain]

d) The quality of education

Yes agree/no disagree/don't know [if no disagree, please explain]

e) The outcomes of children

Yes agree/no disagree/don't know [if no disagree, please explain]

²³ As specified in the [New burdens doctrine: guidance for government departments - GOV.UK](https://www.gov.uk/government/guidance/new-burdens-doctrine-guidance-for-government-departments) (www.gov.uk)

- 19. Do you have any views on the content of proposed individual standards?**
- a) Safeguarding and the wellbeing of children**
[Free text]
- b) Health and safety**
[Free text]
- c) Admissions, guidance and support**
[Free text]
- d) The quality of education**
[Free text]
- e) The outcomes of children**
[Free text]
- 20. Do you agree or disagree that the proposed standards are sufficiently proportionate to enable smaller organisations to comply?**
Yes agree/no disagree/don't know [Please explain if you disagree]
- 21. Are there any other types of providers that would not be able to comply with the proposed standards?**
Yes/no. If yes, please explain the type(s) of provider and why they will not be able to comply?
- 22. [For unregistered alternative providers only]**
Thinking about the proposed regulatory standards in relation to your provision, do you agree or disagree with the following statements?:
- **My provision would already be able to demonstrate compliance**
Agree/disagree/don't know [Please explain if you disagree]
 - **Demonstrating compliance would not place a significant burden on my provision**
Agree/disagree/don't know [Please explain if you disagree]
 - **Demonstrating compliance would place a significant burden on my provision**
Agree/disagree/don't know [Please explain if you disagree]
 - **My provision would not be able to demonstrate compliance in its current form**
Agree/disagree/don't know [Please explain if you disagree]
 - **I would no longer be able to offer provision in any form**
Agree/disagree/don't know [Please explain if you disagree]
- 23. [For unregistered alternative providers only]**
Would complying with the new proposed regulatory standards administered by one body lead to additional costs or savings to the amount you will need to charge to provide your services? If so, please select your answer and use the free text box to set out approximate additional annual costs/savings and any explanation.
- Yes, additional costs
 - Yes, savings

- No change to our costs
- I don't know

[Free text]

24. [For schools only]

Would the proposal to remove the need for schools to carry out quality assurance checks on unregistered alternative provision lead to additional costs or savings? If so, please use free text box to set out approximate additional annual costs/savings and/or explanation.

- Yes, additional costs
- Yes, savings
- No change to our costs
- I don't know

[Free text]

25. [For local authorities only]

Would quality assuring unregistered alternative providers in your area against new regulatory standards lead to additional costs or savings to (a) your high needs spending and (b) your administrative costs? If so, please use free text box to set out approximate additional annual costs/savings and any explanation.

- Yes, additional costs to high needs spending
- Yes, additional administrative costs
- Yes, savings to our high needs spending
- Yes, savings to our administrative costs
- No change to our costs
- I don't know

[Free text]

26. In addition to the costs outlined in questions 23-25, do you think the proposals outlined in the consultation will create costs or savings to the high needs budget?

Please select your answer for each proposal.

Proposal 1: savings/costs/neutral/don't know. [Insert cost/saving and rationale].

Proposal 2: savings/costs/neutral/don't know. [Insert cost/saving and rationale].

Proposal 3: savings/costs/neutral/don't know. [Insert cost/saving and rationale].

Proposal 4: savings/costs/neutral/don't know. [Insert cost/saving and rationale].

Proposal 5: savings/costs/neutral/don't know. [Insert cost/saving and rationale].

Equalities impact assessment

As with any new policy, the Government is required, in making its decisions on these proposals, to have due regard to the need to: eliminate unlawful discrimination, harassment and victimisation; advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and foster good relations between persons who share a relevant protected characteristic and those who do not share it²⁴.

The Call for Evidence helped us to understand the impact of existing practice on groups who share particular protected characteristics. We do not at present believe that our proposals, if implemented, would impact negatively on any group sharing a particular protected characteristic. We will continue to consider equality impacts and if a decision is made to legislate, we would publish a full impact assessment. We will continue to work with local authorities, schools and the sector on equalities, and we have included a question on this in this consultation.

27. Do you think the regulatory arrangements and national standards for unregistered alternative provision proposed in this consultation would have an impact on children with the following protected characteristics?:

- a) Age: positive impact/negative impact/neutral impact/don't know [free text for rationale];
- b) Gender reassignment: positive impact/negative impact/neutral impact/don't know [free text for rationale];
- c) Maternity and pregnancy: positive impact/negative impact/neutral impact/don't know [free text for rationale];
- d) Disability: positive impact/negative impact/neutral impact/don't know [free text for rationale];
- e) Race (including colour, nationality, ethnic or national origin): positive impact/negative impact/neutral impact/don't know [free text for rationale];
- f) Religion or belief: positive impact/negative impact/neutral impact/don't know [free text for rationale];
- g) Sex: positive impact/negative impact/neutral impact/don't know [free text for rationale];
- h) Sexual orientation: positive impact/negative impact/neutral impact/don't know [free text for rationale];

Additional questions

28. How could the Department support providers and commissioners to

²⁴ As specified in section 149(1) of [the Equality Act 2010](#).

transition to the new standards and regulatory arrangements proposed in this consultation if they were to be implemented?

[free text]

29. Thank you for your responses to this consultation. Please use this space to provide any additional views on any of our proposals.

[free text]



Department
for Education

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