Enactment impact assessment

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1. Summary of proposal

1. The Department for Education (hereafter "the department") regulates independent schools in England against prescribed standards, at present the Independent School Standards ("ISS"), to ensure that they are safe and are offering an education which allows children the best opportunity to achieve and thrive.[1]

2. Any setting which meets the definition of an independent school, found in section 463 of the Education Act 1996, must register with the Secretary of State, or those running it will be committing a criminal offence. All independent schools in England are regulated by a regulatory regime which is largely found in Chapter 1 of Part 4 of the Education and Skill Act 2008 ("the 2008 Act"). Before an independent school may be registered the Secretary of State must be satisfied that it is "likely to meet" all the Independent School Standards ("ISS") and the Early Years Foundation Stage, if applicable. All registered independent schools must meet the ISS all of the time. This is generally tested via inspection. Schools not meeting the ISS face the possibility of regulatory action, up to and including deregistration, which effectively requires them to close.

[1] Under section 94 of the Education and Skills Act 2008, the Secretary of State may prescribe a standard in relation to— (a) all independent educational institutions, (b) specified independent educational institutions, or (c) independent educational institutions of a specified description. At present, there is a single set of standards.

3. There are c2450 registered independent schools.[2] Some are long-established and well-funded. Others, particularly those serving children with complex needs, or which cater for children of specific religious or philosophical belief, may be smaller and less well-funded. At any given time around 7% of the c2450 registered independent schools do not meet the ISS. While the current regulatory approach works well for most independent schools, with a vast majority meeting the ISS at any given time (c.93%) and those not meeting the ISS addressing issues swiftly; there are several problems with the existing regulatory regime of independent schools. While these affect relatively few settings and children, the impact on each can be significant.

4. We therefore propose making several changes to this regulatory regime. These changes are based largely on departmental experiences operating under the existing legislation and have at heart two aims – increasing the Secretary of State's ("SoS") oversight of children who are in independent education and improving the SoS's ability to respond in situations where children in independent education are at risk of harm.

2. Strategic case for proposed regulation

1. Independent educational institutions (hereafter 'independent schools') are regulated by the Secretary of State, predominantly under Chapter 1 of Part 4 of the Education and Skills Act 2008 ('the 2008 Act').

2. This legislation requires independent schools to be registered with SoS. If they are not, those responsible for running such a school are committing an offence under section 96 of the 2008 Act. Registered settings are subject to regular inspection against prescribed standards, the Independent School Standards[3], under section 109 of the 2008 Act. Schools which meet the ISS are, among other things, providing a safe education which lets children fulfil their potential. The Secretary of State may take regulatory and enforcement action against schools which do not meet the ISS, in line with the department's published policy.

3. At any given time, around 6-7% of independent schools (c.150 out of c.2450) are failing to meet the ISS and, as a result, are subject to some form of regulatory and enforcement action. That number varies over time. Within this cohort there is a wide mix of failings, incorporating schools with long-term weaknesses and schools which in failing to meet the ISS once, in relatively minor ways, quickly address their failings and so meet the ISS (and no longer face regulatory and enforcement action). It is impossible to predict in advance which schools will, or will not, satisfy the ISS at a given point.

4. While this approach works well for most independent schools, with a vast majority meeting the ISS at any given time (c.93-94%) and those not meeting the ISS addressing issues swiftly; there are several problems with the existing regulatory regime of independent schools. While these affect relatively few settings and children, the impact on each can be significant.

[2] Independent schools close and open daily, so an estimate is provided.
[3] and if applicable the Early Years Foundation Stage.

5. **<u>Problem 1</u>: The regulatory and enforcement action that can be taken against independent schools that are failing to meet the ISS *and* are putting children at risk of harm can be disproportionate and insufficiently flexible for appropriate action to be taken quickly, meaning that appropriate action cannot always be taken against schools which put children at risk of harm**

6. The department can take emergency action against independent schools under section 120 (hereafter "s120") of the 2008 Act if students at the school are "suffering, or are likely to suffer, significant harm". In addition, regulatory and enforcement action can be taken against independent schools which are failing to meet the ISS, in line with our published policy.

