

<b>Title:</b> The Education (Independent School Standards) (England) (Amendment) Regulations 2014 and the Education (Independent School Standards) Regulations 2014  <b>IA No:</b> RPC13-DfE-1808(3) <b>Lead department or agency:</b> Department for Education  <b>Other departments or agencies:</b>	<b>Impact Assessment (IA)</b>			
	<b>Date:</b> 27/07/2015			
	<b>Stage:</b> Final			
	<b>Source of intervention:</b> Domestic			
	<b>Type of measure:</b> Secondary legislation			
<b>Contact for enquiries:</b> <b>Michael Bell</b> michael.bell@education.gsi.gov.uk 01325340430				
<b>Summary: Intervention and Options</b>			<b>RPC Opinion:</b> GREEN	

Cost of Preferred (or more likely) Option			
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, Two-Out? Measure qualifies as
-£22.61m	-£17.58m	£1.61m	Yes   IN

**What is the problem under consideration? Why is government intervention necessary?**

How best to secure improved standards of: leadership and management; welfare and risk assessment; safeguarding and education for all children attending independent schools; and to address the efforts made by a small minority of schools to subvert government policy on extremism in schools.

Government intervention is necessary on these matters in order to protect the interests of, and bring to an end the sub-optimal outcomes for, children attending the schools concerned.

**What are the policy objectives and the intended effects?**

The objective of the proposed regulatory changes is to: force schools to take effective action to improve or change their leadership arrangements where these are deficient; compel schools lacking effective risk assessments to put these into place and keep them up to date; secure an improvement in the educational performance of 'coasting' independent schools or those that repeatedly just scrape through assessments; and stop schools subverting government policy on extremism. The intended effect is to enable all these matters to be taken fully into account as part of the overall regulatory regime for all independent schools and (except on quality of education) free schools and academies.

**What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)**

1. Do nothing. 2. Make the necessary changes to the independent school standards regulations. This is the preferred option because applying the force of law should rapidly achieve the desired change. Schools will be legally required to meet the new standards and where they do not, it will be possible to take effective action within the regulatory system to ensure compliance.

3. The option of issuing some form of guidance has been considered, but discounted because such guidance would have no legal standing and would, in effect, be little more than advice that might be taken or ignored. Even where there is a legal requirement to have regard to guidance, that is all it is. This would not achieve the specific outcomes that regulations can and would not address the 'repeat offenders' who just scrape by in terms of current legislative requirements or go through repeated cycles of failing to meet standards, rectifying the failings and then failing again.

<b>Will the policy be reviewed?</b> It will be reviewed. <b>If applicable, set review date:</b> 09/2016					
Does implementation go beyond minimum EU requirements?				N/A	
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.		<b>Micro</b> Yes	<b>&lt; 20</b> Yes	<b>Small</b> Yes	<b>Medium</b> Yes
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)				<b>Traded:</b> N/A	<b>Non-traded:</b> N/A

**I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs.**

**Signed by the responsible Minister:** John Nash **Date:** 30/07/15

# Summary: Analysis & Evidence

# Policy Option 1

## Description:

### FULL ECONOMIC ASSESSMENT

Price Base Year 2014	PV Base Year 2014	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: N/A	High: N/A	Best Estimate:

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	N/A	N/A	N/A
High	N/A	N/A	N/A
Best Estimate	3.41m	2.26m	22.61m

#### Description and scale of key monetised costs by 'main affected groups'

The primary monetisable costs of the proposed regulatory changes are the staff resources required - in terms of school staff and governors - to familiarise themselves with the new set of regulations and take appropriate actions to comply with them, for those schools not currently meeting the new standards

#### Other key non-monetised costs by 'main affected groups'

The main non-monetisable costs that schools incur as a result of wanting to make sure they are improving their educational quality, that are not directly required by the proposed regulations but on which schools take action as a result of the new standards generally raising the bar for independent schools

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Not Quantified	Not Quantified	Not Quantified
High	Not Quantified	Not Quantified	Not Quantified
Best Estimate	Not Quantified	Not Quantified	Not Quantified

#### Description and scale of key monetised benefits by 'main affected groups'

Given the nature of the specific regulatory changes it is hard to put any monetisation on the expected benefits.

#### Other key non-monetised benefits by 'main affected groups'

The benefits are non-monetised as they primarily relate to the general welfare and achievement of pupils, which is hard to quantify, but we believe they are likely to be considerable. The benefits to the country, although difficult to quantify, should not be underestimated as the changes will help arrest the pattern of poorly educated people entering the workplace and society.

#### Key assumptions/sensitivities/risks

Discount rate (%) 3.5%

There is a general lack of evidence to inform many of the assumptions required to estimate the costs, which is discussed in the evidence base section. These assumptions relate to: how many schools will be affected by each change; how many resource hours are required to take the appropriate action; who in the school will be taking the action; and how will the number of independent schools evolve in the future.

### BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			In scope of OITO?	Measure qualifies as
Costs: £1.61m	Benefits:	Net: -£1.61	Yes	IN

## **Evidence Base (for summary sheets)**

### **1. Problem under consideration**

The Independent School Standards (the standards) set out seven standards (in regulations) that independent school must meet. They are tested via inspection and, ultimately, failure to meet the standards can result in the school being removed from the independent school register.

The problems that we are seeking to address via the new standards are not sector-wide issues. Most independent schools offer high quality education and care to children and the current system of regulation and inspection, which was put in place through the Education Act 2002, has been a major driver for improvement. Sadly, there are still a small number of schools where sub-standard arrangements are the norm.

Despite there being clear and public evidence from inspection reports of these failings, and the state system offering a free and better alternative, many parents are still willing to pay for education at these schools. This may be because, for some parents, the fact that their child receives a particular type of education (e.g. a specific religious character) is far more important than the quality of education. Parents of children with a disability also tend to have strong views about the type of residential school they choose to cater for their child's specific needs and this again may be more important than evidence of quality.

As part of a wider programme of reform for independent schools and against the background of Ofsted's drive to 'raise the bar' we are intending to bring the regulatory provisions up to date by moving from the current regime of the Education Act 2002 to that of the Education and Skills Act 2008. Most of the existing provisions will be replicated in this change, but we also intend to introduce new provisions to address five key problem areas:

