

The Registration of Independent Schools in Scotland

**Guidance for Proprietors overseeing their
school's child protection and safeguarding
arrangements**

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Instruction for amendments to this document

Any proposed amendments to this document should be agreed by the Registrar of Independent Schools' Office in consultation with stakeholders. Any questions or queries on this document should be directed to the Registrar of Independent Schools' Office by email at: independentschools@educationscotland.gov.scot.

Introduction

Of all the responsibilities entrusted to those who run or work in schools, safeguarding children and young people from harm must be chief among them.

In order to do that, it must be everyone's responsibility to be cognisant of the obligations that come from the trust placed in them. Every child has the right to protection from all forms of abuse, neglect or exploitation.

We know from [The Promise](#) how important it is to have a focus on the safety and wellbeing of children. Children and young people must be listened to and meaningfully involved in decision-making about their care and welfare, with all those involved properly listening and responding to what children and young people want and need.

Furthermore, Scotland's approach to improving the wellbeing of children and young people, *Getting It Right For Every Child* ([GIRFEC](#)), is a means for families to work in partnership with those who may support them, such as doctors, nurses, teachers and other education practitioners.

Having reflected on the evidence presented during the sixth stage of the Scottish Child Abuse Inquiry (which focused on boarding schools in Scotland), the Scottish Government requested that the Registrar of Independent Schools develop guidance for the proprietors of independent schools (the term 'proprietors' here assumes the meaning given in section 135 of the Education (Scotland) Act 1980, i.e. the managers of the school; which could be a governing body, trustees, or other person or body of persons responsible for the management of the establishment).

This guidance is not statutory, however, it does relate to statutory and other legal obligations on proprietors. The guidance is not intended to provide an exhaustive list of actions and responsibilities. As ever, proprietors will wish to seek independent legal advice where appropriate to satisfy themselves that they meet their legal obligations.

For further guidance, proprietors may wish to contact HM Inspectors, the Care Inspectorate, Registrar of Independent Schools, GTC Scotland, or the Scottish Council of Independent Schools for advice.

Beyond the guidance, regulation, and legislation that exists to enforce the good running of independent schools, and their primary objectives of keeping children and young people safe and facilitating their continued high-quality education, it is for proprietors to look to their individual contexts and develop robust and reliable means of challenging and improving practice.

Additional reading

This guidance should be read alongside the [National guidance for child protection in Scotland 2021](#) and [The Registration of Independent Schools in Scotland: Guidance for Applicants, Proprietors, and Parents](#).

The *National Guidance for Child Protection in Scotland 2021*, published in September 2021, describes the responsibilities and expectations of everyone who works with, or comes into contact with, children and young people, families, and carers in Scotland. It affirms and strengthens the key role of the education workforce in protecting children through the inclusion of education staff in all references to multi-agency arrangements.

Furthermore, proprietors must understand their obligations as set out in [GTC Scotland's Fitness to Teach Process, Information Booklet for Employers](#).

Additionally, proprietors and school leaders should already be very familiar with [How Good Is Our School? \(4th Edition\)](#), particularly Quality Indicator 2.1 (Safeguarding and child protection).

Finally, proprietors and school leaders should also be aware of the *Guidance on Effective Safeguarding for boards of governors in independent schools*, developed by HM Inspectors, the Care Inspectorate, and Registrar of Independent Schools. Which is a separate document and will be published soon.

Contents

1. Definitions and Terms of Note
2. Responsibilities of proprietors
 - 2.1 Recruitment
 - 2.2 Training of staff
 - 2.3 Safeguarding sub-committee
 - 2.4 Responsibilities of staff
 - 2.5 The National Guidance for Child Protection in Scotland 2021 provides the following specific information about independent schools
3. Who to contact
 - 3.1 At any time
 - 3.2 Where there is a child protection or safeguarding concern
 - 3.3 Information sharing
4. Initiating Child Protection Procedures
5. Referrals to the General Teaching Council for Scotland, Disclosure Scotland, the Office of the Scottish Charity Regulator, the Scottish Social Services Council and Registrar of Independent Schools
 - 5.1 Referrals to the General Teaching Council for Scotland
 - 5.2 Referrals to Disclosure Scotland
 - 5.3 Referrals to the Office of the Scottish Charity Regulator (OSCR)
 - 5.4 Referrals to the Scottish Social Services Council (SSSC)
 - 5.5 Referrals to the Registrar of Independent Schools
6. Conclusions

1. Definitions and Terms of Note

Child

For the purpose of this guidance, generally, a child is any learner attending a school.

Child abuse and neglect

Abuse and neglect are forms of maltreatment and may involve the infliction of harm, or the failure to act to prevent harm. It may involve physical abuse (hitting a child, for example) or emotional abuse. The *National Guidance for child protection in Scotland 2021* defines emotional abuse as “persistent emotional ill treatment that has severe and persistent adverse effects on a child’s emotional development.” It may involve, for example, repeated silencing, ridiculing or intimidation; conveying to a child that they are worthless or unloved; exploitation or corruption of a child.

Sexual abuse

Child sexual abuse (CSA) is defined in the *National guidance for child protection in Scotland 2021* as: “an act that involves a child under 16 years of age in any activity for the sexual gratification of another person, whether or not it is claimed that the child either consented or assented. Sexual abuse involves forcing or enticing a child to take part in sexual activities, whether or not the child is aware of what is happening. For those who may be victims of sexual offences aged 16-17, child protection procedures must be considered. These procedures must be applied when there is concern about the sexual exploitation or trafficking of a child.

The activities may involve physical contact, including penetrative or non-penetrative acts. They may include non-contact activities, such as involving children in looking at or in the production of indecent images, in watching sexual activities, using sexual language towards a child, or encouraging children to behave in sexually inappropriate ways.”

Child sexual exploitation (CSE) is defined as a form of child sexual abuse. It occurs where an individual or group takes advantage of an imbalance of power to coerce, manipulate or deceive a person under 18 into sexual activity in exchange for something the victim needs or wants, and/or for the financial advantage or increased status of the perpetrator or facilitator. The victim may have been sexually exploited even if the sexual activity appears consensual. Child sexual exploitation does not always involve physical contact. It can also occur through the use of technology. Children who are trafficked across borders or within the UK may be at particular risk of sexual abuse (*National guidance for child protection in Scotland 2021*).

Neglect

Neglect is the persistent failure to meet the basic physical or psychological needs of a child which is likely to result in the serious impairment of the child’s health or development. Poverty, and other systemic stresses, may be a factor and neglect is an indicator of both support and protection needs.

'Persistent' means there is a pattern which may be continuous or intermittent which has caused, or is likely to cause significant harm. However, single instances of neglectful behaviour by a person in a position of responsibility can be significantly harmful. Early signs of neglect indicate the need for support to prevent harm (*National guidance for child protection in Scotland 2021*).

Child Protection

Child protection refers to the processes involved in consideration, assessment and planning of required action, together with the actions themselves, where there are concerns that a child may be at risk of harm. Child protection guidance provides overall direction for agencies and professional disciplines where there are concerns that a child may be at risk of harm. Child protection procedures are initiated when police, social work or health professionals determine that a child may have been abused or may be at risk of significant harm. Child protection involves:

- Immediate action, if necessary, to prevent significant harm to a child
- inter-agency investigation about the occurrence or probability of abuse or neglect, or of a criminal offence against a child. Investigation extends to other children affected by the same apparent risks as the child who is the subject of a referral
- assessment and action to address the interaction of behaviour, relationships and conditions that may, in combination, cause or accelerate risks
- focus within assessment, planning and action upon listening to each child's voice and recognising their experience, needs and feelings
- collaboration between agencies and persistent efforts to work in partnership with parents in planning and action to prevent harm or reduce risk of harm
- recognition and support for the strengths, relationships and skills within the child and their world in order to form a plan that reduces risk and builds resilience

Safeguarding

This is a much wider concept than child protection and refers to promoting the welfare of children, young people and protected adults. It encompasses protecting from maltreatment, preventing impairment of their health or development, ensuring that they are growing up in circumstances consistent with the provision of safe and effective care; and taking action to enable all children, young people and protected adults to have the best outcome. Child protection is part of this definition and refers to activities undertaken to prevent children suffering, or likely to suffer, significant harm.

