

<b>Title:</b> <b>Requirement for schools to seek written parental consent before processing children's biometric data</b>  <b>Lead department or agency:</b> Department for Education <b>Other departments or agencies:</b> Home Office Ministry of Justice Department for Business, Innovation and Skills	<b>Impact Assessment (IA)</b>
	<b>IA No:</b>
	<b>Date:</b> 02/08/2011
	<b>Stage:</b> FINAL
	<b>Source of intervention:</b> Domestic
	<b>Type of measure:</b> Primary legislation

## Summary: Intervention and Options

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

Biometric identification systems process unique personal data and are used in numerous schools for a number of practical purposes. Their use is regulated under the Data Protection Act 1998; under this Act there is no explicit requirement that schools consult parents before processing children's biometric data. Guidance for schools has been issued by BECTA and the ICO, both recommending that schools should involve parents and pupils before using the technologies. However there is concern amongst parents' groups that parental consent is not being obtained and that alternative arrangements have not been offered to pupils whose parents have requested that data is not taken. Intervention is required to ensure that sensitive biometric information is only taken from pupils with the consent of their parents, is not taken if the pupil refuses and that alternative arrangements are in place where such consent is not granted.

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

To protect the civil liberties of pupils by ensuring that parents must consent before schools are able to process their child's biometric data. Also, to ensure pupils have the right to refuse their data being used. In addition, to make sure that pupils cannot be denied access to school facilities if parental consent is not given, such that pupils and parents can opt out without consequence. It is envisaged that primary legislation will have greater force in ensuring this is the case than the current guidance based approach.

### What policy options have been considered? Please justify preferred option (further details in Evidence Base)

- 1A)** Do nothing option: schools would not have to obtain consent: the current issue would remain.  
**1B)** Require schools to seek written parental consent before processing children's biometric data and preclude schools from taking the fingerprints of children who have refused to give them. **This is the preferred option.** Within this option there are three options:
- 1.B.a. Require schools to seek written parental consent where the pupil is not competent to consent.
  - 1.B.b. Require parental consent for all children up to the age of 18. **This is the preferred option.**
  - 1.B.c. Require parental consent for all children up to the age of 12.
- 2A)** Do nothing option: schools would not have to provide alternative systems for pupils whose parents refuse consent, leading parents to be pressured to give consent, or to pupils not having access to facilities.  
**2B)** Legislate to require schools to provide alternative arrangements for pupils when they refuse, or their parents who do not consent, to their biometric data being processed. **This is the preferred option.**

**When will the policy be reviewed to establish its impact and the extent to which the policy objectives have been achieved?**

It will not be reviewed

**Are there arrangements in place that will allow a systematic collection of monitoring information for future policy review?**

No

**SELECT SIGNATORY Sign-off** For consultation stage Impact Assessments:

*I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.*

Signed by the responsible SELECT SIGNATORY:

A handwritten signature in black ink, appearing to be 'Ned' followed by a stylized surname.

Date: 02/08/2011

# Summary: Analysis and Evidence

# Policy Option 1

**Description:** Require schools and colleges to seek written parental consent (up to the age of 18) before processing children's biometric data and preclude them from taking the biometric data of children who have refused to give it. Legislate to require schools and colleges to provide alternative arrangements for pupils when they refuse, or their parents do not consent, to their biometric data being processed.

Price Base Year 2010	PV Base Year 2011	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate:

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	£60,000	£12,000	<b>£150,000</b>
High	£300,000	£90,000	<b>£1million</b>
Best Estimate	£120,000	£25,000	<b>£300,000</b>

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

**1B)** Schools using or wishing to begin using biometric technology would bear the administration cost of obtaining and recording written consent from parents, and any refusal from pupils.  
**2B)** Where schools do not already have non-biometric access arrangements in place there may be a cost of implementing these when parents or pupils exercise their right to opt out, such as by issuing swipe cards.

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

Any additional staff time to deal with: for 1.B: pupil/parent disagreements, and for 2.B: difficulties that may arise from managing biometric and non-biometric systems simultaneously. This has not been monetised as the extent of the cost is uncertain.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional	Optional	<b>Optional</b>
High	Optional	Optional	<b>Optional</b>
Best Estimate			

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

No benefits are monetisable, as the benefits are based on civil liberties.

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

**1B)** Parents' rights to withhold biometric data on their children's behalf will be protected by law, as will the child's right to refuse to give their biometric data.  
**2B)** Opt outs will have access to all school facilities, ensuring equality within schools. Also parents and pupils will no longer be pressured into using biometric systems due to a lack of an alternative.

### Key assumptions/sensitivities/risks

Discount rate (%)

3.5

It is assumed that parents will have an adequate opportunity to gain any facts they need to give informed consent. If parents are not able to ascertain this information there is a risk their consent may not be valid. There is a risk that methods of asking for parental consent could be inefficient. The assumption is made that the majority of biometric systems used in schools will have or will be adaptable to have non-biometric alternatives. Where they do not there is a risk of high costs for schools in replacing these systems. For additional assumptions used in the cost estimate calculations please see the table in the evidence base.