- i. Ministers have decided that it is evident from a number of serious failures in safeguarding procedures in recent specific cases in independent, residential special and boarding schools, that the new provision for a standard on the quality of leadership and management, contained in the Education and Skills Act 2008 but not in the Education Act 2002, needs to be activated. This is the most significant difference, that impacts on the standards, between the 2008 and 2002 Acts. The relevant primary legislation will be commenced and its terms require that such a standard be included amongst those prescribed. The exact terms of the standard were subject to consultation. The intended effect is to allow inspectorates to find that the quality of the leadership and management at a school did not meet the standard. Leadership and management is something inspectorates already reach judgements on under their inspection frameworks but not in relation to any regulatory standard. The new standard will allow the department to take regulatory action against the school by serving a statutory notice and requiring it to produce an action plan. The actions to be taken by the school concerned would depend on the severity of the failing. The significance of this is that it allows us to address directly the primary cause of failure in schools with weak leadership. These schools may fail to meet other standards, which we can and do tackle now by taking regulatory action to address those failings. But because the leadership is weak, the schools often fall back into failure at a subsequent inspection. What has to happen to achieve sustained improvement is for the leadership to be improved. With this new standard we will be able to require regulatory action to address that;
- ii. There are a number of ways in which the standards relating to welfare (Part 3), provision of information (Part 6) and the handling of complaints (Part 7) require revision to make them work more effectively and the opportunity is to be taken to carry these changes out at this time as part of the wider reform package. In particular, there is a requirement in Part 3 for schools to ensure that effective risk assessments are in place, acted on and kept up to date;

iii. The department and Ofsted have considered the extent to which planned changes in the Ofsted inspection framework for independent schools (designed to bring the framework closer to that for state-funded schools), need to be reflected in the Quality of Education (Part 1) standard so that schools which require improvement can be subject to regulatory action. The current standard is set at a level which inspection experience suggests allows a significant number of schools to meet the standard although the quality of education provided at those schools would attract a 'requires improvement' judgement if the school were state-funded;

iv. Part 4 (Suitability of staff and proprietors) requires updating to reflect the latest legislative and policy positions in three respects.

- First: the Protections of Freedoms Act 2012 led to scaled back disclosure and barring duties applying to the children's sector, including independent schools. This meant from September 2012 Disclosure and Barring Service (DBS) barred list checks should no longer be carried out on prospective staff or proprietors unless they will be working in regulated activity. Part 4 of the standards currently require full enhanced DBS checks (including barred list check) for all prospective staff and proprietors. The updated standards will align the checking requirements with the primary legislation, only requiring a barred list check if the individual is working in regulated activity.
- Second: the department published updated statutory guidance in April 2014 (Keeping Children Safe in Education) that states 'a person who is prohibited from teaching must not be appointed to work as a teacher in such a setting'. Prohibition orders prevent a person from carrying out teaching work in independent schools (and other educational settings) in England. They are made by the Secretary of State under section 141B of the Education Act 2002. The revised standards make it an explicit requirement for schools to carry out a prohibition check where appropriate.
- Third: on 1 September 2014 new regulations (The Independent Educational Provision in England (Prohibition on Participation in Management) Regulations 2014) came into force, giving the Secretary of State power (known as a section 128 direction) to bar unsuitable people from management positions in independent schools. The updated standards make it a requirement for schools to carry out a check that anyone they are employing in a management position is not subject to a section 128 direction.

v. The spiritual, moral, social and cultural development (SMSC) (Part 2) standard was revised and strengthened in January 2013 following public consultation, and a review was not scheduled until September 2016. However, the planned changes in other standards have led to this being undertaken sooner, and although the existing standard remains basically the same, it is amended so as to require active promotion of fundamental British values (and precluding the undermining of that promotion); and to require the school to take more steps to create an environment of tolerance and inclusivity – including by requiring them to encourage respect for other people and having regard to the protected characteristics set out in the Equality Act 2010. These changes are intended to help inspectorates and the department to tackle those schools which only pay lip service to the SMSC standard, or seek to undermine it, and or subvert government policy on extremism in schools, and also to tackle some schools which may encourage homophobia or racial discrimination. This updated standard came into force on the 29<sup>th</sup> September.

No changes are planned to Standard 5 (premises).

Schools which are micro or small businesses are not exempt from the planned changes. They have never been exempt, not least because they are just as likely to fail to meet standards as larger schools.

## Consultation

All of the proposed changes were subject to a full, public consultation (full details in 'options considered') which has informed this final stage impact assessment. In the consultation we asked small and micro schools to indicate the extent to which they see the new requirements adding a burden, and how we might help with this. The intention is for the new regulations to come into force in January 2015.

## 2. Rationale for intervention

The case for intervention is based on both efficiency and equity arguments:

- To improve economic efficiency by securing higher standards amongst independent schools, thereby contributing to the government's overall programme for school improvement, which is designed to drive up pupil attainment, to the benefit of society and the economy;
- To improve equity by ensuring that all children in independent schools receive the best possible education, and that they are not exposed to extremist teaching or thinking which would run counter to the government's Prevent strategy.
- From a safeguarding perspective (Part 4 changes) intervention is necessary to align the standards with primary legislation and thus ensuring schools can't be put in a position where they are potentially in breach of the standards for not gathering information which primary legislation forbids them from collecting (ie barred list checks on people not in regulated activity). With the requirement to carry out the two new checks (section 128 check and probation check) we create a more robust safeguarding system that ultimately provides greater protection to children.

Intervention is necessary – through changing the regulations – because the market is not currently working effectively. Inspection reports are published and easily available. But nevertheless, parents do send their children to poor quality and failing schools so demand is not currently leading to improved standards in some schools. This leads to a sub-optimal outcome for the economy; it is in our interest that children leave school well-educated and able to participate as adults and good citizens. The regulations are intended to address failings in a subset of the most hardened offending schools, which persistently fail to deliver acceptable standards of education or repeatedly go through a cycle of failing to meet the standards, improving in response to regulatory action, followed by failure again at the next regular inspection.

Intervention from a safeguarding perspective is absolutely necessary. There are no feasible alternatives to government intervention in areas relating to safeguarding and children. It is essential to have a robust regulatory framework and the proposed changes are another step in strengthening that framework.

## 3. Policy objective

The objective of the proposed regulatory changes is to: be able to force schools to take effective action to improve or change their leadership arrangements where these are deficient; compel schools lacking effective risk assessment to put this into place; raise the bar in 'coasting' independent schools; strengthen the safeguarding framework; and stop schools subverting government policy on extremism. The intended effect is to enable all these matters to be taken fully into account in the overall regulatory regime for independent schools (including residential special and boarding schools) and (except on quality of education) free schools and academies.

#### **4. Options considered**

- a. do nothing;
- b. amend the regulations prescribing standards, as described in this Impact Assessment;
- c. leave the standards unchanged but issue guidance designed to encourage schools to change in the desired ways.

The costs and benefits of Option (b) is assessed against the 'do nothing' option. Option (c) has not been costed because Ministers consider that it could not achieve the specific policy objectives. The regulatory system for independent schools depends for its efficacy on prescribed standards which independent schools are obliged to meet in order to remain registered. Although some schools might follow guidance, there would be no legal obligation on them to do so, and there is no effective sanction against schools which do not. In practice it is likely that it would be the high performing schools that adhere to guidance and not those we need to target. The schools we wish to target are already repeatedly failing the existing standards. Issuing guidance is not going to change that. Ministers, therefore, consider that this option would not be worth pursuing as it is not sufficiently specific and direct, and no purpose would be served by costing it.