Proprietors must take full account of safeguarding issues that may impact on children and young people such as bullying, online abuse and eating disorders. The school must ensure relevant policies and guidance are in place to support children, young people and staff. In developing these policies, staff are required to refer to national guidance.

Proper Person

The term 'proper person' is used throughout part V of the Education (Scotland) Act 1980. In short, a proper person is either a proprietor or teacher who is a PVG Scheme member (and, in the case of teachers, appropriately registered with the General Teaching Council for Scotland) and not otherwise barred from the role of proprietor or teacher.

Additional information on 'proper person' is included in an annex at the end of this guidance.

NB: This is not an exhaustive list of the terms which proprietors and school staff should be familiar with. For further information, please refer to the *National guidance for child protection in Scotland 2021*.

2. Responsibilities of proprietors

Proprietors of independent schools have a wide array of responsibilities, many of which are detailed in [The Registration of Independent Schools in Scotland: Guidance for Applicants, Proprietors, and Parents](#). These responsibilities include ensuring that the school safeguards and promotes the welfare of learners at their school, lest the school be found objectionable, or at risk of becoming so, on the grounds listed in section 99(1A) of the [Education \(Scotland\) Act 1980](#).

How a school, and its proprietor, does this is largely a matter for the school and proprietor. However, there are some mandatory actions which are set out below:

- That the school's proprietors, and all staff undertaking regulated work (i.e. school staff and volunteers), are members of the PVG Scheme in advance of taking up post (this is required of any school's robust recruitment practices) and that the legal duty to refer is understood and acted on where appropriate.
- That all teachers employed in the school are duly registered with the General Teaching Council for Scotland.
- That all care staff are appropriately registered with the Scottish Social Services Council.
- That the school has a Child Protection Co-ordinator and Deputy Child Protection Co-ordinator, that both are appropriately trained, and that training is regularly refreshed.
- That all school staff, annually, undertake appropriate child protection training.
- That the school has a Child Protection and Safeguarding Policy which is understood by all staff, parents, and learners, and is reviewed regularly.

Additionally, where a school includes a school accommodation service (i.e. boarding or residential schools), there is an additional duty set out in section 125A of the 1980 Act: "the duty to safeguard and promote the welfare of the child or young person" accommodated at the school.

2.1 Recruitment

While proprietors may not have a direct role in the routine appointment of staff, they are the employer and have ultimate responsibility for the recruitment of staff and volunteers in the school and must ensure there are robust recruitment policies in place. This includes, for example, appropriate pre-employment checks: ensuring that all staff are PVG Scheme Members and registered with the appropriate professional body (the GTCS, or SSSC, for example) depending on the role. Where the role requires GTCS registration (i.e. teaching roles), employers will wish to make use of the [searchable GTCS register](#) to ensure there are no fitness to teach issues.

2.2 Training of staff

As set out above, all staff must undertake – annually – appropriate child protection professional learning. In addition, the school's Child Protection Co-ordinator and Deputy Child Protection Co-ordinator must undertake role-specific professional learning. While it necessary for every school to have at least one Child Protection Co-Ordinator and one Deputy Child Protection Co-ordinator, a school's size – and

whether there is also boarding accommodation – will likely mean that there is a need for more than these two roles alone.

All professional learning must result in all staff across the school having the necessary competences and skills to carry out their safeguarding and child protection roles and responsibilities to the required standard. It is the responsibility of the proprietor to ensure that the content of professional learning aligns with national guidance and is updated regularly to reflect local, national or societal issues. In designing training, providers or proprietors are obliged to refer to National Child Protection Guidance and the National Framework for Child Protection Learning and Development in Scotland; training must also reference the conduct expected of GTCS registered teachers.

2.3 Safeguarding sub-committee

While it is not obligatory, a number of independent schools find benefits in the governing body empowering a sub-committee of governors to oversee and challenge safeguarding and child protection practices in school (in the same way that schools may have a similar sub-committee looking at educational provision or financial matters in the school). All proprietors must also undertake safeguarding training.

Having such a sub-committee does not negate the remainder of the board's responsibilities on safeguarding and child protection; nor the responsibilities of school staff. However, having a small team with this additional responsibility allows for a small working group to consider the school's approaches to safeguarding and child protection in a robust fashion.

They, too, may be empowered to take a pro-active approach to the refreshing and refinement of safeguarding in the spirit of continuous improvement. The example of such a sub-committee has not been used to imply that this is the only means of overseeing and challenging how a school approaches child protection and safeguarding; how a board is constituted is a matter for the proprietor and will be shaped as necessary to suit the school's individual context and the needs of children and young people at the school.

2.4 Responsibilities of staff

It cannot be stated too often that it is the responsibility of all to keep children and young people safe from harm and all those employed in the school should be equipped to handle a safeguarding concern appropriately, timeously, and professionally.

All staff are required to undertake appropriate child protection training, each year, and be able to demonstrate an understanding of what to do should they see, hear, or believe there to be a child protection or safeguarding concern.

Training is available from a number of providers and may be made available through the local authority your school is based in or through the Scottish Council of Independent Schools and elsewhere. Additional training must also be provided for the school's Child Protection Co-ordinator and Deputy Child Protection Co-ordinator

which covers the specific duties and responsibilities of the child protection co-ordinator role.

Additionally, schools must sustain environments where children, young people, and parents know how to raise concerns about staff.

2.5 The National Guidance for Child Protection in Scotland 2021 provides the following specific information about independent schools:

As for all staff in local authority establishments, all staff in independent schools have a responsibility to ensure that the children in their care are not harmed. This applies to teachers and all other practitioners, staff and volunteers. The proprietors of independent schools have a responsibility to ensure that the school they are responsible for does not become objectionable on any of the grounds listed in section 99(1A) of the Education (Scotland) Act 1980. This includes ensuring that the welfare of learners is safeguarded and promoted at the school.

The Public Services Reform (General Teaching Council for Scotland) Order 2011 and the Protection of Vulnerable Groups (Scotland) Act 2007 strengthened the provisions which ensure that teachers in independent schools (as well as other persons in child care positions) meet the necessary standards to enable them to work with children. From 1 June 2021 all teachers in independent schools must be GTCS-registered under the Registration of Independent Schools (Prescribed Person) (Scotland) Regulations 2017 (as amended in 2020).

3. Who to contact

3.1 At any time

Proprietors, and any school staff, are welcome to contact the following individuals at any time for advice and support.

The Registrar of Independent Schools: an official of the Scottish Government, who assists the Scottish Ministers in the registration and regulation of independent schools. While the Registrar of Independent Schools has no formal role directly in the handling of child protection matters, the Registrar is available to support any school and provide advice as required (independentschools@educationscotland.gov.scot).

The School's Link HM Inspector: each independent school has an identified Link HM Inspector. Whilst it is good practice for schools to alert their link HM Inspector to safeguarding and child protection issues, it is important to note that HM Inspectors do not have a direct role in responding to child protection concerns.