Impact on admin burden (AB) (£m):			Impact on policy cost savings (£m):	In scope
New AB:	AB savings:	Net:	Policy cost savings:	Yes/No

## Enforcement, Implementation and Wider Impacts

What is the geographic coverage of the policy/option?	E&W				
From what date will the policy be implemented?	2012				
Which organisation(s) will enforce the policy?	Department for Education and the Information Commissioners office.				
What is the annual change in enforcement cost (£m)?	Nil				
Does enforcement comply with Hampton principles?	N/A				
Does implementation go beyond minimum EU requirements?	N/A				
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)	Traded: N/A		Non-traded: N/A		
Does the proposal have an impact on competition?	No				
What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable?	Costs:		Benefits:		
Annual cost (£m) per organisation (excl. Transition) (Constant Price)	Micro	< 20	Small	Medium	Large
Are any of these organisations exempt?	Yes/No	Yes/No	Yes/No	Yes/No	Yes/No

## Specific Impact Tests: Checklist

Set out in the table below where information on any SITs undertaken as part of the analysis of the policy options can be found in the evidence base. For guidance on how to complete each test, double-click on the link for the guidance provided by the relevant department.

Please note this checklist is not intended to list each and every statutory consideration that departments should take into account when deciding which policy option to follow. It is the responsibility of departments to make sure that their duties are complied with.

Does your policy option/proposal have an impact on...?	<b>Impact</b>	<b>Page ref within IA</b>
<b>Statutory equality duties<sup>1</sup></b> <a href="#">Statutory Equality Duties Impact Test guidance</a>	Yes	Annex A
<b>Economic impacts</b>		
Competition <a href="#">Competition Assessment Impact Test guidance</a>	No	
Small firms <a href="#">Small Firms Impact Test guidance</a>	No	
<b>Environmental impacts</b>		
Greenhouse gas assessment <a href="#">Greenhouse Gas Assessment Impact Test guidance</a>	No	
Wider environmental issues <a href="#">Wider Environmental Issues Impact Test guidance</a>	No	
<b>Social impacts</b>		
Health and well-being <a href="#">Health and Well-being Impact Test guidance</a>	No	
Human rights <a href="#">Human Rights Impact Test guidance</a>	Yes	
Justice system <a href="#">Justice Impact Test guidance</a>	No	
Rural proofing <a href="#">Rural Proofing Impact Test guidance</a>	No	
<b>Sustainable development</b> <a href="#">Sustainable Development Impact Test guidance</a>	No	

<sup>1</sup> Race, disability and gender Impact assessments are statutory requirements for relevant policies. Equality statutory requirements will be expanded 2011, once the Equality Bill comes into force. Statutory equality duties part of the Equality Bill apply to GB only. The Toolkit provides advice on statutory equality duties for public authorities with a remit in Northern Ireland.

## Evidence Base (for summary sheets) – Notes

Use this space to set out the relevant references, evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Please fill in **References** section.

### References

Include the links to relevant legislation and publications, such as public impact assessment of earlier stages (e.g. Consultation, Final, Enactment).

No.	Legislation or publication
1	
2	
3	
4	

+ Add another row

### Evidence Base

Ensure that the information in this section provides clear evidence of the information provided in the summary pages of this form (recommended maximum of 30 pages). Complete the **Annual profile of monetised costs and benefits** (transition and recurring) below over the life of the preferred policy (use the spreadsheet attached if the period is longer than 10 years).

The spreadsheet also contains an emission changes table that you will need to fill in if your measure has an impact on greenhouse gas emissions.

#### Annual profile of monetised costs and benefits\* - (£m) constant prices

	Y <sub>0</sub>	Y <sub>1</sub>	Y <sub>2</sub>	Y <sub>3</sub>	Y <sub>4</sub>	Y <sub>5</sub>	Y <sub>6</sub>	Y <sub>7</sub>	Y <sub>8</sub>	Y <sub>9</sub>
<b>Transition costs</b>	0.12									
<b>Annual recurring cost</b>		0.025	0.025	0.025	0.025	0.025	0.025	0.025	0.025	0.025
<b>Total annual costs</b>										
<b>Transition benefits</b>										
<b>Annual recurring benefits</b>										
<b>Total annual benefits</b>										

\* For non-monetised benefits please see summary pages and main evidence base section



Microsoft Office  
Excel Worksheet

# Evidence Base (for summary sheets)

## Problem under consideration

The processing of biometric data in schools, sixth forms and further education (FE) colleges<sup>2</sup> raises issues around the protection of children's data rights; in particular the issue of whether parents are able to safeguard these rights when a child is at school.

