



The Lawyers' Christian Fellowship

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Out-of-school setting education: Government Consultation

The Consultation

- The Department for Education (DoE) is calling for evidence to inform the development of the government's proposals for requiring certain out-of-school education settings to register and be subject to risk-based inspections. The consultation paper can be found at www.gov.uk/government/consultations/out-of-school-education-settings-registration-and-inspection.
- Responses can be registered by visiting www.education.gov.uk/consultations, by email to outofschoolsettings.REVIEW@education.gsi.gov.uk, or by post to Out-of-School Settings: Call for Evidence, Department for Education, Sanctuary Buildings, Great Smith Street, London SW1P 3BT.
- **The deadline for response is short, with replies due by 11.1.16.**

The Scope and Stated Purpose

- **The scope of the institutes/activities covered is very broad.**
 - o An 'out-of-school education setting' is stated to include *'any institution providing tuition, training or instruction to children aged under 19 in England that is not a school, college, 16-19 academy or registered childcare provider'*¹.
 - o This would appear to include Sunday School Groups, Church Youth Groups, Summer Camps and Student Work (for at least a proportion of the freshers under 19). Notably it would also cover non-faith groups such as home-schooling revision events and any potential number of activities from karate to driving instruction.
 - o The consultation paper expressly states that the proposal is not about regulating the home-schooling context². However, the paper does invite responses as to how to prevent home-schooling being used as an evasive measure.
- **The purpose of the potential measures covers far more than extremism.**
 - o The consultation paper refers to the Counter-Extremism Strategy, (published on 19.10.15), which sets out the government's approach to tackling extremism *'in all its forms'*. In relation to out-of-school settings, the strategy confirms the intention to

¹ Paragraph 1.2.

² Paragraph 2.4.

introduce a new system to enable intervention in such settings with the *'broad aim of keeping children safe generally from the risk of harm, including emotional harm, and promoting their welfare'*³.

- o The paper acknowledges that the consultation is concerned with more than just extremism, to include *'the wider welfare of children who attend these [out-of-school] settings...ensuring a proportionate system of oversight is put in place to keep children safe from harm'*⁴.
 - o The background section in the paper references: health and safety concerns including children being taught in premises which are overcrowded, cramped, dirty, lacking in fire escapes and access to drinking water etc; safeguarding concerns including a lack of suitability checks on staff and the potential for extremist views to be taught⁵.
- **The scope of the measures extend to what is taught.**
- o The paper sets out areas in which activities would be prohibited, including: *'Undesirable teaching, for example teaching which undermines or is incompatible with fundamental British values, or which promotes extremist views'*⁶. However, at present there is no available criteria as to how this will be assessed.
 - o *'Fundamental British values'* is nowhere defined, but is earlier stated to include: *'mutual respect and tolerance of those with different faiths and beliefs...alongside democracy, the rule of law and individual liberty'*⁷. Fundamental values are also referenced in the overall Counter Extremism Strategy as those which *'have evolved over centuries'*⁸.
- **The degree of intervention has the potential to be significant.**
- o The stated purpose of the consultation is to *'enable action to be taken where settings are failing to safeguard and promote the welfare of children, which includes failing to protect them from the harm caused by extremism'*⁹. The paper states that the *'system*

³ Paragraph 2.1.

⁴ Paragraph 3.1.

⁵ Paragraph 2.3.

⁶ Paragraph 3.19.

⁷ Paragraph 2.4.

⁸ Counter-Extremism Strategy, paragraph 1.1

⁹ Paragraph 1.1.

we envisage is intended to avoid imposing unnecessary burdens on the great number of such settings which are positively enhancing children's education'.

- o The key-features put forward include¹⁰:
 - A requirement on those providing the out-of-school setting education to register.
 - A power for a body to inspect settings *'to ensure that children are being properly safeguarded'*.
 - A power to impose sanctions where settings are *'failing to safeguard and promote the welfare of children, which could include barring individuals from working with children and the closure of premises'*.
 - o The paper states that any setting that falls within the proposed measures *'would be required to register with their local authority and would be eligible for investigation, and if appropriate, intervention where concerns were reported'*¹¹.
 - o It is proposed that Ofsted undertake the investigation function for out-of-school settings, acting on a risk-based approach in response to concerns raised or on a sample basis, rather than routinely inspecting all providers¹². At present there are no details as to the trigger mechanism or threshold for intervention.
- **Summer camps are a particular focus, but so might be church based youth work.**
- o The paper proposes to focus resources on *'where children receive intensive tuition, instruction or training out-of-school'* as these are closer in nature to other regulated settings, potentially have greater impact on children, and might pose a greater risk to children.
 - o The paper states 'Intensive education' *'could be considered anything which entails an individual child attending a setting for more than 6 to 8 hours a week'*¹³. Out-of-school settings operating in school holidays is cited as an example¹⁴.
 - o Church youth groups, where youth attend on more than one occasion a week: i.e. services, youth group, etc. have the potential to fall within 'intensive education'.
 - o A young person in vibrant church could easily reach 6 hours between Sunday services, midweek bible classes, worship practices and youth group attendance – not to mention specific one off events over 6 hours such as trips and weekend aways.