The Care Inspectorate has regulatory functions in respect of any independent school that provides accommodation (i.e. a boarding or residential school) and any independent school which provides early learning and childcare. Such services must be registered with the Care Inspectorate. As outlined in this guidance, and elsewhere, there are a number of 'notifiable' incidents which must be referred to the Care Inspectorate.

The General Teaching Council for Scotland (GTCS): The GTCS is the regulatory body for all teachers in Scotland (whether they are employed in local authority, grant-aided, or independent schools). Proprietors have a legal obligation to refer teachers in particular circumstances (discussed later in this guidance). The GTCS is available to discuss and offer advice whenever required/

The Scottish Council of Independent Schools (SCIS): While SCIS is a membership body (and not a regulatory body or part of government), SCIS are happy to receive enquiries from proprietors, headteachers, staff and governors, to offer advice, guidance, and training to member schools.

National Education Safeguarding Leads Network: this new collaborative network (which includes SCIS as a member) brings together education staff who have lead responsibility in safeguarding. These staff from across all local authorities and the independent sector will come together to share practice, support development of professional learning and engage in professional dialogue regarding safeguarding in education themes.

3.2 Where there is a child protection or safeguarding concern

All services and professional bodies should already have clear policies in place for identifying, sharing and acting upon concerns about risk of harm to a child or children. Concerns about possible harm to a child from abuse, neglect or exploitation should always be shared with police or social work without delay.

Concerns may arise in a number of ways including:

- Because of what a child has said
- Over a period of time
- In response to a particular incident
- As a result of direct observations
- Through reports from family, from a third party, or from an anonymous source
- If children are known to social work or have an existing child's plan
- Through notification that a child may become a member of the same household as a child in respect of whom any of the offences mentioned in Schedule 1 of the Criminal Procedure (Scotland) Act 1995 has been committed, or as a person who has committed any of the offences mentioned in Schedule 1

If a member of staff is unsure whether a concern would meet the threshold for child protection, they must discuss it with their child protection coordinator and if they are in doubt they should refer to social work. The GIRFEC National Practice Model can be used as an assessment framework to inform the need to make a referral to another service, including social work.

There are 5 key questions that professionals should ask themselves:

1. What is getting in the way of this person's wellbeing?
2. Do I have all the information I need to help?
3. What can I do now?
4. What can my organisation do to help?
5. What additional help, if any, may be needed from others?

Every local authority has a duty to promote, support and safeguard the wellbeing of all children in need in their area. Local authority social services also have a responsibility for children and young people from their own area, even when in establishments managed by providers other than the local authority (i.e. independent schools). Local authority social services must be contacted where there is a child protection or safeguarding concern. They may be contacted at any time for advice and assistance.

In addition, where a concern relates to a teacher, proprietors should contact GTC Scotland to discuss a discretionary referral without delay.

Where there is concern that a child may be at risk of significant harm, or if there is any allegation related to potentially criminal conduct (or actual criminal conduct), the school will be expected to report the matter to Police Scotland so that they may

investigate the matter as appropriate. Additionally, it may be appropriate to seek advice from Divisional Concern Hubs or local community policing teams as appropriate. Police officers have a statutory duty to detect and prevent crime. Child protection is therefore a fundamental part of the duties of all police officers.

Appendix H of the *National Guidance for Child Protection 2021* provides a checklist to support communication when liaising with authorities and is replicated below in figure 1 for reference.

Name role/contact details of person reporting concern
<p>Key contacts</p> <ul style="list-style-type: none"> • Name of the child, age, date of birth and home address if possible • Name/address/phone of parents/carers or guardians • Culture/language/understanding: any considerations in communication? • Name of child's school, nursery/ early learning centre or childcare • Is it known if the child is on the Child Protection register?
<p>Immediate needs and concerns</p> <ul style="list-style-type: none"> • What is the nature of the child protection concern? • Where is the child now? • How is he/she now? • Physically: does he/she have any known injuries or immediate health needs and do they require • medical treatment? • Emotionally: how is he/she right now and what does she/he need immediately for their • reassurance/understanding? • Communication and understanding; is he/she able to communicate without interpreting/without • additional support for communication? • Is the child safe now? • If not, in your view, is there action that might be taken to make them safe
<p>Record of concerns</p> <ul style="list-style-type: none"> • When did these concerns first come to light? What happened? (For example because of an injury? through what this or another child has said? because of how a child appears? or due to e.g. parental behaviour?) • Is a person are persons are believed to be responsible for harm to a child? • If so, is/are their name/address/occupation/relationship to the child known? • Are you aware if this person has/these persons have access to other children? (Name, age and address details of such children if available?) • If the concern was raised by this child then who has spoken to him/her? Is the person who has spoken to the child available to be spoken with? • What has the child said to this point? (Please note and share) • What he/she has been asked, when and by whom? (Please note and share) • If concerns were not reported when they first arose, was there a reason for this and what has prompted reporting now?
<p>Agreed actions (following this initial communication)</p>

Figure 1, Checklist to support communication about concerns to child protection services, taken from Appendix H of The National Guidance for Child Protection in Scotland 2021.

When an allegation is made against a member of staff, the proprietors will wish to consider whether it is necessary to suspend that member of staff, without prejudice, until any police investigation – and subsequent disciplinary process – has concluded. The process for this should be set out in the school's disciplinary policy and must include onward referral to GTC Scotland where appropriate.

For **boarding or residential schools**, it will also be necessary to notify the Care Inspectorate. Guidance on notifications is available, online, at: [Notifications \(careinspectorate.com\)](https://www.careinspectorate.com). The Care Inspectorate will also be happy to assist with any enquiries around notification. Many boarding schools in Scotland are members of the Boarding Schools Association (BSA), the BSA Charter includes [mandatory reporting](#).

While there is no obligation on schools, day or boarding, to notify the Registrar of Independent Schools of any child protection or safeguarding concerns, it is often useful to do so. The Registrar may be informed by a third party and – if the school has already notified HM Inspectors and the Registrar – they will be better placed to respond to any concern or complaint. Additionally, the Registrar and HM Inspectors will be able to offer advice and support to the school as appropriate. All the regulatory bodies operate collaboratively and share information with each other in confidence.

3.3 Information sharing

Sharing relevant information proportionately and lawfully is an essential part of protecting children from harm and ensuring their wellbeing. Practitioners and managers in statutory services and the voluntary sector should all understand when and how they may share information. Practitioners must be supported and guided in working within and applying the law through organisational procedures and supervisory processes. Within agencies, data controllers and information governance/ data protection leads must ensure that the systems and procedures for which they share accountability provide an effective framework for lawful, fair and transparent information sharing. Where appropriate, data sharing agreements must be in place.

Where there is a child protection concern, relevant information should be shared with police or social work and regulatory bodies without delay, **provided it is necessary, proportionate and lawful** to do so. The lawful basis for sharing information should be identified and recorded. Proprietors will wish to ensure that school staff have a full understanding of the school's policies in this area and how those policies align with national guidance. Further information on information sharing and records management can be found in Part 1 of the *National Guidance for Child Protection in Scotland 2021*.

4. Initiating Child Protection Procedures

Child protection procedures are initiated when police, social work or health determine that a child may have been significantly harmed or may be at risk of significant harm. All concerns which may indicate risk of significant harm must lead to an inter-agency referral discussion (IRD). Practitioners in police, social work and health must participate in IRDs and education/early learning and childcare may have an essential contribution. The child protection process is outlined in page 138 of the *National Guidance for Child Protection in Scotland 2021*.