7. However, the department's experience is that these options are not always appropriate to address risks to children's wellbeing in independent schools. Regulatory and enforcement action is too slow to address major and immediate risks to children's wellbeing, while it is the department's experience, evidenced through examples below, that the existing emergency power under s120 is too blunt a tool to be appropriate in all cases. This is because in practice the only viable option when taking action under s120 is the closure of the school; and because a court may not grant an order effecting this because it would mean permanent closure, use of s120 is reserved for only the most egregious cases (see 'Table A' below for examples).

8. While s120 permits the Secretary of State to request an order imposing a "relevant restriction"[4] on the proprietor of an independent school – which could, for example, in effect close only part of its operation -, while it improves in practice it is only ever de-registration which is considered. This is because if a case is serious enough to justify emergency action (i.e. there is a child suffering, or likely to suffer, significant harm) then it is very unlikely that the failings identified are limited to only one part of the school's operation, therefore imposing a relevant restriction to close only the boarding provision, for example, is unlikely to be appropriate. This means that action under s120 is a very final act which makes no allowance for situations where a school is displaying very severe failings but has capacity to improve quickly.

9. **Evidence to support problem statement –** In practice s120 action is considered infrequently. While in theory any of the c2450 registered independent schools may demonstrate failings against the ISS which cause children to suffer, or be likely to suffer, significant harm, in practice such cases are rare.

10. The department does not collect or publish data on s120 cases because this covers a broad spectrum of activity which is hard to categorise. Some activity related to s120 does not go beyond the Secretary of State writing to give notice of her intentions and the school voluntarily closing in response; in other cases, settings close voluntarily upon receipt of the inspection report which is simultaneously being considered for s120 action

[4] "Relevant restrictions" are found in s117 of the 2008 Act. Schools under a relevant restriction are prevented from: using any part of the institution's premises (e.g. boarding provision); close any part of the institution's operation (e.g. a senior school); and/or cease to admit any new students or new students of specified descriptions.

by departmental officials; in others, a court case has been prepared before notification is received that the setting is closed. Similarly, data does not capture those s120 cases which were borderline, and action was considered internally but not taken forward, perhaps because the failings – while serious – did not meet the test found in legislation. However, it is the experience of departmental officials that action under s120 is rare, with fewer than 10 cases under consideration per academic year (and none in the summer months when schools are generally closed).

11. The reason for this very small number is because, while there are no fixed criteria which must be satisfied before s120 action may be considered, the test needs to be satisfied (that students "are suffering, or are likely to suffer, significant harm") and then the case needs to be sufficiently robust to merit court action. Decisions are made on a case-by-case basis using the available evidence, usually an early notification form detailing failings against the ISS that put students at risk of significant harm, supported by witness statements provided by inspectors.

12. Reports of inspections into independent schools are published on the websites of the relevant school inspectorate: Ofsted or the Independent Schools Inspectorate ("ISI") in the case of "association" independent schools. However, the department's consideration of those reports and whether or not to take regulatory action is not usually published. The department has evidence of these issues from operational experience of the regulatory regime, which has been shared for the purposes of scrutiny of this impact assessment, but data/evidence on this is unpublished.

13. In addition, the Secretary of State's experience acting against schools under s120 powers are that it makes insufficient allowance for cases where a school is displaying very severe failings but has capacity to improve quickly. Instead, action under s120 is definitive. The department has evidence of these issues from operational experience of the regulatory regime, but data/evidence on this is unpublished.

18. Government intervention is therefore necessary to provide greater flexibility in our approach, creating a power to close a school temporarily if this is the most appropriate course of action to remove children from a source of risk (reserving the ability to subsequently de-register the school under s120 if rapid improvements are not made). This new power would also allow the Secretary of State to act on a slightly weaker test than that found in the existing s120. This will allow intervention to take place in those cases which at present are considered serious but not so serious as to warrant action under s120.

19. Were government intervention not to be taken, the only option in practice would remain the Secretary of State attempting s120 actions. This would mean children would remain in unsafe settings with no means by which to get proprietors to put right the identified failings or, if s120 action were to be possible, it would lead to closing the school outright, which may not be proportionate.

20. <u>Problem 2</u>: Independent schools do not have to get approval for some changes in how they operate which could lead to them failing to continue to meet the Independent School Standards ("ISS").

21. Once independent schools are registered, they must seek the Secretary of State's approval before making certain specified changes.