Biometric identification systems are being increasingly used in schools. The biometric systems used by schools in the vast majority of cases are automated fingerprint identification systems (AFIS) which utilise the features of finger or thumb prints to identify pupils. A small number of schools have implemented other biometric systems including iris, face and palm vein recognition technology<sup>3</sup>. Schools utilise these technologies for a variety of practical purposes, most commonly cashless catering, running the library, and taking the register<sup>4</sup>. In general these systems record images of physical characteristics of individuals and convert them into a unique number or template that allows individuals to be identified when they reuse the system. As such they do not store images of characteristics but do hold data that relates to them. This data is therefore of a personal and sensitive nature.

Although no official figures exist for how many schools have implemented biometric systems there are indications that their use is widespread. Figures reported come from FOI requests by the media and interest groups from which it has been estimated that 30% of secondary and 5% of primary schools use biometric systems<sup>5</sup>.

There is also no official evidence concerning parents' or pupils' views on the use of biometric systems in schools. The existence of a number of parent run campaign groups in this area does give an indication that many parents are in opposition to the practice<sup>6</sup>. The public have also raised petitions to the Prime Minister to "stop schools from fingerprinting children"<sup>7</sup> and to "stop schools taking children's fingerprints without parental permission"<sup>8</sup>. Some evidence does exist concerning the use of surveillance measures in general. Research for the Information Commissioner's Office showed that the public are concerned that data used by surveillance systems should be processed in line with the data subject's rights, not be excessive, be held securely, not be kept for longer than necessary, and be fairly and lawfully processed<sup>9</sup>.

Current regulation of the use of biometric technologies comes from the Data Protection Act (DPA) 1998. This requires that personal data is obtained and used fairly and lawfully, is not used for purposes other than those for which it was collected, is kept no longer than is necessary and appropriate data security is in place. The DPA also requires that a condition in Schedule 2 of the DPA must be satisfied before processing personal data. One of these conditions is that the consent of the 'data subject' (in this case the pupil) must be obtained. However, there are a number of other conditions in Schedule 2 that can be relied upon to process personal data in the absence of the data subject's consent. There is no explicit requirement in the DPA that schools must consult parents before children's biometric data is obtained. This means that it is currently possible for a school to process a pupil's biometric data without consent if able to meet one of the other conditions in Schedule 2 of the DPA.

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<sup>2</sup> In general where impact on schools is referred to in this document it will be equally applicable to sixth form colleges and FE unless otherwise stated.

<sup>3</sup> The Leventhorpe School in Hertfordshire and the Barnwell School in Stevenage implemented face recognition technology in September 2009. Retinal scanning was trialled in 2004 at the Venerable Bede Church of England School in Ryhope, Sunderland. Palm-vein systems were trialled in Todholm Primary School in Paisley, Scotland in 2006.

<sup>4</sup> Taylor (2010) From fingerprinting to fingerprinting: the use of biometric technology in UK schools.

<sup>5</sup> Clark, L. (2010) 'One in three secondary schools fingerprinting pupils as Big Brother regime sweeps education system' *Mail Online*. Available at: <http://www.dailymail.co.uk/news/article-1285305/One-schools-fingerprinting>. This article reports that 84 primaries in the sample used biometric systems, based on the total number of primary schools that would be expected over this number of counties the 5% estimated was calculated. The article quotes the estimate of 30% secondary schools.

<sup>6</sup> Parent campaign group Leave them Kids Alone <http://www.leavethemkidsalone.com/>.

<sup>7</sup> July 2007 670 people signed the petition.

<sup>8</sup> September 2007 305 people signed the petition.

<sup>9</sup> Information Commissioner's Office (2004) Public attitudes to the deployment of surveillance techniques in public places: qualitative research report.

[http://www.ico.gov.uk/upload/documents/library/corporate/research\\_and\\_reports/public\\_attitudes\\_research.pdf](http://www.ico.gov.uk/upload/documents/library/corporate/research_and_reports/public_attitudes_research.pdf)

Practice on the use of biometric technologies was guided by the British Educational Communications and Technology Agency (BECTA) until it closed in March 2011 and is currently regulated by the Information Commissioners Office (ICO). Each has produced guidance<sup>10</sup> for schools on the use of biometric systems. Both these documents recommend that schools should involve parents and pupils before using the technologies. The ICO guidance also recommends that children over the age of 12 years should be sufficiently mature to give consent.

No official evidence exists concerning current school practice on gaining parental consent before obtaining children's biometric data. Many parents have publicly expressed concerns that their consent was not obtained, or that they were not fully informed about the nature of the systems used. Concerns have also been raised that no alternative arrangements have been offered to pupils whose parents have requested that data is not taken. This has reportedly led to some pupils having access to important facilities such as the canteen or the library denied. This lack of alternatives has also been cited by parents as effectively forcing them to allow children's biometric data to be taken.

Current regulation under the DPA as well as guidance from the ICO and BECTA does not appear to have ensured that parental consent is routinely obtained before children's biometric data is taken and this seems to have led to children either being compelled to give their biometric data or missing out on school facilities.