5. Referrals to the General Teaching Council for Scotland, Disclosure Scotland, the Office of the Scottish Charity Regulator, the Scottish Social Services Council and Registrar of Independent Schools

While the disciplinary process is separate from the means by which child protection and safeguarding concerns must be reported, it is considered appropriate to re-iterate here the need for proprietors to make referrals to the GTCS and Disclosure Scotland in certain circumstances.

5.1 Referrals to the General Teaching Council for Scotland

At the end of a disciplinary process, and at other stages, referrals may need to be made to the General Teaching Council for Scotland ('GTCS') or Disclosure Scotland.

The GTCS is the body responsible for the regulation of the teaching profession. All teachers in the independent sector must be registered with the GTCS. There are circumstances under which a proprietor must refer a teacher to the GTCS; those circumstances being:

- a teacher is dismissed on grounds of misconduct or incompetence; or
- a teacher resigns, or otherwise stops working at the school, and – were it not for leaving – the teacher would have, or might have, been dismissed on grounds of misconduct or incompetence.

Referrals may be made to the GTCS online, at: [Making a Referral or Recommendation - The General Teaching Council for Scotland \(gtcs.org.uk\)](https://www.gtcs.org.uk/making-a-referral-or-recommendation); of course, proprietors and school leaders may wish to engage with the GTCS at an earlier stage for advice if necessary.

GTC Scotland would also expect early referrals made by proprietors by exception in cases where it is considered that the risk is so serious that immediate action needs to be taken by GTC Scotland to restrict the teacher's registration in the interests of public protection. This would apply in cases where the allegations involved represent conduct that is fundamentally incompatible with being a teacher (for example sexual abuse, violence or child protection matters). In such circumstances, proprietors are unlikely to wait for employer disciplinary procedures to conclude before referring to GTC Scotland

5.2 Referrals to Disclosure Scotland

Disclosure Scotland maintains the lists of person barred from regulated work with children and / or protected adults in Scotland and operate the Protection of Vulnerable Groups ('PVG') Scheme.

Disclosure Scotland, on behalf of the Scottish Ministers, also receive and consider referrals made to them in a number of prescribed circumstances (such as referrals made by Courts where an individual is convicted of a particular offence).

Proprietors of independent schools must make referrals to Disclosure Scotland when an employee has been found to have carried out harmful behaviour which:

- led to that employee being dismissed;
- would have led to dismissal but the employee left prior to dismissal; or
- led to the employee being transferred away from work with children or protected adults.

Examples of harmful behaviour which must be referred: harming a child or protected adult; placing a child or protected adult at risk of harm; inappropriate behaviour involving pornography; inappropriate behaviour of a sexual nature involving a child or protected adult; or giving inappropriate medical treatment to a child or protected adult.

A referral must be made within three months of any of the outcomes listed above occurring. Referrals to Disclosure Scotland may be made, online, at: [Make a referral to Disclosure Scotland - mygov.scot](#).

5.3 Referrals to the Office of the Scottish Charity Regulator (OSCR)

Many independent schools in Scotland are also registered charities and, therefore, are subject to regulation by OSCR; OSCR's role is to ensure that all charities in Scotland comply with the Charities and Trustees Investment (Scotland) Act 2005.

As with the Care Inspectorate, there are specific circumstances in which an independent school must make a referral to OSCR; these are known as [notifiable events](#).

5.4 Referrals to the Scottish Social Services Council (SSSC)

The SSSC is the regulator for social work, social care and early years employees in Scotland. While not all independent schools will have such staff, many do and schools that do have such staff must be aware of the need to have such staff appropriately registered with the SSSC in the same way that teaching staff are registered with the GTCS.

The SSSC, as regulator, considers fitness to practice (similar to a teacher's fitness to teach) and referrals must be made to the SSSC where a member of care staff has been: suspended, dismissed or demoted; or resigned during a disciplinary investigation and the employer would have considered dismissal; or charged or convicted with a criminal offence. Additionally, a referral to the SSSC must be made when a school has referred an individual to Disclosure Scotland or the employer is otherwise concerned about an individual's fitness to practice.

More detail on the referral process, and when to refer, is available on the SSSC website at: [Guidance for employers, the police or other public bodies for making a referral - Scottish Social Services Council \(sssc.uk.com\)](#).

5.5 Referrals to the Registrar of Independent Schools

Whenever a proprietor makes a referral to a regulatory body (such as the GTCS), it is good practice to also inform the Registrar of Independent Schools who can inform and advise the Scottish Ministers accordingly.

6. Conclusions

Keeping children and young people safe is a priority for all and those who undertake to provide education and care – at any level – must be familiar with the national guidance, legislative responsibilities, and good practice.

The role of a proprietor is to oversee a school's capacity to protect children and young people – ensuring that their school has the right people, policies, and practices – and to ensure that the school continues to improve practice.

While this guidance has been drafted to provide an overview, and highlight points of contact and advice, it is not exhaustive. Proprietors, Child Protection Co-ordinators, and senior leaders should be very familiar with the *National Guidance for Child Protection in Scotland 2021* and other documents referenced in this guidance.

Annex A: proper person

The term proper person is used throughout part V of the Education (Scotland) Act 1980 (in particular, in sections 98A (5) and 99(1A)(g) and (h), which set out, among other things, that the Scottish Ministers (1) may not approve an application to register an independent school where either a proposed proprietor or proposed teacher is not a proper person and (2) may find a registered independent school objectionable where a proprietor or a teacher is not a proper person).

It has been considered appropriate to provide further clarity on what is meant by proper person and, therefore, additional detail has been below.

Proprietors:

- A proprietor will not be considered a proper person where:
(1) they are disqualified from being the proprietor of an independent school (by virtue of section 100(2)(e) of the 1980 Act); and / or
(2) they have been barred from regulated work with children (by virtue of the Protection of Vulnerable Groups (Scotland) Act 2007).
- Where a proposed proprietor is not a proper person, the Scottish Ministers will (in the case of an application to register a new school) refuse the application.
- Where a proprietor at an extant school is found not to be a proper person, the Scottish Ministers will consider whether the school is objectionable, or at risk of becoming so, on the grounds set out in section 99(1A)(g) of the 1980 Act and regulatory action (such as imposing conditions on the running of the school) will very likely follow.

Teachers:

- A teacher will not be considered a proper person where:
(1) they are disqualified from being a teacher at an independent school (by virtue of section 100(2)(e) of the 1980 Act); and / or
(2) they have been barred from regulated work with children (by virtue of the Protection of Vulnerable Groups (Scotland) Act 2007); and / or
(3) they are a 'prescribed person' (i.e. not registered with the General Teaching Council for Scotland as set out in the Registration of Independent Schools (Prescribed Person) (Scotland) Regulations 2017).
- Where a proposed teacher is not a proper person, the Scottish Ministers will (in the case of an application to register a new school) refuse the application.
- Where a teacher at an extant school is found not to be a proper person, the Scottish Ministers will consider whether the school is objectionable, or at risk of becoming so, on the grounds set out in section 99(1A)(h) of the 1980 Act and regulatory action (such as imposing conditions on the running of the school) will very likely follow.

As proprietors should appreciate, it is vital – and obligatory – for all proprietors, teachers, and other staff to be PVG Scheme Members (to ensure that no individual at the school is barred from regulated work) and that all teachers are appropriately registered with the General Teaching Council for Scotland (and that any other staff, such as care staff, are appropriately registered with the appropriate regulatory body). Such checks must be included as part of the school's robust recruitment practices.

Where a school identifies an individual who is not a proper person, the school must respond quickly in accordance with their own policies and inform the Registrar of Independent Schools; no individual who is not a proper person should be permitted to carry out the role of proprietor or teacher.