¹⁰ Paragraph 2.6.

¹¹ Paragraph 3.12.

¹² Paragraphs 3.15 & 3.16.

¹³ Paragraph 3.7.

¹⁴ Paragraphs 3.6 & 3.7

- **The concern for religious freedom is stated to be recognised, but much will depend on the terms of its implementation.**
 - o The paper states that the proposal *'is not about regulating religion or infringing people's freedom to follow a particular faith or hold particular beliefs. The mutual respect and tolerance of those with different faiths and beliefs is one of our fundamental British values...Through this proposal, we are seeking to ensure that those who work in positions of trust and influence with children and young people respect those with different faiths and beliefs and do not, in expressing their individual beliefs, promote intolerance against others'*¹⁵.
 - o The lack of definition of terms such as *'British values'*, *'mutual respect and tolerance'*, *'intolerance'*, *'promote intolerance against others'* and *'emotional harm'* leaves uncertainty as to the extent to which the freedom to hold and express religious views remains protected.

The Importance of Our Response

- **The paper invites evidence upon which to frame its proposal.**
 - o The paper recognises that due to the diversity of the out-of-school education sector, and that it operates outside the oversight of local and national government, the evidence base available to the DoE is *'less strong'* than for regulated institutions¹⁶.
 - o The paper states that the DoE would *'like to know more about the full range of [out-of-school] settings and their characteristics: the number of settings in each local authority; hours of operation per week; hours each student attends per week; numbers of staff/volunteers; numbers of students, the types of premises they operate from; subjects taught; and the positive benefits from accessing such provision'*¹⁷; together with what advice and assistance is available to settings, and what additional support would be welcome.
 - o The paper specifically invites views on:
 - Defining a threshold for settings to fall within/be excluded from the scope of the proposed measures, with reference to the number of hours which the children attend, or other characteristics of the setting together with opinions on how to ensure settings do not simply alter their provision to evade regulation¹⁸.

¹⁵ Paragraph 2.4.

¹⁶ Paragraph 2.8.

¹⁷ Paragraph 3.4.

¹⁸ Paragraph 3.9.

- How the registration requirement will operate in practice and the implications for providers and local authorities¹⁹. (It is envisaged in the document that registration would be via an online portal although it is unclear whether churches would need to make multiple registrations to cover different ministries and stand alone events over 6 hours in different settings)
 - Whether the proposed prohibited activities appropriately capture the range of concerns that could arise and that should be reported and investigated²⁰.
 - The proposed system to inspect and investigate concerns by Ofsted²¹.
 - The most appropriate sanctions and which body/bodies should have powers to act²².
- **It is important that Christians respond clearly and constructively.**
- o It is clear that the consultation is more than about tackling extremism in the out-of-school setting.
 - o Few would disagree with many of the stated aims in the paper.
 - o Given the failings in child welfare in the out-of-school setting in the past, it is difficult to argue against some system of protection, and many will agree that it is appropriate.
 - o A number will be concerned that the proposals represent state regulation of religious teaching.
 - o Many will share the concern that the proposed measures have the potential to limit the freedom to teach the bible to our children and young people. Terms such as *'undesirable teaching'*, *'mutual respect and tolerance'* *'promoting intolerance'* and *'emotional harm'* provide a wide scope of interpretation; much will depend on the guidance given to those charged with policing the system and how they apply it.
 - o It is to be noted that Churches are already subject to regulation by the Charity Commission, which includes the requirement to have a safeguarding policy in place for their children's work and to carry out criminal records checks on those involved.
 - o It is therefore important to respond clearly and constructively.
 - o A response is likely to be most helpful if framed in clear and measured terms under the specific matters upon which the paper invites response, set out in the preceding sub-section above; in particular: the scope of activities affected and the manner in which the relevant terms are to be interpreted.
 - o The deadline for response is 11.1.16.

¹⁹ Paragraph 3.14.

²⁰ Paragraph 3.20.

²¹ Paragraph 3.17.

²² Paragraph 3.22

A final thought

- The message of the gospel is clear: *‘Salvation is found in no-one else, for there is no other name under heaven given to men by which we must be saved’*²³. This message can cause offence even when put forward appropriately, with gentleness and respect. It is important that the freedom to teach biblical truth is safeguarded. As the Equality and Human Rights Commission said recently in relation to the Lord’s prayer advert, “there is no right not to be offended in the UK”.²⁴

²³ Acts 4v12.

²⁴ <http://www.equalityhumanrights.com/statement-freedom-expression-and-lord’s-prayer>