22. These specified changes are currently found in section 162 (s162) of the Education Act 2002 ("the 2002 Act") and are: a change in proprietor, address, age range of pupils catered for, capacity, whether or not the school provides accommodation, whether the school is single sex or coeducational and whether or not the school admit pupils with SEN (often an application for material change approval request will encompass more than one of these at the same time, such as an increase in capacity and age range).

23. Before we approve a material change request, we must be satisfied that the relevant ISS will continue to be met once this change is made. For example, we may wish to assure ourselves that a school doubling in capacity is able to meet the requirements in Part 5 of the ISS with regards to the quality of accommodation and classrooms.

24. The problem with the existing legislation that we have observed in its operation is that there are changes that can and are made which can affect an independent school's ability to meet the ISS and so deliver an education which help children achieve and thrive but which are not a material change. These include:

    a. That a school can become or cease to be a 'special institution', i.e., one specially organised to make special educational provision for students with special educational needs (rather than just to admit or cease to admit pupils with Special Education Needs (SEN) and can change the type(s) of special educational needs that it caters for. What this means is that a school registered as catering for pupils with particular needs can instead cater for children with wholly different, but still complex, needs without departmental oversight.
    b. That a school can begin using new buildings away from their registered address for routinely providing education, accommodation, or meals to students, without prior assurance that the new buildings are safe for pupil use and that the requirements of the ISS are met in relation to them.

25. Furthermore, there are problems with regards to the approval of material changes. At present, material changes may only be approved if all the relevant ISS are met once the change is made. This poses a problem because it means that schools not meeting the ISS cannot make a material change, even if the change is to pupils' benefit and, indeed, gets the school closer to meeting the ISS. As an example, a school which is operating in an unsafe building may not be meeting part 5 of the ISS. The school's proprietors may wish to move to newer buildings at a different address to put this right, however these new buildings may also not satisfy part 5 of the ISS, albeit in relatively minor and quickly remedied ways. While it would clearly be beneficial for pupils to use the newer, safer building, the Secretary of State would currently be unable to approve the change of address.

26. A final issue relates to the sanctions available to the Secretary of State in cases of unauthorised material changes. At present the only option available in cases where a school makes an unauthorised material change is de-registration (effective closure). This is similar to the first problem outlined above. Since this will, among other things,

severely disrupt children's education and require them to find new school places, the impact of de-registration is therefore likely to be disproportionate to the risk created by the unauthorised material change. For that reason, we have only very rarely considered taking regulatory action against any school making a material change without departmental oversight and approval (even if those changes have exposed children to risk of harm). In practice, what is required is a less punitive power and one that might, in appropriate circumstances, be used to in effect, "undo" an unauthorised material change which is reducing the school's ability to meet the ISS. We wish to prevent, for instance, use of an unsafe building or a school admitting pupils in an age range beyond its approved limits.

27. **Evidence to support problem statement –** Each year the department receives around 400 material change applications. The particular changes proposed are based on that experience operating the current regulatory regime. Naturally there is not quantitative evidence regarding material changes that are not captured by existing arrangements because they are not reported on at present. Instead, case studies have been produced = of particularly egregious cases which have highlighted weaknesses in our regulatory regime:

28. <u>Example of a material change concerning buildings occupied:</u>

    a. A school was found to be meeting the ISS at an inspection in June 2018. At its next inspection, in 2022, inspectors found that the school had begun using a new building away from their registered address to routinely provide education to students.[5]

    b. The inspection of the new building found that fire extinguishers had not been serviced since the school began to use the buildings for pupils, and fire doors were not kept shut. The buildings' fire alarm system displayed a fault throughout the inspection. School leaders could not provide inspectors with fire safety certificates or an external fire risk assessment. It had not been ensured that hot water supplies were regulated, and therefore there was a risk pupils could be scalded. First-aid and health and safety policies were out of date and school leaders did not have an overall risk assessment policy in place, resulting in the assessment of any risks being weak.

    c. The school was found to not be meeting the ISS in relation to part 5 (premises and accommodation of schools) and part 3 (welfare, health and safety of pupils). The use of this building would not have approved, if we had been aware of its use, as pupils using that building would have been at risk of significant harm. The lack of a requirement for the Secretary of State to approve such changes exposed to children to risk for four years.

