



**Bristol City Council Advice**  
**Alternative Provision (AP) & Unregistered Schools**  
**September 2019 (Updated September 2022)**  
**Advice to Alternative Providers and Commissioners of Alternative Provision**

Following recent news reports highlighting the Government's focus on unregistered schools, we are reissuing this advice to provide clarity to AP settings and commissioners of AP.

As a Local Authority we want to ensure APs and commissioners are aware of the law and their obligations and that practice is lawful.

**Why are we sharing this advice?**

Any Alternative Provider (AP) of education must register as an independent school if they fulfil the criteria above. Commissioners of AP should not request provision which may mean the AP is operating illegally.

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

We are attempting to address concerns about full-time education of children being made by individual or several different APs where such provision should be made in a school and, in some cases, where AP is being used as the sole education offer for children without having independent school status, registered with the DfE.

**What is an independent (or private) school?**

We would like to draw your attention to the published guidance which states that the definition of an independent (or private) school is:

“any school at which full-time education is **provided for five or more pupils of compulsory school age, or for one or more such pupils with an EHC plan or a statement of special educational needs or who is “looked after”** by a local authority, and is not a school maintained by a local authority or a non-maintained special school.”

[Guidance on registering as an Independent School](#) is available.

### Is there a legal definition of full time?

The guidance goes on to say that "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."

### Does that correspond to a specific number of hours per week?

We consider any institution that is operating during the day, for more than 18 hours per week, to be providing full-time education but it should be noted that this guidance does not commit to the position that if an institution operates for 18 hours or less it is not an independent school, and we cannot offer that sort of guarantee. The department cannot give an authoritative interpretation of what constitutes "full-time education" as this is ultimately a matter for the courts.

### Is teaching time the only measure of 'full-time education'?

It is important to note that teaching time alone is not the only indicator of full-time provision. Relevant factors for providers to consider include, **but are not limited to:**

- 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 full-time education could be provided elsewhere.

### What is meant by a short-term placement?

There is no definition of what constitutes a short-term placement and the DfE are unable to provide a definitive answer in relation to this. Placements which are temporary lasting up to say, one term for any pupil, may be considered short term. However, we would not think the same if a pupil attended for more than one term – since this may occupy a significant portion of the year and as set out in our registration guidance, the number of weeks in the academic term/year the education is provided" is relevant to determining whether full-time education is provided. Providers may wish to seek their own independent legal advice to ensure that they comply with the law.

### Who is responsible for ensuring that providers are operating correctly?

Local authorities have a responsibility to provide suitable full-time education to children in its area. The local authority does have the discretion to commission directly with unregulated providers if it chooses to do so, however, providers are responsible for deciding whether their provision meets the requirements for registration as an independent school,

before accepting pupils, using the information available. Find the [published guidance on independent school registration](#). Where providers are in any doubt, they may wish to seek their own independent legal advice.

We would expect that a local authority, if placing a child for all or substantially all of the child's education, would use a registered provider and ensure the child receives regulated, full-time education with a broad curriculum, including for those children with SEN or an ECHP in place. If this is not possible, the LA may decide to use more than one provider; it will be for each provider to decide whether taking the placement will require them to first be registered as an independent school.

### **Further Information**

Please contact the ALP Hub for further advice:

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