#### **Option (a) – do nothing**

This option was considered, but at best it would maintain the status quo which is not acceptable. It was discarded for the following reasons:

- i. The government's aim of improving the quality of leadership and management in schools which demonstrate a lack of effectiveness in this aspect would not be realised, leading to continued failure in some schools to carry out the changes which will secure compliance with the regulatory standards;
- ii There is a need for some changes to standards in Part 3 (and Parts 6 and 7), to ensure that schools implement them more effectively, and to introduce a new requirement on risk assessment. Doing nothing would not achieve this.
- iii. Some independent schools would continue to meet the existing regulatory standards but offer a standard of education which was not at the level which is equal to an Ofsted judgement of good, and no regulatory action could be taken against them. This would not be in the interests of the schools' pupils, or the parents who were paying fees for the education provided. Furthermore, it would lead to a sub-optimal outcome for the economy. This can only be addressed by ensuring that all schools meet a higher minimum standard.
- iv. Do nothing in terms of the Protection of Freedoms 2012 barred list check changes would leave a confusing regulatory system where the standards are not aligned with primary legislation. Not introducing the requirement to carry out the two additional checks would leave a weaker safeguarding framework than what is potentially available and this is not acceptable.
- v. Although full evidence on the effectiveness of changes made to the SMSC standard from January 2013 will not be available until there is a larger body of inspection evidence, a review by Ofsted and the department of inspection experience to date suggests that those changes do not fully meet the requirements of the Prevent strategy, in that they allow schools too easily to lay lip service to the values underpinning the standard without positively promoting it, and in some cases to subvert the standard by apparently following it but also teaching certain subjects in a way which contradicts the standard. Furthermore, there is a need to more directly tackle teaching which promotes extremism or does not discourage unfair discrimination.

## Costs

There will be no additional financial costs associated with this option.

### **Option (b) – amend the regulations**

This option is preferred because it is a targeted approach with sanctions that will help achieve the desired outcomes:

- i To achieve higher standards in schools by allowing action to be taken in cases of poor leadership and management;
- ii To improve the implementation of standards in Part 3, and also introduce a risk assessment requirement so that schools are obliged to take a more systematic approach to risk management;
- iii To ensure that the standards applied to education quality in independent schools mirror those applied in state-funded schools;
- iv. Align the safeguarding framework with primary legislation and at the same time strengthen the protections it offers children.
- v To further strengthen the Part 2 (SMSC) standard in pursuance of the government's Prevent strategy.

### **Summary of consultation responses**

As indicated in section 1 above, all of the proposed changes were the subject of a public consultation. The consultation was launched on 23 June, with deadlines for response of 4 August for the SMSC (including the requirement for schools to actively promote fundamental British values) and the suitability of staff standards, and 18 August for the remaining standards. In the consultation we asked small and micro schools to indicate the extent to which they see the new requirements adding a burden, and how we might help with this. The consultation included a question (9b) on the extent to which the new standards would add a burden so the department could measure this; and a question (9c) on what the department might do to assist schools to meet the standards.

The department received a total of 1529 consultation responses: 1,462 responses by the first deadline of 4 August and a further 81 responses (NB – 14 of these were adding to earlier responses) by the 18 August deadline. There was considerable opposition to the proposed changes to the SMSC standard, but this largely resulted from two misconceptions: that the proposed revisions would require schools to promote other religions and have a negative impact on religious freedoms; and that they would require schools to promote the protected characteristics and extend equality requirements. The proposed standard does not have this effect: rather it requires respect for other people, including those of different faiths. 909 responses focussed solely on the SMSC changes and were based on an inaccurate narrative from the Christian Institute, which orchestrated a concerted campaign of opposition. The assessment of consultation responses is, therefore, based on the 620 (non-campaign) responses.

**Question 9b): If the standards as currently drafted were to form part of the new regulations, could you indicate the extent to which you see the new requirements adding a burden, including the likely cost of reviewing them and the cost of making any required changes to school policies?**

There were 226 (non-campaign) responses to this question, including 98 individual responses from independent schools. 149 (84 independent schools) said they could indicate the extent to which they see the new requirements adding a burden; 23 (3 independent schools) said they couldn't; and 54 (11 independent schools) indicated that they were not sure.

Of the 226 responses, 159 provided comments. The majority of respondents were teachers or members of the senior management team at independent schools.

**Nature of comments received**

Of these 159 responses:

- 54 responses (34%) did not address the question asked;
- 18 responses (11%) provided almost identical answers that looked like they were a suggested response from one source; and
- 87 responses (55%) addressed the question asked.

Of the 87 responses which addressed the question:

- 64 (74%) claimed that the changes represent a new burden;
- 9 (10%) claimed that there is no new burden or a minimal burden;
- 11 (13%) claimed that there is a high new burden; and
- 3 (2%) provided details of the extent of the new burden.

The table below shows the distribution of responses by category.

<b>Category of response</b>	<b>Number of responses</b>	<b>% (Base = ALL)</b>	<b>% (Base = Unique, relevant answers)</b>
Claims new burden; no detail provided	64	40.3%	73.6%
Claims no new burden or minimal burden	9	5.7%	10.3%
Claims new burden is high	11	6.9%	12.6%
Specifies new burden	3	1.9%	3.4%
<b>Sub-total: Relevant, unique answers</b>	<b>87</b>	<b>54.7%</b>	<b>100%</b>
No relevant information	54	34.0%	-
Repeated statement	18	11.3%	-
<b>Total</b>	<b>159</b>	<b>100%</b>	-



**Question 9c): Do you have any suggestions for how the Department might assist schools in meeting the new standards, particularly those that are small (fewer than 50, but more than 10 employees) or micro (fewer than 10 employees) businesses?**

There were 195 (non-campaign) responses to this question. 105 said they did have suggestions; 55 didn't; and 35 indicated that they were not sure.

Key points were:

- By far the biggest response was – don't make these changes;
- A close second was – standardise the process re: only make updates once a year (if needed); at the same point each year; and consult at the same point each year;
- Third was – give all schools significant time to plan for and implement changes including a period of transition where inspections consider 'progress towards' rather than actual outcomes; and
- Fourth was- the department should provide model policies, templates, documents to reflect any of the additional burdens they are introducing. This would really help small schools in particular, meet the new burdens.

**What can we learn from the consultation?**

None of the responses provided detail on the level of the burden, and most cited no evidence. For example, very few described the tasks they would need to carry out, who would be involved; and how long this would take. Those that did provide information provided very high level estimates. Without this information, we cannot improve on the scenario-based estimates provided in the initial Impact Assessment.

The responses are consistent with the department's view that the vast majority of high performing independent schools, that take the existing standards seriously, are likely to notice little or no change in terms of additional burdens resulting from the new standards. This is also consistent with responses to the wider consultation questions from e.g. the Independent Schools Council (ISC) and some of its schools where they indicate that ISC schools are already meeting the proposed new standards. ISC schools represent approximately 50% of all independent schools in England. The small number of schools who do not take the current standards seriously might well notice a change and are, therefore, likely to comment adversely on the proposed changes (all be it without any detailed evidence on costings). However, this should not mean that we do not introduce the changes, as these are the very schools that the new standards target. To help schools understand the new requirements the department intends to provide additional non-statutory advice, to be published alongside the new regulations.

We have taken on board a number of comments with regards to the drafting of the regulations as a result of the consultation. We will be making changes, to part one, four and eight in particular, to strengthen the drafting, make the regulations easier to understand and ensure the requirements are explicit. However these changes do not change the policy intent of the new regulations and do not ultimately change the requirements for the independent schools and as such do not change our cost estimates.