29. <u>Example of a material change concerning making special educational provision:</u>

[5] While reports including these examples are published by the Inspectorate, we have not provided sources or references because this would result in the selection of these case studies for use in this Impact Assessment not being anonymised, which we think it is important to preserve to avoid unfairly drawing attention to particular independent schools in this way.

a. A school was found to meeting the ISS with an overall grading of outstanding across four standard inspections between 2009 – 2019. At the next standard inspection in 2022, inspectors noted that the school had dramatically changed the types of special educational needs for which it was specially organised to make provision for but did not have suitable staff in post to meet these pupils' needs. The inspectorate found staff to be overwhelmed and lacking in the training, skills and experience needed to support pupils.

b. The school was found to not be meeting the ISS in relation to part 1 (quality of education provided) and part 3 (welfare, health and safety of pupils). The change of the type of special educational needs that the school catered for would not have been approved if the Secretary of State had been aware that staff were not suitably trained or lacked relevant skills or experience to cater for new types of special educational needs and as such, would not meet the relevant ISS and so deliver a poorer education for children.

30. In both case studies (and others like them) there were few practicable regulatory options open to the Secretary of State:

a. Emergency action under s120 of the 2008 Act, either to de-register the setting or to impose a relevant restriction was complicated since it was unclear that we could have convinced a court to grant an order. In addition, action under s120 is an expensive, time-intensive process.
b. Enforcement action under s115 and 116 of the 2008 Act can be slow and requires certain pre-conditions to be satisfied.

31. None of these options provide a practicable facility to achieve the desired ends, returning the school to meeting the ISS and providing a safe education with minimal disruption to children. The powers are either disproportionate and disruptive to children's education, involve the litigation risk of not proving a case to the court's satisfaction, and/or are slow and labour-intensive. None met the policy need at the time.

32. Intervention is therefore required to both increase the Secretary of State's oversight of material changes and permit more precise and flexible regulatory action to be taken, to keep children safe from harm. The rationale for this largely relates to a 'merit good' argument, whereby the state/society wishes to set a standard of education and enforce this via the ISS and associated checks and inspections. Also relevant is addressing potential market failures around imperfect information, in particular, the difficulties that parents would face – in the absence of regulation – in obtaining complete information about the quality and suitability of a school.

33. **<u>Problem 3:</u> The Secretary of State has the power to de-register schools which fail to meet the Independent School Standards ("ISS"). This sort of decision is invariably appealed, and the appeal can be successful even where the school does not have the capacity long-term to meet the standards. This can create a situation where children are in schools which do not keep them safe and help them thrive for a very long time.**

34. As outlined above, all registered independent schools are under an ongoing obligation to meet the ISS at all times. Provided certain conditions are met – broadly that the ISS are not being met and an opportunity has been given to ensure compliance[6] – the SoS may, under section 116(1)(b) of the 2008 Act, remove the institution from the register (note that this is a wholly distinct process from "emergency" action under section 120 of the 2008 Act).

35. The SoS's decision can be appealed to the First-Tier Tribunal ("FTT") and will not take effect either during the period in which (i) an appeal may be brought (i.e. 28 days) or (ii) where an appeal has been brought, the appeal has not been determined, withdrawn or otherwise disposed of.

36. What this means in practice is that it is very common for a proprietor to appeal a deregistration decision, meaning that the school can remain in operation until this is resolved, although in some cases they withdraw their appeal if a further inspection shows that little progress has been made in meeting the ISS. In practice only a nominal amount of cases actually reach the FTT since either improvement is made so the Secretary of State withdraws the de-registration since it is now inappropriate to so act, or improvement is not made and the proprietor voluntarily withdraws. This causes several problems and poor outcomes for children:

    a. Since lodging an appeal allows a school to remain open regardless of its performance this option is invariably taken. This means that children may remain for a long time in a school which is not meeting, and has not for some time met, the ISS.
    b. The time taken for an appeal to be heard allows the proprietor of a setting time to demonstrate that they have made sufficient improvements to meet the ISS by the time of the appeal hearing. However, the improvements may be short-lived or illusory, with the SoS later having to return to regulatory and enforcement action because the school does not have the capacity or willingness to sustain long-term compliance with its regulatory obligations. This is very damaging to the interests of students, some of whom may be attending such schools for many years while it goes through repeated cycles of improvement and deterioration.
    c. In some cases, it is costly and time-consuming for the department to prepare a legal case in support of a de-registration decision only for the proprietor to withdraw their appeal at the last moment when a final inspection demonstrates that sufficient progress against the ISS has not been made.

