

**Official Response  
to the Government Consultation**

# **Strengthening protections in unregistered alternative provision**

**July 2024**

# About this consultation

## What is unregistered alternative provision?

Local authorities and schools can arrange alternative provision<sup>2</sup> and special educational provision<sup>3</sup> 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 school, and placements in unregistered settings can sometimes help children to gain valuable qualifications that may not be readily available in their schools.

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

<sup>3</sup> 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.

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.

# Official Response on behalf of **Community Union**

## About **Community Union**

Formerly PAT/PANN and latterly Voice, the Education and Early Years section of **Community Union** represent thousands of serving teachers and support staff, headteachers, lecturers, nursery and early years workers, nannies and other education professionals in schools and academies, nurseries and early years settings, colleges, and universities across the whole of the UK.

We provide legal and casework support to our members and regularly engage with them in determining our response to policy proposals.

**Community Union** is affiliated to the Trades Union Congress (TUC), to the Irish TUC, Scottish TUC and Welsh TUC as well as the General Federation of Trades Union (GFTU).

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This is a public document which will be published on our website following the consultation close.

The information shared within this response may be used and quoted as appropriate for the purposes it was gathered, and **Community Union** should be acknowledged as a contributor. We would be happy to discuss the comments in this response with the DfE or a research body acting on its behalf using the contact details supplied.

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

When delivered effectively, intervention can improve behaviour, engagement and enhance learning. How long this intervention lasts should be determined exclusively by the needs of the learner and not be some arbitrary decision based on programme length or funding limits.

We know that the best provision puts the needs of the learner at its heart and whilst we agree that alternative provision should not be a destination, we do not agree that it is only an intervention since for some learners, it may be more necessary than mainstream provision and may need to continue for them beyond what may otherwise be expected.

It is Community's position, that ideally, all alternative provision and placements should be in registered provision with unregistered providers seeking registration, else only used as a last resort. Where unregistered provision is used, it should be monitored to ensure safety and limited to those who are on a school admission register.

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

### **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 2 Comments**

As previously noted, it is Community's belief that Education Other Than at School should be in registered provision wherever possible and that providers that are not yet registered should seek registration once they begin accepting placements.

All local authorities should compile, publish, and make available up to date lists of all approved alternative providers, be they registered or otherwise, with core information about each provider, including their registration status, so that schools can make informed decisions about the suitability of the placement and the commitment of the providers.

Commissioners from local authorities and multi-academy trusts *should* carry out checks – especially on the setting and its staff, in order that the provision can be included on and remain on local authorities' approved lists. This forms an important part of the on-going safety and safeguarding checks and should not be the responsibility of individual schools who will be placing pupils in this provision. It is reasonable for schools to assume that this checking process has been undertaken before any setting appears on any approved list. Furthermore, this checking process could be the first step in any unregistered provision becoming formally registered.

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

### 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 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?**

Yes agree/no disagree/**don't know**.

- 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.

- 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?**

#### Chapter 3 Comments

We have previously set out that Community fundamentally disagrees with the use of unregistered provision to care for the most vulnerable and needy children, those who cannot access education through traditional schooling and who need greater levels of support to enable them to engage in learning. This is especially the case for those who are not on a school's admissions register.

We do understand the need to ensure that provision is not disjointed and that settings should provide as cohesive an education as possible. Therefore, we agree that it may be appropriate for children with SEND to receive all their provision from a single provider and that where this is the case, they meet all of the child's needs. However, it is essential that this provision is checked by local authorities or MAT commissioners to ensure the suitability and safety of any provision.

Again, it is our assertion that, wherever possible, all provision should be required to be registered, or have begun the process to become registered. It may not be appropriate for settings to register as "independent schools" and we believe that it may be appropriate for there to be a category to allow independent providers to offer support



and specialist provision that meets the needs of the child and offers all of the necessary learning without them having to be “independent schools”.

We understand that demand for special provision – in special schools, in specialist provision and in settings other than schools has exploded, with schools and local authorities struggling to meet demand due to a failure of Government to provide adequate funding. This lack of funding is affecting all education provision with demand outstripping specialist supply meaning that mainstream provision is having to support ever complex needs without additional funding or specialist staffing support. This is unfair on the children and on the staff who work alongside them.

This must not be a race to the bottom, and the needs of the pupils and providers must be properly funded. Registration of providers is one way of checking the suitability of provision.

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

### **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]
- 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]
- 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]
- 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 4 Comments**

As previously established, Community fundamentally disagrees with the use of unregistered provision and that wherever possible, all provision should be required to be registered, or have begun the process to become registered when they accept placements. This is especially the case for those pupils who receive most or all of their education elsewhere than a school and are therefore not on a school role.

In order to ensure that all placements are safe and appropriate for the pupils, local authorities should compile, publish, and make available up to date lists of approved alternative providers, with core information about each provider including their registration status so that informed decisions about the suitability of the placement can be made before pupils are placed. This will allow local authorities to truly understand the nature of the setting and its suitability for pupils.

Similarly, all settings, both registered and unregistered that have children placed with them and are in receipt of public funding should be regularly monitored and inspected as appropriate.

In order to ensure effective use of public funds it could be a requirement of funding that settings become registered by the end of any placement or funding arrangement.

## Chapter 5: The new national standards for unregistered alternative provision

### 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]

**19. Do you have any views on the content of proposed individual standards?**

**a) Safeguarding and the wellbeing of children**

Community agrees with all of the proposed national standards for Safeguarding and the wellbeing of children.

We would prefer that statement (g) were strengthened to state that children with needs **will** have individualised plans in place to meet their needs. As this is provision for those who are outside of mainstream schooling it is reasonable for providers to meet the specific needs of the learners.

**b) Health and safety**

Community agrees with the proposed national standards for health and safety.

We would expect there to be a qualified first aider on-site and for them to be fully qualified in paediatric first aid, especially if there will be any primary-aged children within the provision.

**c) Admissions, guidance and support**

Community agrees with the proposed national standards for admissions, guidance and support.

It may be worth specifying the regularity and frequency of contact relating to behaviour and progress information as “routinely” is too vague to have any real meaning.

**d) The quality of education**

Community agrees with the proposed national standards relating to the quality of education.

**e) The outcomes of children**

Community agrees with the proposed national standards covering the outcomes of children.

**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**.

## 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 it<sup>24</sup>.

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

**b) Gender reassignment:**

positive impact/negative impact/**neutral impact**/don't know

**c) Maternity and pregnancy:**

positive impact/negative impact/neutral impact/**don't know**

It is important that protections and risk assessments are in place to cover those who are pregnant whilst working and perhaps even more important that provision and protection for young mothers is of high-quality and meets the proposed standards. This is especially the case where settings may have pupils who have violent tendencies which may place pregnant pupils at increased risk.

**d) Disability:**

positive impact/negative impact/neutral impact/**don't know**

**e) Race (including colour, nationality, ethnic or national origin):**

positive impact/negative impact/**neutral impact**/don't know

**f) Religion or belief:**

**positive impact**/negative impact/neutral impact/don't know

We share the concerns of Ofsted and other unions around unregistered provision that pursue a particular religion or belief. In particular we have concerns about the curriculum and health and wellbeing aspects, but also that integration of all pupils and teaching of core British values does not happen.

We feel that these proposed standards, together with a focus on ensuring all unregistered provision is monitored, visited and ultimately seeks to be registered will help to improve the safety and education of all the children who attend.

**g) Sex:**

positive impact/negative impact/**neutral impact**/don't know

**h) Sexual orientation:**

positive impact/negative impact/**neutral impact**/don't know