Full consultation response information can be found at -

<https://www.gov.uk/government/consultations/proposed-new-independent-school-standards>

## Costs

The costs of these regulatory changes are difficult to predict. Due to there being multiple changes occurring simultaneously, (including moving from the Education Act 2002 to the provisions of the Education and Skills Act 2008) there is substantial uncertainty regarding the overall cost of the change. For this reason we have calculated a central “best” estimate that represents the most likely costs of this change and high and low scenarios for each component of the changes. We do not present an overall high or low scenario because we do not believe it is feasible that all the high or low scenarios could occur simultaneously.

We have calculated the following costs using published figures for wages in the school system and economy as a whole. Further explanation is provided in **TECHNICAL ANNEX A**. Given our best knowledge, the following costs are expected:

- Monetised transition costs for all 2,411 independent schools and 3,830 academies and free schools in familiarising themselves with the new standards = £2.63m.
- Monetised transition costs for approximately 5% of faith schools in changing their curricula and lesson plans to meet the more stringent SMSC standard = £0.01m.
- Monetised annual and transition costs for 5% of independent schools, academies and free schools in introducing and operating an effective risk assessment process as in Part 3 = £0.04m transition costs and £0.50m total annual costs over 10 years (discounted).
- Monetised annual costs for approximately 25% of independent schools in changing the way they handle complaints = £0.59m total annual costs over 10 years (discounted).
- Monetised transition costs for independent schools having to codify their welfare standards = £0.025m plus negligible annual costs per school (of around £40).
- Annual monetised costs 2% of independent schools, academies and free schools from making changes to ensure that they meet the new leadership and management standards = £17.79m for the 10 year appraisal period (discounted).
- Monetised transition costs for 25% of independent schools making changes to their teaching and curriculum so that they can meet the changes in Part 1(Quality of Education) = £0.68m
- Prohibition checks for 100% of independent schools who will have to out this check every time hiring a new member of staff = £0.24m over 10 years.
- Section 128 checks for 100% of independent schools who will have to carry out this check every time hiring a new member of management staff = £0.08m over 10 years.

### **Summary of Overall Economic Costs (central estimate)**

	Transitional Costs (nominal)	Average Annual Costs (nominal)	Total Annual Costs (discounted)	Net Present Costs (discounted)
Familiarisation	£2.63m	-	-	£2.63m
SMSC	£0.01m	-	-	£0.01m
Risk Assessment	£0.04m	£0.06m	£0.5m	£0.54m
Complaints	-	£0.07m	£0.59m	£0.59m
Welfare	£0.02m	-	-	£0.02m
Leadership	-	£2.09m	£17.79m	£17.79m
Quality	£0.7m	-	-	£0.7m
Prohibition checks		£0.03m	£0.24m	
Section 128 checks		£0.01m	£0.08m	
<b>Total overall costs</b>	<b>£3.41m</b>	<b>£2.26m</b>	<b>£19.2m</b>	<b>£22.61m</b>

### Summary of Costs to Business (central estimate)

	Transitional Costs (nominal)	Average Annual Costs (nominal)	Total Annual Costs (discounted)	Net Present Costs (discounted)
Familiarisation	£2.55m	-	-	£2.55m
SMSC	£0.01m	-	-	£0.01m
Risk Assessment	£0.04m	£0.02m	£0.15m	£0.19m
Complaints	-	£0.07m	£0.59m	£0.59m
Welfare	£0.02m	-	-	£0.02m
Leadership	-	£1.57m	£13.41m	£13.41m
Quality	£0.7m	-	-	£0.7m
Prohibition checks		£0.01m	£0.07m	£0.07m
Section 128 checks		£0.003m	£0.02m	£0.02m
<b>Total costs to business</b>	<b>£3.33m</b>	<b>£1.67m</b>	<b>£14.25m</b>	<b>£17.58m</b>

The benefits of the changes are not monetised. This is due to the considerable uncertainty regarding the effect of the changes and the inability to accurately monetise the value of these. They are intended to include:

- Improved education for all pupils in independent schools, particularly those currently failing to continuously improve.
- Reduced instances of extremism and greater social well-being from improved Social Moral Spiritual and Cultural education.
- Improved welfare protection for all pupils in independent schools because of improved leadership and management, and up to date risk assessment processes.

We believe that the calculations we have used are proportionate. Most changes create only minor costs to business and we have given greater care to estimate the greatest cost by varying multiple assumptions regarding it.

The main risks surrounding this assessment are:

- The proportion of schools affected by each of the regulations.
- The number of work hours required to comply with the regulations.
- The characteristics of the people that would need to work to comply with each of the regulations.
- Future increases in the number of academies, free schools and independent schools.

Aside from the fourth, each of these assumptions varies for each of the seven costs considered.

We have used a ten year appraisal period and a discount rate of 3.5%.

These changes affect both state and independent schools. As independent schools are either private or third sector organisations we have considered all costs borne by them to be direct costs to business. Following some uncertainty regarding how to classify the cost of school governor time we have taken this to be, in both state and independent schools, a direct cost to business as it affects

individuals rather than public bodies. This approach is cautious rather than optimistic and serves only to overestimate potential net cost to business.

*Reduction in extremism is an unquantifiable benefit that could be a result of the changes to school behaviour induced by these regulations.*

### **Option (c) – issue guidance instead of amending the regulations**

This option was considered but discounted and not costed for the essentially the same reasons as Option (a), because if guidance was issued, although some schools might follow it, there would be no way of ensuring that all schools did so, and there would be no way of enforcing compliance with such guidance.

It is already the case that there are a number of schools that repeatedly fail to meet the standards as they are currently set, going through a cycle of failure, rectifying failings, just meeting the standards, only to be failing again at the next regular inspection. If the existing regime of regulation is not securing either long lasting improvement or closure, then it is unlikely that issuing guidance would achieve the outcome of raising the standards. Consequently we are left with option (b) as the only realistic one to achieve the outcome of improving the quality of provision in these schools.

### **Summary and preferred option with description of implementation plan.**

Option (b) is preferred as it will achieve the enforceable regulatory regime changes sought by ministers that effectively targets those schools that do not meet the required standards, whereas neither Option (a) nor Option (c) would do so.

The department intends to make and lay the new regulations in the coming weeks with the intention for them to commence in January 2015.

## Economic Analysis

*NOTE: This annex has been updated for the validation-stage IA. Some of the figures in this annex differ from those presented in the consultation IA. We have updated the inputs, such as the annual salary of senior teachers, where later data is available. The figures are all calculated for FY 2014-15. As a result, the central scenario discounted cost has increased by approximately £400k to £22.3m. We have also added the changes to part 4 of the legislation around safeguarding. This brings the total discounted cost in the central scenario up to £22.6m. The consultation did not, as mentioned in the main body, provide us with any evidence to allow us to narrow the scenario range presented in this annex.*

These regulatory changes affect private independent schools and academies and free schools. This analysis considers individually the costs of each of the proposed regulatory changes and the overall aggregate costs. We present both overall economic costs and the direct costs to business. Academies and free schools are state funded and not in the private sector, so whilst they are included in the overall economic costs some of their costs are excluded from the estimated net costs to business.