### **Rationale for intervention**

The Government has stressed the importance of protecting the public's fundamental civil liberties and freedoms. The use of biometrics in schools is at present compromising the right of parents and pupils in relation to this personal data. Current regulation under the DPA as well as guidance from the ICO and BECTA does not appear to have been forceful or clear enough to protect these rights.

The Government considers new legislation is necessary to provide this protection. This will require that schools, sixth form colleges and FE colleges:

- gain the written consent of each parent before processing children's biometric data;
- do not compel pupils to give their biometric data, even where a parent has consented; and
- provide adequate alternative arrangements for pupils who refuse or whose parents do not consent to their biometric data being taken.

The introduction of this legislation will be more forceful than the previous approach which relied on schools adhering to guidance. It will also clarify for schools, as well as for parents, what their respective rights and duties are with regard to consent for the taking of pupils' biometric data; removing the uncertainty around whether or whose consent is required under the DPA. This may also spare schools complaints from parents who feel they should have been consulted.

The requirement for parental consent should not be overly burdensome on schools or colleges. Obtaining written consent from parents is a common practice and the required staff time and administrative costs will not be great. Nor is it envisaged that providing alternative arrangements will be costly. In most cases the identification systems that schools use can also support non-biometric alternatives, for example swipe cards. Hence there should not be significant extra costs imposed on schools when meeting the requirement for alternative arrangements.

### **Policy Objective**

To protect the civil liberties of pupils and parents right to safeguard their children by ensuring schools have sought parental consent before they are able to process children's biometric data. Also, to ensure pupils have the right to refuse their data being collected or used. In addition, to make sure that pupils

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<sup>10</sup> Becta guidance on biometric technologies in schools 2007 and The use of biometrics in schools 2008.

cannot be denied access to school facilities if parental or pupil consent is not given, such that pupils and parents can opt out without consequence.

## Options Considered

The policy has two main aspects:

- 1) The requirement for parental consent and requirement to allow pupils the right to refuse.
- 2) The requirement for alternative arrangements to be provided for opt outs.

### Options considered in relation to 1) The requirement for parental consent

1. A) Do nothing – this is the baseline option. Under this option schools would not be required to gain parental consent before processing children’s biometric data.
1. B) Legislate to require schools to seek written parental consent before processing children’s biometric data and preclude schools from taking the fingerprints of children who have refused to give them. **This is the preferred option.**

Within this option, two options for specifying the age of a child after which parents should no longer be required to give consent were considered. The three options are -

- a. Require schools to seek written parental consent only where the pupil is not competent to give valid consent.
- b. Require parental consent for all children under 18 years of age. **This is the preferred option.**
- c. Require parental consent for all children up to the age of 12.

### Options considered in relation to 2) The requirement for alternative arrangements to be provided for opt outs

2. A) Do nothing -this is the baseline option. Under this option schools would not be required provide alternative arrangements for those who opt out.
2. B) Legislate to require schools to provide alternative arrangements for pupils when they refuse, or their parents who do not consent, to their biometric data being processed. **This is the preferred option.**
2. C) Issue Government guidance specifying what alternatives should be made available to those who opt out.

## Costs and Benefits, compared to the do nothing option

### **Costs of 1.B (written consent):**

- Schools would bear the administrative and financial burdens of obtaining and recording written consent from parents, and any refusal from pupils. This cost is likely to be more significant when the requirements first comes into force as schools, which have not already done so, will have to request and record written consent on behalf of all pupils in order to continue to use any biometric technology. After that point the burden will be less significant as schools will only have to gain the consent from the parents of new pupils. (See section on the Combined Costs of 1B and 2B below for more analysis of the costs).
- Situations where pupils and their parents disagree about whether the school should be allowed to process biometric data may be burdensome for schools to deal with. It is envisaged that on most occasions this will be a matter settled between pupils and their parents, but it is likely that in some circumstances school staff may become involved, taking up staff time.

### **Benefits of 1.B (written consent):**



- Parents' rights to withhold biometric data on their children's behalf will be protected by law.
- Schools will no longer receive complaints from parents who believed that they should have been consulted before their child's data was taken. This may result in a small reduction of staff time dealing with complaints as well as better staff morale.
- The child's right to refuse to give their biometric data will be given statutory force.
- Pupils will learn the importance of safeguarding personal biometric information.

**Costs of 1.B.a (parental consent just for cases where the pupil is not competent):**

- Schools would have to make difficult judgments as to whether a child is competent to consent, taking up staff time as well as leaving schools open to challenge from parents who disagree with any decision that the pupil is competent.
- The difficulty for schools of judging children's competence may lead to occasions where children consent to their data being taken without fully understanding the implications, which means that their civil liberties would not be protected.
- There is an incentive for staff to deem pupils competent in order for the biometrics system to be accepted; in this case the pupils' civil liberties would not be protected. (These costs are not likely to be applicable to sixth form and FE colleges)

**Benefits of 1.B.a (parental consent just for cases where the pupil is not competent):**

- Fewer parents may be needed to be asked for consent, hence lessening the administrative burden for schools. However, this benefit is expected to be small because obtaining written consent from parents is a common practice and the required staff time and administrative costs are small; therefore this benefit is expected to be small. (These benefits are not likely to be applicable to sixth form and FE colleges).