37. **Evidence to support problem statement –** Independent schools open and close frequently. It is not unusual for a school to close voluntarily after receiving a poor inspection report demonstrating non-compliance against the ISS (perhaps because parents respond to such a report by removing their children from the school, meaning it ceases to be a viable business). The number of schools which display the type of long-term and consistent failings which justify de-registration is comparatively small.

38. The department does not publish data on appeals and outcomes because the department's internal records management system does not differentiate between cases where a school de-registers voluntarily, de-registers following/during regulatory action or

[6] The precise conditions are found in s115(4) and (5) of the Education and Skills Act 2008.

de-registers following action from the SoS and after a drawn-out appeals process. Neither has it been practicable to gather feedback from the FTT about this process, given how few cases actually reach that stage. In the absence of this, we have produced the following case studies illustrating problems with current appeals arrangements.

39. Example 1: Following registration in 2015, over a period of three years a school repeatedly failed to meet all the ISS having had six inspections by Ofsted and the opportunity to submit action plans to the SoS setting out how it intended to meet the ISS in the future. The decision was taken to de-register the school. The proprietor lodged an appeal to the FTT against the decision. In the current regime, the FTT considers (amongst other things) the circumstances of the school at the time of the hearing and in this case, as some improvement had been made at the time of the hearing before the FTT, the view was taken that the burden of proof was on the SoS to demonstrate that the school was unlikely to meet the ISS in the foreseeable future - which the SoS was unable to do. The appeal was therefore allowed, the SoS's decision overturned and the school remained open. In the subsequent years, the school had three Ofsted inspections, two of which found the school not to be meeting the ISS.[7] This was therefore a failing school within which cohorts of pupils received sub-standard education over a number of years.

40. Example 2: A school was inspected in November 2021. It failed to meet all eight parts of the ISS at the inspection. The decision was taken to de-register the school. The proprietor lodged an appeal to the FTT against the decision. The appeal hearing was scheduled to take place on 18 December 2022. Whilst awaiting the appeal, the school demonstrated sufficient improvement against the ISS, resulting in the SoS voluntarily agreeing to concede to the appeal on the grounds that to de-register a school which was improving with regards to meeting the ISS would be disproportionate. In the subsequent years, the school had three Ofsted inspections, all of which resulted in the ISS not being met. Improvements were short-lived due to school's leadership team's lack of skills and knowledge appropriate to their role. This resulted in the SoS returning to regulatory and enforcement action, resulting in school closure almost three years after the original notice was served. This was therefore a failing school within which cohorts of pupils received sub-standard education over a number of years.

41. These cases illustrate the problem whereby independent schools with persistent failings to meet the ISS can stay open between the time a decision by the Secretary of State is taken to de-register and the time of the FTT, and in some cases beyond then based on temporary improvements only.

42. Government intervention is necessary to mitigate the risk of worse outcomes for pupils, who would otherwise continue to attend a school which either has not met or only occasionally met the ISS for all of their time at the school, including a period when the school may relapse back into non-compliance after the appeal is determined in their favour. Without government intervention, the appeals process would unintentionally continue to lead to a few independent schools continuing to provide children with an

[7] These reports are published by the relevant inspectorate, but to link to them would reveal the name of the school in question so this has not been done.

unsafe and/or poor-quality education during the time taken for, and in some cases after, the FTT to hear a case.

43. **<u>Problem 4:</u> The regulatory regime for checking the suitability of proprietors of independent schools has been found to contain gaps.**

44. It is currently a requirement of the ISS that the SoS makes the following, specified checks on independent school proprietors who are individuals and Chairs of proprietor bodies. The SoS may decide not to approve a proprietor based on the outcome of these checks.

    a. Are they barred from regulated activity with children?
    b. Are they prohibited from managing an independent school under section128[8] of the 2008 Act? This is determined as per our published guidance, Prohibiting unsuitable individuals from managing independent schools.
    c. Do they have a criminal record?
    d. Do they have the right to work in the UK?