There is a good deal of uncertainty about the assumptions underpinning the impacts of the proposed changes because the department does not collect a lot of the specific information required to estimate the size of these impacts. This information relates to the extent of particular problems and non-compliance within individual schools and how exactly schools will respond to comply with the regulations.

The approach we have taken, therefore, is to use what we feel are informed opinions about these factors in order to estimate the broad order of magnitude of the impacts of the changes. We have only monetised the costs of the changes because the benefits – as set out in the main template – are much harder to quantify. We have also looked at the sensitivity of our best estimates to changes in the assumptions used. So for each regulatory change indicative High, Central and Low scenarios are presented to illustrate how sensitive the costs are to different assumptions. They are not intended to provide upper and lower bound estimates of the costs.

### Summary of total costs

The best estimate for the overall monetised cost of these changes – over 10 years – is £22.61m. This is based on £3.41m one-off costs and average annual costs of £2.26m (both in nominal terms). Our best estimate for the cost to business is £17.58m based on £3.33m one-off costs and average annual costs of £1.67m.

Most of the changes are expected to have quite low costs so whilst the estimates are sensitive to the assumptions used, they do not materially affect the magnitude of the estimates. However, the changes to leadership arrangements could be quite significant for the small number of schools likely to be affected. Sensitivity analysis around our central assumptions for this change shows that the costs vary substantially according to the assumptions used; between £2.2m and £61.0m on the basis of the assumptions tested. Therefore, although we think the overall costs could be in the region of £22.6m over ten years, they could be a lot higher or lower than this.

We have estimated the following one-off cost and eight recurring costs for regulatory changes:

1. Familiarisation: reading and understanding the new regulations (one-off);
2. SMSC Revisions: changes required to meet with the more stringent SMSC standard;
3. Risk Assessments: introducing an effective risk assessment process;
4. Complaints: recording complaints as per the new regulation;

5. Welfare: changes required to meet the welfare standards;
6. Leadership: changes to meet the new leadership and management standard;
7. Education quality: changes to curriculum to meet the new quality of education standards.
8. Probation check: Requirements for schools to carry out a prohibition check for members of new staff
9. Section 128 check: Requirements to carry out a 128 direction check for new recruits to management positions.

## Main Assumptions

In order to monetise the costs we need to know four main things:

1. What proportion of schools will be affected by each of the regulations?
2. How many hours of time are required to make the changes to comply with the regulations?
3. What are the characteristics of those doing the work to comply with each of the regulations?
4. How is the number of schools going to evolve in the future?

Some of the evidence needed to answer these questions is not available. So we have used what we believe to be reasonable assumptions in order to ascertain the likely orders of magnitude of the various costs. They are therefore indicative rather than definitive. We test how sensitive the costs are to these assumptions under alternative values. The answers to the two first questions depend on which of the seven costs we are looking at. Therefore, we present these assumptions when analysing each of the changes. For the third and fourth questions, we present the assumptions used in the table below and explain our rationale for them.

Assumptions	Low	Central	High
<b>Uncertain</b>			
Governing Body Size	13	17	21
Governor Wage State Schools	£12	£12	£15
Governor Wage independent schools compared to state	100%	125%	125%
In £ terms	£12	£15	£18
Hours spent on governor time per month, per person	8	9	10
Growth in the number of independent schools	0%	1%	3%
Growth in the number of free schools and academies	5%	10%	15%
<b>Certain</b>			
Salary Senior Teacher (annual) excluding on-costs	£56,100	£56,100	£56,100
Administrator Wage (hourly)	£11	£11	£11
On Costs (non-wage labour costs)	22%	22%	22%

The first block of assumptions in the table is uncertain because we cannot exactly determine their values. For these, we have provided low, central and high values.

*Governing body size:* The NAO's report on academies<sup>1</sup> states that the average size of their governing bodies is 13. A similar report for independent schools<sup>2</sup>, reports 21 as the average size for their governing bodies. We therefore use these two figures as our extreme scenarios and the average between both, 17, as our central scenario.

*Governor wage rate:* As we do not know the exact composition of the governing bodies, which will vary between schools, it is very difficult to know the average wage of a governor. In our low and central scenarios, we assume that their average wage is the average wage of the whole UK

<sup>1</sup> NAO, 2010, The Academies Programme, London, The Stationery Office

<sup>2</sup> Who Governs the Governors?, Neil Carmichael MP and Edward Wild

population, at £12 per hour. However, it is not unreasonable to assume that governors are unrepresentative of the average worker and that they may come from the professional and higher skilled population. So we assume in our high scenario that the average hourly wage of a governor is 25% higher than the average national wage: that is £15 per hour.

The value of governor time is considered a cost to business in both state and independent schools. In independent schools this represents the regulations using up some of a resource that should belong to the private entity. In state schools we consider it a direct cost to business because the time of governors is given by individuals who may or may not be undertaking this work on business time. It therefore seems most cautious to consider all of this time a direct business cost to ensure we overestimate rather than under estimate the equivalent annual net cost to business.

*Independent school governor wage rate:* Additionally, we would think it is plausible that governors in independent schools may be even less representative of the average worker and have higher salaries than their peers in state schools. Following this, we assume in our central and high scenarios that average wages for governors in independent schools are 25% higher than those of state schools (i.e. £15 central and £18 high). However, as we have no evidence that independent school governors earn wages that are higher than state school governors, we assume in our low scenario that governors of both types of schools have the same hourly wages on average.

*Governor hours:* Anecdotal evidence<sup>3</sup> suggests that governors spend, on average, 9 hours per month on governor work. To consider the sensitivity around this figure we vary it by one hour in both directions in our two extreme scenarios.

*Future number of independent schools:* We are not sure how the number of academies and independent schools is going to evolve in the future. For our low, we assume that the number of independent schools will remain unchanged in the next 10 years. In order to be cautious, we assume in the central scenario a 1% growth rate (in line with the population) and in the high scenario that this growth rate is 3%. The Academies and Free Schools programmes are demand-led so we cannot be sure about their exact growth rate. To take this uncertainty into account, we consider arbitrary growth rates of 5%, 10%, and 15% in each of the three scenarios to indicate how sensitive the costs are to the number of schools. We are not saying that we actually expect the numbers to grow at these rates.

On the other hand, we are relatively confident about the last three assumptions:

*Teacher and school staff salaries:* The wages of senior teachers and school administrators have been taken from the national pay scales. Based on evidence in an academic study<sup>4</sup>, we have also assumed that these hourly wages do not differ between state and independent schools.

*Non-wage labour costs:* We apply an on-cost uplift to average hourly gross wages of 1.2213. This captures average employer pension and NI contributions of the teachers' workforce. On-costs for non-staff school governors may be lower than this but for caution we apply the same uplift for all staff in this impact assessment. This is in line with HM Treasury guidance to incorporate both salary and non-wage labour costs, HM Treasury (2011, p.20). The Green Book: Appraisal and Evaluation in Central Government.