**Costs of 1.B.b (parental consent for all pupils under 18):**

- Schools will have a greater administrative burden in obtaining written consent, and potentially in dealing with a greater number of opt outs. Obtaining written consent from parents is a common practice so it is expected that the administrative costs will be small.

**Benefits of 1.B.b (parental consent for all pupils under 18):**

- Parents will have the right to consent for all children, removing the possibility that children who are not able to give valid consent can be fingerprinted without the consent of a parent, which ensures that their civil liberties are protected.
- The specified age limit would be explicitly clear to schools when parental consent is required, avoiding confusion and the time that would be required to inform the necessary school staff about the requirements, such as through training sessions.

**Costs of 1.B.c (parental consent for all pupils under 12):**

- It is not clear that all children over the age of 12 are sufficiently mature to understand the implications of giving biometric data; hence in some cases children may consent to their data being taken without fully understanding the implications, which means that their civil liberties would not be protected. (This cost is not applicable to sixth form or FE colleges)

**Benefits of 1.B.c (parental consent for all pupils under 12):**

- Schools would only have to gain parental consent for children under 12 years of age, reducing the administrative cost and staff time spent acquiring parental consent. (This benefit is not applicable to sixth form or FE colleges).

**Costs of 2.B (require schools to provide alternative arrangements):**

- Where schools do not already have non-biometric access arrangements in place there may be a cost of implementing these when parents or pupils exercise their right to opt out. The biometric systems used in schools of which the DfE is aware have ready built in non-biometric alternatives; typically these are swipe cards or PIN numbers. The use of swipe cards will impose the small cost on schools in providing the swipe card, these commonly cost approximately 17p per card, and hence this cost will be small. In some cases schools may be required to add swipe card or PIN units to their systems incurring a greater cost. Typically such a unit would cost between £20-40, imposing a moderate cost on schools. In cases where school systems are not adaptable to non-biometric alternatives or schools find the use of two systems unworkable they may have to replace the entire system. The cost of implementing an entire alternative system is reported to

typically cost £1,000 – 1,500 for a primary school and £3000 - £3500 for a secondary school<sup>11</sup>. However some systems have been alleged to cost up to £30,000. DfE is not aware of any cases where this would occur; if or where it does so a large cost will be incurred by those individual schools. (See section on the Combined Costs of 1B and 2B below for more analysis of the costs).

- Schools using biometric systems will now have to manage new difficulties that arise from there being biometric and non-biometric methods for pupils to access facilities. This could cost the school in terms of lost teaching time to manage issues that arise. The scale of this cost is uncertain.
- Where schools cannot use biometric systems on all pupils they may miss out on claimed benefits in security, quicker and easier access to services, and savings in staff time.

**Benefits of 2.B (require schools to provide alternative arrangements):**

- Children who and whose parents opt out of data being processed will have access to all school facilities, ensuring equality within schools. This has reportedly not always been the case under current regulation.
- Parents and pupils will no longer be coerced into using biometric systems due to a lack of an alternative; hence they will be able to exercise their right to opt out without consequence. This will result in schools no longer receiving complaints from parents who believed that they should have been consulted before their child's data was taken. This may result in a small reduction of staff time dealing with complaints as well as better staff morale.

**Costs of 2.C (issue guidance on the use of biometrics and the provision of alternatives)**

- Schools will be under no obligation to provide alternative arrangements for pupils. This may allow pupils who or whose parents opt out of using biometric systems to be disadvantaged, or to parents and pupils being coerced into consenting.
- Practice on the providing of alternatives may not be altered by new guidance given the apparent ineffectiveness of past BECTA and ICO guidance.

**Benefits of 2.C (issue guidance on the use of biometrics and the provision of alternatives)**

- Guidance as opposed to legislation may afford schools greater flexibility in offering non-biometric alternatives, possibly leading to lessening financial burdens.

**Combined Costs of 1B and 2B**

Further analysis provides illustrative scenarios of the estimates for the possible costs that currently biometric-using schools would incur. (This estimate excludes costs to schools who do not currently use biometrics, including future new schools). The scenarios are based on varying assumptions for the proportion of those schools who decide to request parental consent, relative to those who decide to abandon the use of biometrics. In scenarios 1 and 2 it is assumed that those schools will need to issue new swipe cards to all pupils rather than request consent. In scenarios 3 and 4 it is assumed that all schools who currently use biometrics also use swipe cards, such that the only cost of continuing with biometrics is the administration of consent forms. A breakdown of estimated costs for the comprehensive spending review period is included in Annex B.