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Instruction for amendments to this document

Any proposed amendments to this document should be agreed by the Registrar of Independent Schools' Office in consultation with stakeholders. Any questions or queries on this document should be directed to the Registrar of Independent Schools' Office by email at: independentschools@educationscotland.gov.scot.

Introduction

Of all the responsibilities entrusted to those who run or work in schools, safeguarding children and young people from harm must be chief among them.

In order to do that, it must be everyone's responsibility to be cognisant of the obligations that come from the trust placed in them. Every child has the right to protection from all forms of abuse, neglect or exploitation.

We know from [The Promise](#) how important it is to have a focus on the safety and wellbeing of children. Children and young people must be listened to and meaningfully involved in decision-making about their care and welfare, with all those involved properly listening and responding to what children and young people want and need.

Furthermore, Scotland's approach to improving the wellbeing of children and young people, *Getting It Right For Every Child* ([GIRFEC](#)), is a means for families to work in partnership with those who may support them, such as doctors, nurses, teachers and other education practitioners.

Having reflected on the evidence presented during the sixth stage of the Scottish Child Abuse Inquiry (which focused on boarding schools in Scotland), the Scottish Government requested that the Registrar of Independent Schools develop guidance for the proprietors of independent schools (the term 'proprietors' here assumes the meaning given in section 135 of the Education (Scotland) Act 1980, i.e. the managers of the school; which could be a governing body, trustees, or other person or body of persons responsible for the management of the establishment).

This guidance is not statutory, however, it does relate to statutory and other legal obligations on proprietors. The guidance is not intended to provide an exhaustive list of actions and responsibilities. As ever, proprietors will wish to seek independent legal advice where appropriate to satisfy themselves that they meet their legal obligations.

For further guidance, proprietors may wish to contact HM Inspectors, the Care Inspectorate, Registrar of Independent Schools, GTC Scotland, or the Scottish Council of Independent Schools for advice.

Beyond the guidance, regulation, and legislation that exists to enforce the good running of independent schools, and their primary objectives of keeping children and young people safe and facilitating their continued high-quality education, it is for proprietors to look to their individual contexts and develop robust and reliable means of challenging and improving practice.

Additional reading

This guidance should be read alongside the [National guidance for child protection in Scotland 2021](#) and [The Registration of Independent Schools in Scotland: Guidance for Applicants, Proprietors, and Parents](#).

The *National Guidance for Child Protection in Scotland 2021*, published in September 2021, describes the responsibilities and expectations of everyone who works with, or comes into contact with, children and young people, families, and carers in Scotland. It affirms and strengthens the key role of the education workforce in protecting children through the inclusion of education staff in all references to multi-agency arrangements.

Furthermore, proprietors must understand their obligations as set out in [GTC Scotland's Fitness to Teach Process, Information Booklet for Employers](#).

Additionally, proprietors and school leaders should already be very familiar with [How Good Is Our School? \(4th Edition\)](#), particularly Quality Indicator 2.1 (Safeguarding and child protection).

Finally, proprietors and school leaders should also be aware of the *Guidance on Effective Safeguarding for boards of governors in independent schools*, developed by HM Inspectors, the Care Inspectorate, and Registrar of Independent Schools. Which is a separate document and will be published soon.

Contents

1. Definitions and Terms of Note
2. Responsibilities of proprietors
 - 2.1 Recruitment
 - 2.2 Training of staff
 - 2.3 Safeguarding sub-committee
 - 2.4 Responsibilities of staff
 - 2.5 The National Guidance for Child Protection in Scotland 2021 provides the following specific information about independent schools
3. Who to contact
 - 3.1 At any time
 - 3.2 Where there is a child protection or safeguarding concern
 - 3.3 Information sharing
4. Initiating Child Protection Procedures
5. Referrals to the General Teaching Council for Scotland, Disclosure Scotland, the Office of the Scottish Charity Regulator, the Scottish Social Services Council and Registrar of Independent Schools
 - 5.1 Referrals to the General Teaching Council for Scotland
 - 5.2 Referrals to Disclosure Scotland
 - 5.3 Referrals to the Office of the Scottish Charity Regulator (OSCR)
 - 5.4 Referrals to the Scottish Social Services Council (SSSC)
 - 5.5 Referrals to the Registrar of Independent Schools
6. Conclusions

1. Definitions and Terms of Note

Child

For the purpose of this guidance, generally, a child is any learner attending a school.

Child abuse and neglect

Abuse and neglect are forms of maltreatment and may involve the infliction of harm, or the failure to act to prevent harm. It may involve physical abuse (hitting a child, for example) or emotional abuse. The *National Guidance for child protection in Scotland 2021* defines emotional abuse as “persistent emotional ill treatment that has severe and persistent adverse effects on a child’s emotional development.” It may involve, for example, repeated silencing, ridiculing or intimidation; conveying to a child that they are worthless or unloved; exploitation or corruption of a child.

Sexual abuse

Child sexual abuse (CSA) is defined in the *National guidance for child protection in Scotland 2021* as: “an act that involves a child under 16 years of age in any activity for the sexual gratification of another person, whether or not it is claimed that the child either consented or assented. Sexual abuse involves forcing or enticing a child to take part in sexual activities, whether or not the child is aware of what is happening. For those who may be victims of sexual offences aged 16-17, child protection procedures must be considered. These procedures must be applied when there is concern about the sexual exploitation or trafficking of a child.

The activities may involve physical contact, including penetrative or non-penetrative acts. They may include non-contact activities, such as involving children in looking at or in the production of indecent images, in watching sexual activities, using sexual language towards a child, or encouraging children to behave in sexually inappropriate ways.”

Child sexual exploitation (CSE) is defined as a form of child sexual abuse. It occurs where an individual or group takes advantage of an imbalance of power to coerce, manipulate or deceive a person under 18 into sexual activity in exchange for something the victim needs or wants, and/or for the financial advantage or increased status of the perpetrator or facilitator. The victim may have been sexually exploited even if the sexual activity appears consensual. Child sexual exploitation does not always involve physical contact. It can also occur through the use of technology. Children who are trafficked across borders or within the UK may be at particular risk of sexual abuse (*National guidance for child protection in Scotland 2021*).

Neglect

Neglect is the persistent failure to meet the basic physical or psychological needs of a child which is likely to result in the serious impairment of the child’s health or development. Poverty, and other systemic stresses, may be a factor and neglect is an indicator of both support and protection needs.

'Persistent' means there is a pattern which may be continuous or intermittent which has caused, or is likely to cause significant harm. However, single instances of neglectful behaviour by a person in a position of responsibility can be significantly harmful. Early signs of neglect indicate the need for support to prevent harm (*National guidance for child protection in Scotland 2021*).

Child Protection

Child protection refers to the processes involved in consideration, assessment and planning of required action, together with the actions themselves, where there are concerns that a child may be at risk of harm. Child protection guidance provides overall direction for agencies and professional disciplines where there are concerns that a child may be at risk of harm. Child protection procedures are initiated when police, social work or health professionals determine that a child may have been abused or may be at risk of significant harm. Child protection involves:

- Immediate action, if necessary, to prevent significant harm to a child
- inter-agency investigation about the occurrence or probability of abuse or neglect, or of a criminal offence against a child. Investigation extends to other children affected by the same apparent risks as the child who is the subject of a referral
- assessment and action to address the interaction of behaviour, relationships and conditions that may, in combination, cause or accelerate risks
- focus within assessment, planning and action upon listening to each child's voice and recognising their experience, needs and feelings
- collaboration between agencies and persistent efforts to work in partnership with parents in planning and action to prevent harm or reduce risk of harm
- recognition and support for the strengths, relationships and skills within the child and their world in order to form a plan that reduces risk and builds resilience

Safeguarding

This is a much wider concept than child protection and refers to promoting the welfare of children, young people and protected adults. It encompasses protecting from maltreatment, preventing impairment of their health or development, ensuring that they are growing up in circumstances consistent with the provision of safe and effective care; and taking action to enable all children, young people and protected adults to have the best outcome. Child protection is part of this definition and refers to activities undertaken to prevent children suffering, or likely to suffer, significant harm.