## **Monetised costs of the individual regulatory changes**

In this section, we present the costs generated by each of the seven categories mentioned above.

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<sup>3</sup> Being a School governor, BBC.co.uk's Learning Parents section

<sup>4</sup> *Competition for Private and State School Teachers*, Centre for the Economics of Education.

## 1. Familiarisation

Proportion of schools affected: All independent schools, academies and free schools will need to familiarise themselves with the new regulations. There are currently 2,411 independent schools and 3,830 academies and free schools.<sup>5</sup>

Hours required: We cannot be precise about how long it will take school staff and governors to familiarise with the new standards. However, on the basis of how much they will need to read we believe that the process of familiarisation will take place through a governor meeting and will take around 1.5 hours, on average, per school. We also assume a small amount of time will be required from administrative staff. In our low scenario we assume that it would only take one hour and in the high scenario we assume that it would take two hours.

Time taken (hours) by	Low	Central	High
Admin Staff	1.0	1.5	2.0
Board of Governors meeting	1.0	1.5	2.0

	Low	Central	High
Proportion of Schools affected	100%	100%	100%
Total hours per school (people x time)	18	28	36
Cost per independent school	£200	£477	£968
Cost per academy	£200	£386	£779
Overall one-off cost (nominal)	£1.25m	£2.63m	£5.31m
Total cost to business (nominal)	£1.19m	£2.55m	£5.20m

Our best estimate of the one-off costs is £2.63m. We take the entire cost of the change to independent schools as a direct cost to business

For academies and free schools the cost of school administrator time is a cost to the public sector, but we treat all governor time (whether they're supporting independent or state schools) as a business cost. Governors' time in independent schools is a resource which these bodies will have to use on these additional activities. For public sector schools, we make the cautious assumption that governors will get additional time off work to complete these additional tasks and therefore the cost also falls completely on businesses. This leads to an estimated cost to business of familiarisation of £2.55m. Sensitivity analysis indicates that the costs are quite sensitive to the assumption about the amount of time needed, mainly because we are assuming that the whole governing body needs to know about and discuss the changes. If it took half an hour less than our best estimate, the overall costs would fall to £1.25m and would rise to £5.31m if it takes half an hour longer.

## 2. SMSC Curriculum Revisions

Proportion of schools affected: The vast majority of schools will not be affected by this change but we expect a small number of independent faith schools will need to make changes to their curriculum to better reflect the values outlined in the new regulations. There are currently around a 1,000 independent faith schools and we would expect that it will affect about 50 such schools (5% of the sector). To reflect the uncertainty around this figure we assume that only 2.5% of the schools will be affected in our low scenario and 10% of the schools in the high scenario.

Hours required: We expect that alterations to the curriculum will be undertaken by a member of the senior management team and are expected to take less than a day's work. This will be a one-off cost. Our estimates of time required in the three scenarios are as follows:

	Low	Central	High

<sup>5</sup> Based on the *Schools, Pupils and their Characteristics* Statistical First Release, January 2014



Proportion of Faith Schools affected	2.5%	5%	10%
Number of schools affected (year 1)	26	50	104
Time taken Senior Management (hrs.)	5	6	7
Average cost per school (year 1)	£214	£257	£300
Total one-off costs (nominal)	£6k	£13k	£31k

The costs of this change are expected to be very small. Our best estimate of the total one-off cost is £13k, all of which accrues to independent schools so is all a direct cost to business. Changing the assumptions provides a range from £6k to £31k.

### 3. Risk Assessments

Proportion of schools affected: Data shows that 81 (3.5%) independent schools are identified as lacking effective risk assessment. This is from a partial year snapshot of 146 schools with known issues; this scales up to an estimated annual number of schools where issues are identified of 190 (30% more than the sample). So our central estimate is that this change will affect 5% of independent schools, free schools and academies. We have varied these figures in the extreme scenarios to test the sensitivity of the costs.

Hours required: We would expect that in a typical school, this might require half an hour of discussion by a governing body, followed by 10 hours of work per year by a senior staff member to carry out the risk assessment. The high and low scenarios below are quite extreme as we assume high and low assumptions for both the proportion of schools affected and the amount of time spent annually complying with the regulations. They are, therefore, illustrative.

	Low	Central	High
Proportion of schools affected	2.5%	5%	10%
Time taken by governors - one off discussion (hrs.)	0.5	0.5	0.5
Time taken annually by senior staff member (hrs.)	5	10	15
Transitional one-off costs (nominal)	£15k	£42k	£129k
Average annual costs (nominal)	£12k	£59k	£216k
Annual costs over 10 years (discounted)	£0.105m	£0.498m	£1.807m
Overall costs (discounted)	£0.120m	£0.540m	£1.936m
Transitional one-off costs to business(nominal)	£15k	£42k	£128k
Average annual costs to business (nominal)	£4k	£17k	£57k
Annual costs to business over 10 years (discounted)	£0.036m	£0.148m	£0.485m
Overall costs to business (discounted)	£0.050m	£0.190m	£0.613m

Our best estimate is that this change will incur a one-off transitional cost of £42k and the overall cost is estimated at £0.540m discounted over 10 years. The discounted total cost to business is £0.190m (we don't count the cost of a school administrator's time in the case of academies). If this requirement is less onerous to comply with than we expect and fewer schools are affected, the overall economic costs could be as low as £0.120m over 10 years. On much more pessimistic assumptions, the costs could be as large as £1.936m.

### 4. Complaints

Proportion of schools: As state schools already have to comply with similar standards, this regulation will only affect independent schools. Our best estimate is that it could affect 25% of these schools but we also look at how sensitive the costs are to alternative assumptions.

Work hours: The requirement to record complaints will create on-going costs. We expect this to be a minor burden on administrative staff, requiring no more than 8 hours per year to be invested

in this activity. If it takes 5 minutes to record a complaint and 5 minutes to record any resulting action, 8 hours would assume that a school gets on average around 50 complaints a year. In our lower scenario, we analyse the possibility of this activity requiring only 6 hours per year and 10 hours per year in our high scenario.

	Low	Central	High
Proportion of independent schools	20%	25%	30%
Time taken Admin (hrs.)	6	8	10
Average annual cost per school (nominal) year 1	£82	£110	£137
Average annual cost total (nominal)	£40k	£66k	£99k
Annual costs over 10 years (discounted)	£341k	£593k	£969k

We do not think this will be an onerous change for schools and this is reflected in the relatively low estimated costs. The total discounted cost over the 10 year appraisal period is estimated at £593k. As this relates solely to independent schools, all of this is a cost to business.

Due to the inherent uncertainty regarding the number of complaints received in any year, our estimate is a rough ballpark figure. The above “best” estimate is based on the initial years when the process is likely to take longer to implement, rather than once it has been in place for some time, so we think our best assumption is quite reasonable. Under the low scenario assumptions, the costs would be £341k and would rise to £969k under more pessimistic assumptions about the number of schools affected and the time required.

#### 5. Welfare Changes

Proportion of schools: This change is expected to affect only independent schools but we cannot be certain about how many it will affect. We think it is reasonable to assume that it could affect around a quarter of schools. The exact proportion is uncertain so we vary the figure in our three scenarios, from 10% up to 30%.