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<sup>11</sup> Based on reports from two suppliers Softlink Europe and Micolibrain systems via contact with the DfE and as reported in the press: <http://www.out-law.com/page-7680>.

	<u>Scenario</u>			
	<u>1: 75% request consent, 25% issue swipe cards</u>	<u>2: 90% request consent, 10% issue swipe cards</u>	<u>3: 50% request consent, 50% use existing swipe cards</u>	<u>4: 25% request consent, 75% use existing swipe cards</u>
<u>Present value cost estimates over 10 years (based on discount rate 3.5%)</u>				
Administration of consent forms and where applicable issuing new swipe cards to pupils whose parents refuse to consent <sup>12</sup>	£500,000	£500,000	£300,000	£150,000
Buying new swipe card readers <sup>13</sup>	£7,000	£7,000	0	0
Administration of new swipe cards to issue to all pupils <sup>14</sup>	£200,000	£100,000	0	0
Swipe card costs <sup>15</sup>	£300,000	£150,000	0	0
<b><u>Total</u></b>	<b>£1million</b>	<b>£0.8million</b>	<b>£300,000</b>	<b>£150,000</b>
<u>Additional Assumptions used in this analysis:</u>				
<ul style="list-style-type: none"> <li>• In schools that request consent, we estimate that 5% of pupils' parents on average will refuse consent</li> <li>• The number of schools currently using biometrics is estimated to be one third of all secondary schools and 5% of primary schools</li> <li>• In scenarios 1-2 it is assumed that <b>no schools already issue swipe cards to pupils</b> who use biometrics: this assumption is contrary to some anecdotal evidence. If many schools have already issued swipe cards then the costs of moving away from the biometric technology would be much lower: for example, in scenario 4, the total 10-year present value cost could be as low as £150,000 just for consent administration, if none of the swipe card costs were incurred.</li> <li>• Scenarios 3 and 4 also assume that relatively high proportions of schools move away from biometric technology (50% and 75%), because it would not cost schools to do so, and thus it is expected a higher proportion would. Scenario 3 is used as the best estimate in the summary calculations, based on some anecdotal evidence that schools have existing swipe cards.</li> <li>• (All figures are rounded, to reflect uncertainty in assumptions). Please note that this is the reason that the costs of administration of consent forms and swipe cards appears to be the same for scenarios 1 and 2.</li> </ul>				

Due to the lack of estimates of how many sixth form and FE colleges use biometric systems, cost imposed on them are not included in this analysis. The costs on sixth form and FE colleges are likely to be similar to those on secondary schools. Given that there are far fewer sixth form and FE colleges than schools the costs left out of this analysis are not likely to be significant<sup>16</sup>.

## Risks and assumptions

<sup>12</sup> Based on 1 minute per pupil, hourly admin staff wage equals median wage £11.03 plus 25% for non-wage labour costs. This may be higher where schools have difficulty in ascertaining the contact details of the second parent of a child.

<sup>13</sup> Estimated to be needed in 2% of all schools, buying 6 readers per school at £30 per reader, but not included in costs for schools where it is assumed they already use swipe cards.

<sup>14</sup> Based on 30 seconds per pupil, hourly wage of admin staff equal to median wage £11.03 plus 25% for non-wage labour costs.

<sup>15</sup> Based on 17p per card, and assumption that primary schools will replace cards annually and secondary schools every other year plus new starting cohort. It is assumed that schools will opt for swipe cards at the above cost rather than the more expensive smart cards which typically cost up to £3.50 per card. Costs will also depend in part on the rate at which pupils lose swipe / smart cards, which is uncertain.

<sup>16</sup> The Association of Colleges report that there are 352 colleges in England, including sixth form and FE colleges. In comparison there are 3,343 secondary schools and 17,361 primary schools (DfE published figures 2007).

It is assumed that once schools ask parents for their written consent they will have an adequate opportunity to gain any facts they need to give informed consent. If parents are not able to ascertain this information there is a risk their consent may not be valid.

There is a risk that schools' methods of asking for parental consent could be inefficient: for example, sending letters home with a consent form for parents to return may lead to a low response rates if the children lose the letters or if the parents do not promptly return the consent slips. Equally where, for example, parents are separated and a school does not hold the contact details of the second parent it may face difficulty in ascertaining this information and therefore in contacting the parent. This could lead to a large number of the pupils being prevented from using the biometric systems for a significant period of time, such that the costs identified of issuing swipe cards to pupils could be significantly higher in some schools and colleges.

The assumption is made that the majority of biometric systems used in schools will have or will be adaptable to have non-biometric alternatives. Where they do not there is a risk of high costs for schools in replacing these systems when providing for opt outs. Details of the majority of these systems are not held by the DfE; however, all of the suppliers that the DfE is aware of do provide these facilities.

### **Wider Impacts**

There is a possibility that the proposed requirements might be a disincentive to schools considering buying biometric systems, reducing the demand for them. This may decrease the profitability of providers and associated businesses, resulting in a negative economic impact.