Proprietors must take full account of safeguarding issues that may impact on children and young people such as bullying, online abuse and eating disorders. The school must ensure relevant policies and guidance are in place to support children, young people and staff. In developing these policies, staff are required to refer to national guidance.

Proper Person

The term 'proper person' is used throughout part V of the Education (Scotland) Act 1980. In short, a proper person is either a proprietor or teacher who is a PVG Scheme member (and, in the case of teachers, appropriately registered with the General Teaching Council for Scotland) and not otherwise barred from the role of proprietor or teacher.

Additional information on 'proper person' is included in an annex at the end of this guidance.

NB: This is not an exhaustive list of the terms which proprietors and school staff should be familiar with. For further information, please refer to the *National guidance for child protection in Scotland 2021*.

2. Responsibilities of proprietors

Proprietors of independent schools have a wide array of responsibilities, many of which are detailed in [The Registration of Independent Schools in Scotland: Guidance for Applicants, Proprietors, and Parents](#). These responsibilities include ensuring that the school safeguards and promotes the welfare of learners at their school, lest the school be found objectionable, or at risk of becoming so, on the grounds listed in section 99(1A) of the [Education \(Scotland\) Act 1980](#).

How a school, and its proprietor, does this is largely a matter for the school and proprietor. However, there are some mandatory actions which are set out below:

- That the school's proprietors, and all staff undertaking regulated work (i.e. school staff and volunteers), are members of the PVG Scheme in advance of taking up post (this is required of any school's robust recruitment practices) and that the legal duty to refer is understood and acted on where appropriate.
- That all teachers employed in the school are duly registered with the General Teaching Council for Scotland.
- That all care staff are appropriately registered with the Scottish Social Services Council.
- That the school has a Child Protection Co-ordinator and Deputy Child Protection Co-ordinator, that both are appropriately trained, and that training is regularly refreshed.
- That all school staff, annually, undertake appropriate child protection training.
- That the school has a Child Protection and Safeguarding Policy which is understood by all staff, parents, and learners, and is reviewed regularly.

Additionally, where a school includes a school accommodation service (i.e. boarding or residential schools), there is an additional duty set out in section 125A of the 1980 Act: "the duty to safeguard and promote the welfare of the child or young person" accommodated at the school.

2.1 Recruitment

While proprietors may not have a direct role in the routine appointment of staff, they are the employer and have ultimate responsibility for the recruitment of staff and volunteers in the school and must ensure there are robust recruitment policies in place. This includes, for example, appropriate pre-employment checks: ensuring that all staff are PVG Scheme Members and registered with the appropriate professional body (the GTCS, or SSSC, for example) depending on the role. Where the role requires GTCS registration (i.e. teaching roles), employers will wish to make use of the [searchable GTCS register](#) to ensure there are no fitness to teach issues.

2.2 Training of staff

As set out above, all staff must undertake – annually – appropriate child protection professional learning. In addition, the school's Child Protection Co-ordinator and Deputy Child Protection Co-ordinator must undertake role-specific professional learning. While it necessary for every school to have at least one Child Protection Co-Ordinator and one Deputy Child Protection Co-ordinator, a school's size – and

whether there is also boarding accommodation – will likely mean that there is a need for more than these two roles alone.

All professional learning must result in all staff across the school having the necessary competences and skills to carry out their safeguarding and child protection roles and responsibilities to the required standard. It is the responsibility of the proprietor to ensure that the content of professional learning aligns with national guidance and is updated regularly to reflect local, national or societal issues. In designing training, providers or proprietors are obliged to refer to National Child Protection Guidance and the National Framework for Child Protection Learning and Development in Scotland; training must also reference the conduct expected of GTCS registered teachers.

2.3 Safeguarding sub-committee

While it is not obligatory, a number of independent schools find benefits in the governing body empowering a sub-committee of governors to oversee and challenge safeguarding and child protection practices in school (in the same way that schools may have a similar sub-committee looking at educational provision or financial matters in the school). All proprietors must also undertake safeguarding training.

Having such a sub-committee does not negate the remainder of the board's responsibilities on safeguarding and child protection; nor the responsibilities of school staff. However, having a small team with this additional responsibility allows for a small working group to consider the school's approaches to safeguarding and child protection in a robust fashion.

They, too, may be empowered to take a pro-active approach to the refreshing and refinement of safeguarding in the spirit of continuous improvement. The example of such a sub-committee has not been used to imply that this is the only means of overseeing and challenging how a school approaches child protection and safeguarding; how a board is constituted is a matter for the proprietor and will be shaped as necessary to suit the school's individual context and the needs of children and young people at the school.

2.4 Responsibilities of staff

It cannot be stated too often that it is the responsibility of all to keep children and young people safe from harm and all those employed in the school should be equipped to handle a safeguarding concern appropriately, timeously, and professionally.

All staff are required to undertake appropriate child protection training, each year, and be able to demonstrate an understanding of what to do should they see, hear, or believe there to be a child protection or safeguarding concern.

Training is available from a number of providers and may be made available through the local authority your school is based in or through the Scottish Council of Independent Schools and elsewhere. Additional training must also be provided for the school's Child Protection Co-ordinator and Deputy Child Protection Co-ordinator

which covers the specific duties and responsibilities of the child protection co-ordinator role.

Additionally, schools must sustain environments where children, young people, and parents know how to raise concerns about staff.

2.5 The National Guidance for Child Protection in Scotland 2021 provides the following specific information about independent schools:

As for all staff in local authority establishments, all staff in independent schools have a responsibility to ensure that the children in their care are not harmed. This applies to teachers and all other practitioners, staff and volunteers. The proprietors of independent schools have a responsibility to ensure that the school they are responsible for does not become objectionable on any of the grounds listed in section 99(1A) of the Education (Scotland) Act 1980. This includes ensuring that the welfare of learners is safeguarded and promoted at the school.

The Public Services Reform (General Teaching Council for Scotland) Order 2011 and the Protection of Vulnerable Groups (Scotland) Act 2007 strengthened the provisions which ensure that teachers in independent schools (as well as other persons in child care positions) meet the necessary standards to enable them to work with children. From 1 June 2021 all teachers in independent schools must be GTCS-registered under the Registration of Independent Schools (Prescribed Person) (Scotland) Regulations 2017 (as amended in 2020).

3. Who to contact

3.1 At any time

Proprietors, and any school staff, are welcome to contact the following individuals at any time for advice and support.

The Registrar of Independent Schools: an official of the Scottish Government, who assists the Scottish Ministers in the registration and regulation of independent schools. While the Registrar of Independent Schools has no formal role directly in the handling of child protection matters, the Registrar is available to support any school and provide advice as required (independentschools@educationscotland.gov.scot).

The School's Link HM Inspector: each independent school has an identified Link HM Inspector. Whilst it is good practice for schools to alert their link HM Inspector to safeguarding and child protection issues, it is important to note that HM Inspectors do not have a direct role in responding to child protection concerns.