Work hours: We do not expect this regulatory change to require much effort on the part of schools, to codify their welfare standards, and is likely to be carried out by administrative staff. We would expect it require only a few hours, but we do not know how many exactly.

	Low	Central	High
Proportion of independent schools affected	10%	25%	30%
Time taken Admin (hrs.)	2	3	5
Average cost per school (nominal)	£27	£41	£68
Total one-off transitional cost (nominal)	£7k	£25k	£50k

The costs are one-off in the first year and are expected to be negligible at £25k, all of which are a cost to business. Even under the more pessimistic assumptions the costs would only be in the region of £50k.

#### 6. Leadership Improvements

Proportion of schools affected: We expect that only a very small proportion of independent schools will need to make changes to their leadership arrangements to meet the standard as this is not a common problem. Data shows that 31 (1.3%) independent schools are identified as having issues with poor leadership and management. This scales up to an estimated *annual* number of independent schools affected of 40 (1.7%), which we round to 2% (48) for our cautious central estimate for the number of independent schools. We think the proportion of academies and free schools likely to need to make changes will be even lower so we will assume 0.5% as a

cautious estimate. For the schools that are affected, however, it could require quite significant changes.

	Low	Central	High
Proportion of independent schools affected	0.5%	2%	3%
Proportion of free schools and academies affected	0.25%	0.5%	1%

The number of current independent schools that corresponds to 2% is around 48 and the number of current free schools and academies that corresponds to 0.5% is approximately 20. So our central assumption is that around 68 current schools could be affected by the change.

#### Work hours:

We expect one of four potential responses in schools that find they need to improve their leadership arrangements to meet the new standards:

1. Hire **additional members of senior staff**. We believe it is unlikely that more than one new hire will be required by any school, although other staff may later be replaced. To take this into account we use the salary of a senior teacher taken from national pay scales. (CEE research shows that hourly wages do not significantly differ between state and independent Schools. This option would cost a school **£56,100 pa** (excluding on-costs).
2. Add an **additional governor** to the board. This would cost **£1,584 pa** (excluding on-costs).
3. Create a **new governing body of governors** where none currently exists. Assuming an average governing body size of 17, this would cost **£29,920 pa** (excluding on-costs).
4. Replace **ineffective trustees**. Any trustees that leave will be replaced by (we expect) more able replacements. We therefore consider this action costless.

We cannot possibly know what proportion of the schools affected will decide to go for which of these four options. Estimating the costs of this change is therefore very difficult. In the absence of any information we have assumed an equal proportion of affected schools will choose each of the four options. However, the table below shows how we have varied the distribution of the options to look at how sensitive the costs are to this.

	Low	Central	High
Senior staff	10%	25%	40%
Additional Governor	20%	25%	30%
New Board of Governors	30%	25%	20%
Ineffective Trustees	40%	25%	10%
Average annual total cost (nominal)	£0.258m	£2.090m	£7.250m
Total costs over 10 years (discounted)	£2.205m	£17.792m	£61.000m
Average annual cost to business (nom.)	£0.175m	£1.569m	£5.121m
Total cost to business (discounted)	£1.504m	£13.412m	£43.360m

This regulatory change is likely to be the most costly of the changes being introduced - and the analysis shows that the assumptions we use about the distribution of the take up of the four options makes a substantial difference to the costs. So we cannot be certain about their actual level.

Assuming an equal distribution provides an estimated overall cost of £17.792m discounted over ten years, £13.412m of which is a cost to business. However, even amongst the scenarios considered above there is a very wide range for the overall costs from £2.205m to as much as £61.000m.

7. Education Quality

Proportion of schools: This change is expected to only affect independent schools. Data shows that 22 (1%) independent schools are identified as not meeting minimum education standards. This scales up to an estimated *annual* number of independent schools affected of 28 (1.3%). We think the problem is likely to be wider than this and it may well affect 20-30% of schools.

Work hours: We expect these requirements to consume one hour of governing body time to set a direction about actions needed and then 20 hours of senior staff time on revising the curriculum. It is very difficult to predict what further changes will be needed in some schools, e.g. recruiting better teachers. Therefore, we have not estimated these, but it should be noted that the costs would be higher if many schools need to hire more expensive teachers.

The following table shows how the assumptions vary in our three scenarios:

	Low	Central	High
Proportion of independent schools affected	20%	25%	30%
Time taken senior teachers (hrs.)	10	20	30
Time taken for governor meeting (hrs.)	1	1	1
One-off cost per school (nominal)	£614	£1,161	£1,775
Total one-off cost (nominal)	£0.296m	£0.700m	£1.269m

Our best estimate of the overall one-off transitional cost is £700k, all of which is a cost to business. This falls to £296k in the low scenario and is as high as £1.269m in the high scenario.

8. Probation checks.

Prohibition orders prevent a person from carrying out teaching work in independent schools (and other educational settings) in England. Prohibition orders are made by the Secretary of State under section 141B of the Education Act 2002. The department published updated statutory guidance in April 2014 (Keeping Children Safe in Education) that stated 'a person who is prohibited from teaching must not be appointed to work as a teacher in such a setting'. Checks are made on the Employer Access Online Service. The service also identifies any existing prohibitions and sanctions made by the General Teaching Council for England (GTCE) before its abolition at the end of March 2012, and provides information about any teacher qualifications held and whether induction has been passed. The service is offered free of charge to schools. We want to make it an explicit requirement in the standards for schools to carry out prohibition checks.

Proportion of schools: DfE data shows there are 2,411 independent schools in the UK in 2014<sup>6</sup>. We assume that on average, each independent school will carry out three probation checks a year for new members of staff, using a range of one to five checks per year. This reflects assumed turnover and recruitment of staff to independent schools.

Time taken: The requirement for independent schools to carry out a prohibition check will carry a cost of staff time. Checks can be made free of charge on the Employer Access Online Service. It is thought a member of support staff would complete this in a very short period of time, with a conservative estimate of five minutes used.

Admin wages: We do not have data on how much staff in independent schools are paid. Earnings data of administrative staff have been taken from the Annual Survey of Hours and Earnings<sup>7</sup> which collects earnings data across a range of occupations and professions in the UK. This is estimated at £11 per hour. DfE evidence suggests that wage costs should be uplifted by 22% to take account of non-wage labour costs, which produces an hourly rate of £13.19.

	Low	Central	High
Proportion of independent schools affected	100%	100%	100%
Hourly wage of admin staff after uplift	£13.19	£13.19	£13.19
Time taken to make checks	5 mins	5 mins	5 mins
Checks per year	1	3	5
Total one-off cost (nominal)	£2,650	£7,949	£13,249

#### 9. Section 128 checks.

On the 1 September 2014 new regulations (The Independent Educational Provision in England (Prohibition on Participation in Management) Regulations 2014) came into force that give the Secretary of State power to bar unsuitable people from management positions in independent schools. Known as a 'section 128 direction' it prohibits a person from taking part in the management of an independent school in England, or places a restriction on a person's ability to do so. Section 128 directions may be given in respect of a person who has been convicted of, been given a caution in respect of, or is subject to a relevant finding in respect of a relevant offence, or has engaged in relevant conduct, if the appropriate authority (the Secretary of State) considers that the person is therefore unsuitable to take part in the management of an independent school. We are in ongoing talks with relevant bodies as to the best way to reflect a section 128 direction in the safeguarding checking regimes. We want to make it a requirement in the ISS for schools to carry out section 128 direction checks.

