

Guidance on Alternative Provision and the Requirements for the Registration as an Independent School

When considering the use of alternative provision schools should note that the statutory guidance on [Alternative Provision](#), paragraph 34, states that the 'responsibility for the alternative provision used rests with the commissioner'. In Darlington where an academy places a pupil in alternative provision they will be deemed to be the commissioner. The guidance goes on to state, at paragraph 38, that 'alternative provision should be good quality and registered where appropriate'.

The guidance clarifies the registration requirement as:

An AP provider should be registered as an independent school if it meets the criteria for registration (that it provides full-time education to five or more full-time pupils of compulsory school age, or one such pupil who is looked-after or has a statement of SEN).

The [Registration of Independent Schools](#) advice provides further clarity:

An independent school is defined as any school at which full time education is provided for five or more pupils of compulsory school age, or one or more such pupils with an EHC plan or a statement of special educational needs or who is "looked after" by the local authority, and is not a school maintained by a local authority or a non-maintained special school. A child is "looked after by a local authority" if he or she is in its care or is provided with accommodation for a continuous period of more than 24 hours by the authority under certain of its social services functions (see section 22 of the Children Act 1989).

If your establishment falls outside the definition of an independent school given above, it cannot be registered with the department as an independent school. However, local authorities will need to be satisfied that children of compulsory school age who are attending your establishment are receiving full-time education suitable to their age, ability, aptitude and any special educational needs they may have, including any provision being made in parallel to that in your establishment.

It is an offence to operate an unregistered independent school, and anyone who does so is liable on summary conviction to a fine and/or imprisonment.

Full-time education - There is no legal definition of 'full time'. However, we would consider an institution to be providing full-time education if it is intended to provide, or does provide, all, or substantially all, of a child's education.

Relevant factors in determining whether education is full-time include:

- (a) the number of hours per week that is provided - including breaks and independent study time;
- (b) the number of weeks in the academic term/year the education is provided;
- (c) the time of day it is provided;
- (d) whether the education provision in practice precludes the possibility that fulltime education could be provided elsewhere.

If schools believe a provider is offering full time education and is exceeding the pupil thresholds defined above they should contact the 11-19 (Learning & Skills) Team at the local authority. If on investigation the local authority considers that the provider is operating as an unregistered school they will raise this with the DFE who will decide what action to take in line with the guidance on [regulating independent schools](#).