45. Provided that these checks are passed and the relevant ISS are satisfied, the SoS will have to approve the proprietor and so permit that person to hold a very large degree of responsibility over children's educational wellbeing, regardless of what else is known about that person. There is no reliable and efficient mechanism to prevent an individual who meets the ISS but who may otherwise be considered unsuitable from acting as an independent school proprietor.

46. The Secretary of State does have further powers in this area. The main prohibition power available is that found in s128 of the 2008 Act. Section 128 permits the SoS to prohibit someone from a leadership and management position in an independent school (or permit this only under certain conditions). However, there are several problems with this tool which make it inadequate to the task.

47. **Evidence to support problem statement –** The necessary due diligence checks set out in the ISS are carried out at two regulatory stages: i. when an independent school first applies for registration, and ii. when an existing school informs us of a change of proprietor.

48. There are examples of individuals returning a positive result but this not being deemed relevant to the decision (for instance, a conviction which was made many years' previously but which does not suggest a safeguarding risk), and individuals returning a positive result but this being just one reason among others why a registration application was refused. However, our records do not contain a single example of an individual failing these checks and, as a result, being refused approval.

[8] S128 of the Education and Skills Act 2008 allows "the appropriate authority ("SoS") to direct that a person: (a) may not take part in the management of an independent educational institution; (b) may take part in the management of such an institution only in circumstances specified in the direction; (c) may take part in the management of such an institution only if conditions specified in the direction are satisfied.

49. At the same time, we are aware of individuals who, while not returning a positive result, are not considered suitable for a position of responsibility over children's wellbeing. We have seen through departmental experience of operating the regime, that in a small number of high-profile cases, proprietors (or members of proprietor bodies) who are unsuitable for the role but who pass the existing checks, can do damage to children's wellbeing through the prevailing culture in the settings for which they are responsible. There is therefore a need to prevent these people from holding these positions.

50. The department has evidence of these issues from operational experience of the regulatory regime, but data/evidence on this is unpublished.

51. As outlined above, the SoS does have further powers under s128 of the 2008 Act. However, evidence to support that this is ineffective includes:

    a. An individual may only be the subject of a s128 direction on prescribed grounds, which are set out in regulations.[9][10] It can be difficult to identify the prescribed grounds on which the SoS can lawfully act, particularly in the absence of the individual committing a criminal offence or being subject to a finding by a professional regulatory body of having breached professional standards.

    b. It is expensive and time-consuming to make a s128 direction. The process which must be followed is set out in regulations and requires, among other things, the SoS to give at least two months for the subject of the order to make representations against the decision. Further, and similar to problem 3 above, the final decision taken by the SoS may also be appealed to the FTT. This can mean that it takes many months to issue a s128 direction and in the meantime the decision to approve or otherwise a prospective proprietor cannot be made, meaning either that the pre-registration application does not proceed, or a registered school is acting without a proprietor. Neither is a satisfactory outcome.

52. Government intervention is necessary because it is the proprietor or those who run a proprietor body who are responsible for ensuring compliance against the ISS and so providing a safe and high-quality education. If government does not intervene this can place children who attend the independent school for which this person is responsible at a risk of harm since, for example, it may allow individuals with a history of poor management or pedagogical practices to be responsible for children's wellbeing.

53. **Problem 5: The suite of inspection powers for unregistered schools is not strong enough for the Inspectorate to collect evidence of criminal activity.**

54. It is already an offence under section 96 (s96) of the 2008 Act to conduct an independent school which is not registered. Unregistered independent schools are not subject to regular inspection against the Independent School Standards ("ISS") and do not provide assurance as to the safety or quality of education they provide. They

[9] The Independent Educational Provision in England (Prohibition on Participation in Management) Regulations 2014

[10] Departmental published guidance provides more detail on the prescribed grounds: Prohibiting unsuitable individuals from managing independent schools

therefore pose a risk to children's wellbeing and a risk that children may be at risk of harm. The Chief Inspector ("Ofsted") may already carry out without-notice inspections of settings believed to be operating as an unlawful, unregistered independent school. Ofsted can enter any premises where the Chief Inspector has reasonable cause to believe that an offence under s96 is being committed. Ofsted's powers in this area are found in section 97 of the 2008 Act ("s97 inspections"). Similarly, Ofsted can enter and inspect registered schools suspected of being the site of a criminal offence found in the 2008 Act.[11]

55. Up to 31 August 2024 (the latest date on which we have published figures), Ofsted had conducted 994 in-person s97 inspections.[12] The purpose of these inspections is not to determine the quality of education or safeguarding in these settings, but solely to determine whether a potential criminal offence is being committed, i.e. whether the setting in question is operating as an independent school but is not registered with the Secretary of State. This is very different activity from Ofsted's routine work of determining school performance.