The Care Inspectorate has regulatory functions in respect of any independent school that provides accommodation (i.e. a boarding or residential school) and any independent school which provides early learning and childcare. Such services must be registered with the Care Inspectorate. As outlined in this guidance, and elsewhere, there are a number of 'notifiable' incidents which must be referred to the Care Inspectorate.

The General Teaching Council for Scotland (GTCS): The GTCS is the regulatory body for all teachers in Scotland (whether they are employed in local authority, grant-aided, or independent schools). Proprietors have a legal obligation to refer teachers in particular circumstances (discussed later in this guidance). The GTCS is available to discuss and offer advice whenever required/

The Scottish Council of Independent Schools (SCIS): While SCIS is a membership body (and not a regulatory body or part of government), SCIS are happy to receive enquiries from proprietors, headteachers, staff and governors, to offer advice, guidance, and training to member schools.

National Education Safeguarding Leads Network: this new collaborative network (which includes SCIS as a member) brings together education staff who have lead responsibility in safeguarding. These staff from across all local authorities and the independent sector will come together to share practice, support development of professional learning and engage in professional dialogue regarding safeguarding in education themes.

3.2 Where there is a child protection or safeguarding concern

All services and professional bodies should already have clear policies in place for identifying, sharing and acting upon concerns about risk of harm to a child or children. Concerns about possible harm to a child from abuse, neglect or exploitation should always be shared with police or social work without delay.

Concerns may arise in a number of ways including:

- Because of what a child has said
- Over a period of time
- In response to a particular incident
- As a result of direct observations
- Through reports from family, from a third party, or from an anonymous source
- If children are known to social work or have an existing child's plan
- Through notification that a child may become a member of the same household as a child in respect of whom any of the offences mentioned in Schedule 1 of the Criminal Procedure (Scotland) Act 1995 has been committed, or as a person who has committed any of the offences mentioned in Schedule 1

If a member of staff is unsure whether a concern would meet the threshold for child protection, they must discuss it with their child protection coordinator and if they are in doubt they should refer to social work. The GIRFEC National Practice Model can be used as an assessment framework to inform the need to make a referral to another service, including social work.

There are 5 key questions that professionals should ask themselves:

1. What is getting in the way of this person's wellbeing?
2. Do I have all the information I need to help?
3. What can I do now?
4. What can my organisation do to help?
5. What additional help, if any, may be needed from others?

Every local authority has a duty to promote, support and safeguard the wellbeing of all children in need in their area. Local authority social services also have a responsibility for children and young people from their own area, even when in establishments managed by providers other than the local authority (i.e. independent schools). Local authority social services must be contacted where there is a child protection or safeguarding concern. They may be contacted at any time for advice and assistance.

In addition, where a concern relates to a teacher, proprietors should contact GTC Scotland to discuss a discretionary referral without delay.

Where there is concern that a child may be at risk of significant harm, or if there is any allegation related to potentially criminal conduct (or actual criminal conduct), the school will be expected to report the matter to Police Scotland so that they may

investigate the matter as appropriate. Additionally, it may be appropriate to seek advice from Divisional Concern Hubs or local community policing teams as appropriate. Police officers have a statutory duty to detect and prevent crime. Child protection is therefore a fundamental part of the duties of all police officers.

Appendix H of the *National Guidance for Child Protection 2021* provides a checklist to support communication when liaising with authorities and is replicated below in figure 1 for reference.

Name role/contact details of person reporting concern
<p>Key contacts</p> <ul style="list-style-type: none"> • Name of the child, age, date of birth and home address if possible • Name/address/phone of parents/carers or guardians • Culture/language/understanding: any considerations in communication? • Name of child's school, nursery/ early learning centre or childcare • Is it known if the child is on the Child Protection register?
<p>Immediate needs and concerns</p> <ul style="list-style-type: none"> • What is the nature of the child protection concern? • Where is the child now? • How is he/she now? • Physically: does he/she have any known injuries or immediate health needs and do they require • medical treatment? • Emotionally: how is he/she right now and what does she/he need immediately for their • reassurance/understanding? • Communication and understanding; is he/she able to communicate without interpreting/without • additional support for communication? • Is the child safe now? • If not, in your view, is there action that might be taken to make them safe
<p>Record of concerns</p> <ul style="list-style-type: none"> • When did these concerns first come to light? What happened? (For example because of an injury? through what this or another child has said? because of how a child appears? or due to e.g. parental behaviour?) • Is a person are persons are believed to be responsible for harm to a child? • If so, is/are their name/address/occupation/relationship to the child known? • Are you aware if this person has/these persons have access to other children? (Name, age and address details of such children if available?) • If the concern was raised by this child then who has spoken to him/her? Is the person who has spoken to the child available to be spoken with? • What has the child said to this point? (Please note and share) • What he/she has been asked, when and by whom? (Please note and share) • If concerns were not reported when they first arose, was there a reason for this and what has prompted reporting now?
<p>Agreed actions (following this initial communication)</p>

Figure 1, Checklist to support communication about concerns to child protection services, taken from Appendix H of The National Guidance for Child Protection in Scotland 2021.

When an allegation is made against a member of staff, the proprietors will wish to consider whether it is necessary to suspend that member of staff, without prejudice, until any police investigation – and subsequent disciplinary process – has concluded. The process for this should be set out in the school's disciplinary policy and must include onward referral to GTC Scotland where appropriate.

For **boarding or residential schools**, it will also be necessary to notify the Care Inspectorate. Guidance on notifications is available, online, at: [Notifications \(careinspectorate.com\)](https://www.careinspectorate.com/notifications). The Care Inspectorate will also be happy to assist with any enquiries around notification. Many boarding schools in Scotland are members of the Boarding Schools Association (BSA), the BSA Charter includes [mandatory reporting](#).

While there is no obligation on schools, day or boarding, to notify the Registrar of Independent Schools of any child protection or safeguarding concerns, it is often useful to do so. The Registrar may be informed by a third party and – if the school has already notified HM Inspectors and the Registrar – they will be better placed to respond to any concern or complaint. Additionally, the Registrar and HM Inspectors will be able to offer advice and support to the school as appropriate. All the regulatory bodies operate collaboratively and share information with each other in confidence.

3.3 Information sharing

Sharing relevant information proportionately and lawfully is an essential part of protecting children from harm and ensuring their wellbeing. Practitioners and managers in statutory services and the voluntary sector should all understand when and how they may share information. Practitioners must be supported and guided in working within and applying the law through organisational procedures and supervisory processes. Within agencies, data controllers and information governance/ data protection leads must ensure that the systems and procedures for which they share accountability provide an effective framework for lawful, fair and transparent information sharing. Where appropriate, data sharing agreements must be in place.

Where there is a child protection concern, relevant information should be shared with police or social work and regulatory bodies without delay, **provided it is necessary, proportionate and lawful** to do so. The lawful basis for sharing information should be identified and recorded. Proprietors will wish to ensure that school staff have a full understanding of the school's policies in this area and how those policies align with national guidance. Further information on information sharing and records management can be found in Part 1 of the *National Guidance for Child Protection in Scotland 2021*.

4. Initiating Child Protection Procedures

Child protection procedures are initiated when police, social work or health determine that a child may have been significantly harmed or may be at risk of significant harm. All concerns which may indicate risk of significant harm must lead to an inter-agency referral discussion (IRD). Practitioners in police, social work and health must participate in IRDs and education/early learning and childcare may have an essential contribution. The child protection process is outlined in page 138 of the *National Guidance for Child Protection in Scotland 2021*.