Time taken: It is thought a member of support staff would complete the administration for a section 128 check in a very short period of time, with a conservative estimate of five minutes used. Different options are being considered for how the section 128 check will be administered.

<sup>6</sup> Schools, pupils and their characteristics: January 2014 SFR 15/2014

<sup>7</sup> Annual Survey of Hours and earnings, 2014 provisional results

It is likely it will either be completed through the disclosure barring service enhanced check request form, or alternatively via the Employer Online Access Service. The cost of the section 128 check would be incorporated into the £44 DBS fee if the former, whereas the latter is already free of charge, hence neither of these options would increase cost to schools.

It is thought that on average, each independent school will carry out one section 128 direction check a year for new members of management, using a range of zero to three checks per year. This reflects assumed turnover and recruitment of management positions in independent schools. Other assumptions are the same as probation checks.

	Low	Central	High
Proportion of independent schools affected	100%	100%	100%
Hourly wage of admin staff after uplift	£13.19	£13.19	£13.19
Time taken to make checks	5 mins	5 mins	5 mins
Checks per year	0	1	3
Total one-off cost (nominal)	£0	£2,650	£7,949

### Summary of Overall Economic Costs (central estimate)

***For the purposes of the EANCB calculation, we are only concerned with the economic costs falling on independent schools. Academies and Free-Schools are public sector bodies (as defined by the ONS) and as such are out of scope of OITO. The table below shows the one-off costs and requiring costs for the 2,411 registered independent schools.***

	Transitional Costs (nominal)	Average Annual Costs (nominal)	Total Annual Costs (discounted)	Net Present Costs (discounted)
Familiarisation	£2.63m	-	-	£2.63m
SMSC	£0.01m	-	-	£0.01m
Risk Assessment	£0.04m	£0.06m	£0.5m	£0.54m
Complaints	-	£0.07m	£0.59m	£0.59m
Welfare	£0.02m	-	-	£0.02m
Leadership	-	£2.09m	£17.79m	£17.79m
Quality	£0.7m	-	-	£0.7m
Prohibition checks		£0.03m	0.24m	
Section 128 checks		£0.01m	0.08m	
<b>Total overall costs</b>	<b>£3.41m</b>	<b>£2.26m</b>	<b>£19.2m</b>	<b>£22.61m</b>

## Summary of Costs to Business (central estimate)

***To generate the EANCB estimate, we use the one-off costs to business of £3.3m (as shown in the table below) and the annual requiring costs of £1.67m, in conjunction with the BIS September EANCB calculator. This results in an EANCB estimate of £1.61m. This includes the cost to business of extra time taken by governors in state schools. This is an IN under OITO methodology.***

	Transitional Costs (nominal)	Average Annual Costs (nominal)	Total Annual Costs (discounted)	Net Present Costs (discounted)
Familiarisation	£2.55m	-	-	£2.55m
SMSC	£0.01m	-	-	£0.01m
Risk Assessment	£0.04m	£0.02m	£0.15m	£0.19m
Complaints	-	£0.07m	£0.59m	£0.59m
Welfare	£0.02m	-	-	£0.02m
Leadership	-	£1.57m	£13.41m	£13.41m
Quality	£0.7m	-	-	£0.7m
Prohibition checks		£0.01m	£0.07m	£0.07m
Section 128 checks		£0.003m	£0.02m	£0.02m
<b>Total costs to business</b>	<b>£3.33m</b>	<b>£1.67m</b>	<b>£14.25m</b>	<b>£17.58m</b>

## EANCB

Using the EANCB calculator published in October 2014 (<https://www.gov.uk/government/publications/impact-assessment-calculator--3>), these figures in the 'Summary of Costs to Business' table above produce an EANCB of -£1.61m. The consultation-stage IA used a previous version of the calculator.

## Small and micro business assessment

There are currently 2,411 independent schools outside the public sector<sup>8</sup>. Of these, 77.6% (1,790) are small and micro businesses with fewer than 50 employees; 56.7% are small businesses and 20.9% are micro businesses (with fewer than 10 employees). The table below shows – for a sample of 146 schools - how many have issues related to the measures in this impact assessment, by size of establishment. The data indicates that there are proportionately slightly more micro businesses with issues (7.3%) than businesses with 10 or more employees (around 6%). So the proposed regulatory changes will clearly impact on SMEs.

<sup>8</sup>We do not have data on employee size for all 2,405 schools as those opening after 17/01/13 will not have staff numbers recorded on Edubase until after this years' school census. We have data for 2,306 of these schools so assume that the non-recorded schools follow the same size distribution.

On average, around 16 new cases are opened each month. This suggests that we might expect around 190 new cases in total to be identified annually, equating to around 8% of the 2,411 schools; of which around 150 could be small and micro businesses. So the regulatory changes are expected to have an impact on only a small number of SME schools.

Issues Category	Poor Leadership and Management	Lack of Effective Risk Assessment	Minimum Standards	Multiple issues
<b>Staff number category</b>				
<b>50 or more employees</b> (total No of Independent schools 516)				
of these there are 31 independent schools	5	22	1	3
% of 31	16	71	3	10
6.0%				
<b>Fewer than 50 employees, but more than 10</b> (total No of Independents schools 1,308)				
of these there are 80 independent schools	20	45	12	3
% of 80	25	56	15	4
6.1%				
<b>Fewer than 10 employees</b> (total No of Independent schools 482)				
of these there are 35 independent schools	6	14	9	6
% of 35	17	40	26	17
7.3%				
<b>Total number of schools with issues</b>	31	81	22	12

Given that the purpose of the changes is to address failings in the management of schools and quality of education provided, and that the vast majority of independent schools are SMEs, we are not exempting SMEs from the new regulatory changes. Exempting them – fully or partially – would not achieve the policy aims. Moreover, by doing so we would be signalling that we are setting lower standards for small and micro schools, which would not achieve an equitable outcome for all pupils irrespective of the size of their school. The fact that cases are identified at all demonstrates that the current approach is not working.

Additionally, there is no rationale for allowing small and micro independent schools to take longer to comply by addressing their failures than larger schools or longer than we would expect of any state school – or for varying the compliance requirements by size of school. For example, there would be serious child safety concerns if we allowed SMEs to continue operating for an extended period with inadequate safeguarding procedures resulting from poor leadership and management. Similarly, where the quality of education provided would ‘require improvement’ by Ofsted (were these state schools) and where the curriculum of some schools is a threat to tolerance, equality and inclusivity the potentially adverse consequences for children means these problems need to be addressed quickly by all schools, regardless of how large they are.

Finally, the estimated compliance costs per school for each of the regulatory changes is small and whilst they will be disproportionately more expensive for small schools (relative to budgets) we believe they are small enough to be absorbed without causing harm to the financial position of schools.