### **Implementation and preferred option**

The preferred opinions are 1.B.b. and 2.B.

1.B.b is preferred as the 18 year age limit affords parents the greatest right to safeguard their children's biometric data. Option 1.B.a is unacceptable as many children between 12 and 18 years of age may not be competent to give valid consent for the use of their biometric data, interest groups have previously raised this concern in relation to the 12 year age limit specified in ICO guidance. Option 1.B.c. is unacceptable as it leaves open the possibility that some children who are not competent to consent are judged by school staff to be so.

Option 2.B is preferred as it is important that schools are obliged to ensure equality for pupils who do not use biometric systems, and to ensure that parents' right to consent cannot be compromised by coercion. Option 2.C is considered unacceptable as current guidance on the use of biometric in schools appears to have been ineffective in ensuring schools provide non-biometric alternatives to pupils.

Implementation will be achieved via primary legislation via the Protections of Freedoms Bill, which was introduced in February 2011.

### **Reasons for not planning a Post Implementation Review (PIR)**

The rationale for the introduction of this legislation is based on preserving the civil liberties and freedoms of pupils. Other than the practice of schools in gaining consent and providing alternatives it is not dependant on specific measurable outcomes that could require post implementation review measures. Schools will, under the proposed legislation, be accountable to Governing bodies as well as the Information Commissioner for meeting these requirements. For these reasons it is not necessary and does not present value for money to run a PIR for the Policy.

### **Human Rights**

Please refer to the ECHR Memorandum for the Protection of Freedoms Bill.

## PROFORMA FOR A FULL EQUALITY IMPACT ASSESSMENT

### **Outlawing the use of biometric systems by pupils in schools without parental consent**

#### **Description of the policy**

This policy forms part of the Government's wider aim of protecting the fundamental civil liberties of individuals and stems from "*The Coalition: Our programme for government*" document commitment to "*outlaw the fingerprinting of pupils in schools without parental permission*".

Biometric systems are being increasingly used in schools, in the vast majority of cases the systems schools utilise are automated fingerprint identification (AFIS). Such systems store templates relating to the unique physical characteristics of individuals, the data they process is therefore of a personal and sensitive nature. Under current regulation in the Data Protection Act 1998 the biometric data of students under the age of 18 can be processed in schools and colleges without the consent of their parents.

The Government considers new legislation is necessary to ensure children's rights in regard to biometric data are protected. Under this legislation, schools, sixth form colleges and Further Education colleges will be required to gain the written consent of parents of children aged under 18 before processing their children's biometric data and will not be able to process data if the child refuses to allow them to do so. Schools and colleges will also be required to provide alternative arrangements for pupils who refuse or whose parents do not consent to their data being taken.

The proposed legislation will form part of the Protection of Freedoms Bill to be introduced early 2011. If enacted these requirements are likely to come into force no sooner than January 2012.

#### **The Evidence Base**

No official figures exist for how many schools have implemented biometric identification systems. Via Freedom of Information (FOI) requests, the media have estimated that 30% of secondary schools and 5% of primary schools use biometric systems<sup>17</sup>. There are no such indications of how many sixth form colleges or FE colleges have implemented biometric technologies.

There is also no official evidence regarding the use of benefits of the biometric systems used in schools. Indications from suppliers and interest groups are that the most common uses are cash-less catering, running the library, and taking the register<sup>18</sup>.

There is no or very little evidence concerning parents' or pupils' views on the use of biometric systems in schools. Some evidence does exist concerning the use or surveillance measures in general. A small-scale qualitative project showed that whilst some school children were uncritically supportive of surveillance measures, others were sceptical of the efficiency and accuracy of the systems<sup>19</sup> Also research for the Information Commissioner's Office<sup>20</sup> showed

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<sup>17</sup> Clark, L. (2010) 'One in three secondary schools fingerprinting pupils as Big Brother regime sweeps education system' *Mail Online*. Available at: <http://www.dailymail.co.uk/news/article-1285305/One-schools-fingerprinting-pupils-Big-Brother-regime-sweeps-education-system.html>.

<sup>18</sup> Taylor (2010) From fingerprinting to fingerprinting: the use of biometric technology in UK schools.

<sup>19</sup> McCahill, M and Finn, R (2010). The Social impact of Surveillance in Three UK Schools: 'Angels', 'Devils' and 'Teen Mums'.

that the public are concerned that data used by surveillance systems should be processed in line with the data subject's rights, not be excessive, be held securely, not be kept for longer than necessary, and be fairly and lawfully processed.

## **Disability and Special Educational Needs**

DfE does not hold any official evidence in relation to how often biometric systems have been used on pupils with disabilities or special educational needs (SEN). However given indications of the widespread use of these systems, it is likely that a significant number of pupils with disability or SEN have had their biometric data taken.

Many SEN pupils may be less able to give valid consent than their peers for their biometric data to be taken. Hence it is particularly important that parents of SEN pupils are required to provide written consent before their children's data can be processed. The proposed legislation will be important in protecting the data rights of these pupils.