5. Referrals to the General Teaching Council for Scotland, Disclosure Scotland, the Office of the Scottish Charity Regulator, the Scottish Social Services Council and Registrar of Independent Schools

While the disciplinary process is separate from the means by which child protection and safeguarding concerns must be reported, it is considered appropriate to re-iterate here the need for proprietors to make referrals to the GTCS and Disclosure Scotland in certain circumstances.

5.1 Referrals to the General Teaching Council for Scotland

At the end of a disciplinary process, and at other stages, referrals may need to be made to the General Teaching Council for Scotland ('GTCS') or Disclosure Scotland.

The GTCS is the body responsible for the regulation of the teaching profession. All teachers in the independent sector must be registered with the GTCS. There are circumstances under which a proprietor must refer a teacher to the GTCS; those circumstances being:

- a teacher is dismissed on grounds of misconduct or incompetence; or
- a teacher resigns, or otherwise stops working at the school, and – were it not for leaving – the teacher would have, or might have, been dismissed on grounds of misconduct or incompetence.

Referrals may be made to the GTCS online, at: [Making a Referral or Recommendation - The General Teaching Council for Scotland \(gtcs.org.uk\)](https://www.gtcs.org.uk/making-a-referral-or-recommendation); of course, proprietors and school leaders may wish to engage with the GTCS at an earlier stage for advice if necessary.

GTC Scotland would also expect early referrals made by proprietors by exception in cases where it is considered that the risk is so serious that immediate action needs to be taken by GTC Scotland to restrict the teacher's registration in the interests of public protection. This would apply in cases where the allegations involved represent conduct that is fundamentally incompatible with being a teacher (for example sexual abuse, violence or child protection matters). In such circumstances, proprietors are unlikely to wait for employer disciplinary procedures to conclude before referring to GTC Scotland

5.2 Referrals to Disclosure Scotland

Disclosure Scotland maintains the lists of person barred from regulated work with children and / or protected adults in Scotland and operate the Protection of Vulnerable Groups ('PVG') Scheme.

Disclosure Scotland, on behalf of the Scottish Ministers, also receive and consider referrals made to them in a number of prescribed circumstances (such as referrals made by Courts where an individual is convicted of a particular offence).

Proprietors of independent schools must make referrals to Disclosure Scotland when an employee has been found to have carried out harmful behaviour which:

- led to that employee being dismissed;
- would have led to dismissal but the employee left prior to dismissal; or
- led to the employee being transferred away from work with children or protected adults.

Examples of harmful behaviour which must be referred: harming a child or protected adult; placing a child or protected adult at risk of harm; inappropriate behaviour involving pornography; inappropriate behaviour of a sexual nature involving a child or protected adult; or giving inappropriate medical treatment to a child or protected adult.

A referral must be made within three months of any of the outcomes listed above occurring. Referrals to Disclosure Scotland may be made, online, at: [Make a referral to Disclosure Scotland - mygov.scot](#).

5.3 Referrals to the Office of the Scottish Charity Regulator (OSCR)

Many independent schools in Scotland are also registered charities and, therefore, are subject to regulation by OSCR; OSCR's role is to ensure that all charities in Scotland comply with the Charities and Trustees Investment (Scotland) Act 2005.

As with the Care Inspectorate, there are specific circumstances in which an independent school must make a referral to OSCR; these are known as [notifiable events](#).

5.4 Referrals to the Scottish Social Services Council (SSSC)

The SSSC is the regulator for social work, social care and early years employees in Scotland. While not all independent schools will have such staff, many do and schools that do have such staff must be aware of the need to have such staff appropriately registered with the SSSC in the same way that teaching staff are registered with the GTCS.

The SSSC, as regulator, considers fitness to practice (similar to a teacher's fitness to teach) and referrals must be made to the SSSC where a member of care staff has been: suspended, dismissed or demoted; or resigned during a disciplinary investigation and the employer would have considered dismissal; or charged or convicted with a criminal offence. Additionally, a referral to the SSSC must be made when a school has referred an individual to Disclosure Scotland or the employer is otherwise concerned about an individual's fitness to practice.

More detail on the referral process, and when to refer, is available on the SSSC website at: [Guidance for employers, the police or other public bodies for making a referral - Scottish Social Services Council \(sssc.uk.com\)](#).

5.5 Referrals to the Registrar of Independent Schools

Whenever a proprietor makes a referral to a regulatory body (such as the GTCS), it is good practice to also inform the Registrar of Independent Schools who can inform and advise the Scottish Ministers accordingly.

6. Conclusions

Keeping children and young people safe is a priority for all and those who undertake to provide education and care – at any level – must be familiar with the national guidance, legislative responsibilities, and good practice.

The role of a proprietor is to oversee a school's capacity to protect children and young people – ensuring that their school has the right people, policies, and practices – and to ensure that the school continues to improve practice.

While this guidance has been drafted to provide an overview, and highlight points of contact and advice, it is not exhaustive. Proprietors, Child Protection Co-ordinators, and senior leaders should be very familiar with the *National Guidance for Child Protection in Scotland 2021* and other documents referenced in this guidance.

Annex A: proper person

The term proper person is used throughout part V of the Education (Scotland) Act 1980 (in particular, in sections 98A (5) and 99(1A)(g) and (h), which set out, among other things, that the Scottish Ministers (1) may not approve an application to register an independent school where either a proposed proprietor or proposed teacher is not a proper person and (2) may find a registered independent school objectionable where a proprietor or a teacher is not a proper person).

It has been considered appropriate to provide further clarity on what is meant by proper person and, therefore, additional detail has been below.

Proprietors:

- A proprietor will not be considered a proper person where:
 - (1) they are disqualified from being the proprietor of an independent school (by virtue of section 100(2)(e) of the 1980 Act); and / or
 - (2) they have been barred from regulated work with children (by virtue of the Protection of Vulnerable Groups (Scotland) Act 2007).
- Where a proposed proprietor is not a proper person, the Scottish Ministers will (in the case of an application to register a new school) refuse the application.
- Where a proprietor at an extant school is found not to be a proper person, the Scottish Ministers will consider whether the school is objectionable, or at risk of becoming so, on the grounds set out in section 99(1A)(g) of the 1980 Act and regulatory action (such as imposing conditions on the running of the school) will very likely follow.

Teachers:

- A teacher will not be considered a proper person where:
 - (1) they are disqualified from being a teacher at an independent school (by virtue of section 100(2)(e) of the 1980 Act); and / or
 - (2) they have been barred from regulated work with children (by virtue of the Protection of Vulnerable Groups (Scotland) Act 2007); and / or
 - (3) they are a 'prescribed person' (i.e. not registered with the General Teaching Council for Scotland as set out in the Registration of Independent Schools (Prescribed Person) (Scotland) Regulations 2017).
- Where a proposed teacher is not a proper person, the Scottish Ministers will (in the case of an application to register a new school) refuse the application.
- Where a teacher at an extant school is found not to be a proper person, the Scottish Ministers will consider whether the school is objectionable, or at risk of becoming so, on the grounds set out in section 99(1A)(h) of the 1980 Act and regulatory action (such as imposing conditions on the running of the school) will very likely follow.

As proprietors should appreciate, it is vital – and obligatory – for all proprietors, teachers, and other staff to be PVG Scheme Members (to ensure that no individual at the school is barred from regulated work) and that all teachers are appropriately registered with the General Teaching Council for Scotland (and that any other staff, such as care staff, are appropriately registered with the appropriate regulatory body). Such checks must be included as part of the school's robust recruitment practices.

Where a school identifies an individual who is not a proper person, the school must respond quickly in accordance with their own policies and inform the Registrar of Independent Schools; no individual who is not a proper person should be permitted to carry out the role of proprietor or teacher.



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