Where parents do not consent to the use of biometric systems, some particular benefits for disabled children may not be available. For example, biometric systems remove the need for pupils to carry cash or swipe cards when using canteens and libraries; some pupils with certain physical disabilities may find the manipulation of these items more problematic than using a fingerprint scanner. Biometric systems are also reported to save staff time dealing with situations such as lunch queues. Where less time is saved, due to some pupils not being allowed to use the systems, school staff may have less time to give SEN or disabled pupils additional aid.

In most cases schools and colleges will be able to find non-biometric alternatives when regulating canteens, and libraries and for ensuring adequate staff time is spent helping disabled pupils.

## **Ethnicity, Deprivation and Gender**

The use of biometrics and in particular automated fingerprint identification raises emotive concerns regarding the surveillance and criminalisation of youth. These are likely to be particularly strong in minority ethnic groups who may feel that they are subject to greater surveillance and criminalisation than other groups. The introduction of the requirement for parental consent will be particularly reassuring for these groups.

Biometrics identification systems are often used by schools to monitor and track school attendance, and are reported to be useful in maintaining good attendance levels. Given that pupils from deprived backgrounds and certain ethnic groups have higher absence rates than others group<sup>21</sup> the restriction of the use of these systems may have a greater effect on their school attendance. The systems are also claimed to remove stigma around free school meals (FSM) by allowing pupils to pay for meals without cash. This may lead to a negative effect on FSM eligible pupils whose parents opt out of using the systems<sup>22</sup>. It is unlikely these issues will be problematic as there are non-biometric alternatives, such as swipe card systems, available to schools that can provide most of the same benefits for managing attendance or catering.

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<sup>20</sup> Information Commissioner's Office (2004) Public attitudes to the deployment of surveillance techniques in public places: qualitative research report.  
[http://www.ico.gov.uk/upload/documents/library/corporate/research\\_and\\_reports/public\\_attitudes\\_research.pdf](http://www.ico.gov.uk/upload/documents/library/corporate/research_and_reports/public_attitudes_research.pdf)

<sup>21</sup> DfE Statistical First Release 08-09

<sup>22</sup> Supplier of biometric systems sight improving attendance and removing stigma around free school meals as a benefits of their systems. There is no official evidence that supports this claim.

## **Summary**

The policy should have a positive impact on equalities by better protecting the rights of some SEN children and by easing emotive concerns around the increased surveillance of ethnic minority groups. Some negative effects of restricting the use of biometric systems may occur for SEN/disabled, deprived and certain ethnic groups. These effects are unlikely to be significant due the availability of suitable alternatives.

## **Next steps**

The policy will be implemented via primary legislation in the Protection of Freedoms Bill, to be introduced early 2011. If enacted they will come into force no sooner than January 2012.

DfE is developing plans to communicate with schools on the proposed requirements as well as the proper use of biometric information; as part of these plans informal consultation with interest groups was carried out in September 2010. This involved schools sector, children's rights and civil liberties groups, all of whom were broadly supportive of the policy. No issues around the impact on equalities were raised.

BIS intends liaising closely with DfE and will also work with the Association of Colleges to ensure that the FE sector is aware of the proposed requirements and to disseminate best practice where biometric systems are used.

During the passage of the Bill, Departmental channels and media opportunities will be used to raise awareness of the requirement that is intended to be brought into force. Once Royal assent is reached web-based guidance on the use of biometrics will be issued. This should aid schools and colleges in ensuring that no students are disadvantaged by not being able to use biometric systems.

Department for Education  
December 2010

Annex B: Cost of preferred options.

**Estimated costs over the CSR:**

**(with rounding due to the costs only being estimates)**

assuming 2012/13 is the year the policy comes into effect and schools must either obtain consent or stop using their biometric systems, then the comprehensive spending review period costs would be:				
costs without inflation				
<b>highest cost scenario: that no biometric-using schools already issue swipe cards to pupils, so the policy leads to 75% requesting consent, 25% issuing swipe cards</b>				
	2012/13	2013/14	2014/15	total
cost of 75% of those schools administrating consent forms	£ 180,000	£ 40,000	£ 30,000	£ 250,000
cost of all of those schools buying new swipe card readers if they need to	£ 7,000	£ -	£ -	£ 7,000
cost of admin of all swipe cards	£ 30,000	£ 20,000	£ 20,000	£ 80,000
cost of 25% and 5% of 75% issuing swipe cards	£ 50,000	£ 30,000	£ 30,000	£ 100,000
total	£ 300,000	£ 100,000	£ 100,000	£ 450,000
<b>lowest cost scenario: all biometric-using schools already issue swipe cards to pupils, so the policy leads to 25% requesting consent, 75% using existing swipe cards</b>				
cost of 25% of those schools administrating consent forms	£ 60,000	£ 10,000	£ 10,000	£ 80,000
total				£ 80,000