56. If a setting is suspected of operating unlawfully as an unregistered independent school the SoS normally, in the absence of any aggravating factor (such as a high level of risk to children's welfare), gives the proprietor of the setting an opportunity to regularise their arrangement by, for instance, registering as an independent school, before moving to prosecution if this is not done satisfactorily and in a timely fashion.

57. Identified, suspected unregistered independent schools are therefore usually issued with a warning notice by the Department for Education and then have the option of (i) registering with the Secretary of State (demonstrating compliance with the ISS), (ii) closing, or (iii) changing their provision to no longer operate unlawfully, usually by reducing the number of hours offered to become a part-time setting.

58. Based on the operation of this regime since 2016, using Ofsted's feedback, we have concluded that a stronger suite of inspection powers is necessary. Ofsted's existing powers in this area are too limited in regard to (a) the type of evidence that can be investigated and (b) the range of criminal activity that can be investigated.

59. **Evidence to support problem statement –** We are basing our proposals on our experiences since 2016, and the 994 in-person inspections which have taken place in that time. The results of Ofsted's inspections into unregistered independent schools since 2016 are as follows:

Most recent status of setting	**Number of settings issued with a warning notice**
All settings	**190**
Under investigation	13

[11] The main criminal offence which may be committed by a registered independent school is for a school to breach a "relevant restriction", see s117 of the 2008 Act.
[12] All figures and statistics taken from Unregistered schools management information, 1 January 2016 to 31 August 2024: Unregistered_schools_management_information_-_Jan_2016_to_31_August_2024.ods).

Most recent status of setting	Number of settings issued with a warning notice
Changed service to comply with the current legislation	121
Closed	35
Registered	16
No further action taken	5

Table B. Ofsted's inspections into unregistered independent schools since 2016.

60. Settings where "no further action [was] taken" indicate situations where evidence could not be gathered and so a determination as to whether the setting was acting unlawfully or not could not be made. In addition, we know of a small number of cases where Ofsted's current powers in this area have severely hindered inspectors and, for instance, allowed potential evidence of criminality to be removed from the setting before the inspection began. The result is that in some settings we have been unable to determine whether a criminal offence is being committed and so whether regulatory action is justified; the children in these settings remain potentially at risk of harm due to our inability to act.

61. In addition, we know of a small number of cases where limitations in Ofsted's current powers in this area have severely hindered inspectors and, for instance, allowed potential evidence of criminality to be removed from the setting before the inspection began. We do not collect data on the number of inspections hindered in this way, since it is ultimately the judgement of the relevant inspector whether their inspection has been hindered or if a different result was possible under different inspection powers.

62. The result is that in some settings we have been unable to determine whether a criminal offence is being committed and so whether regulatory action is justified; the children in these settings remain potentially at risk of harm due to our inability to act.

63. Government intervention is necessary because otherwise a small number of settings will continue to be able to avoid investigation, and a determination about whether they are operating unlawfully will not be able to be made. This would mean a perpetuation of the existing situation where some settings are unlawfully operating, meaning, among other things, that they are not subject to regular inspection against the ISS regarding the quality of the education they provide or the safety of the pupils who attend. There is a strategic interest in being able to close down these settings and prosecute those who, in running an illegal unregistered school, putting children at risk of harm. There is a similar interest in being able to act against individuals who are running registered schools unlawfully, for example in breach of a relevant restriction.

64. **<u>Problem 6:</u> There are full-time educational settings that are not regulated because they are not legally identifiable as schools because they deliver too narrow of a curriculum. These settings do not provide assurance as to the safety or suitability of the education they provide.**

65. Section 92 (s92) of the 2008 Act defines what constitutes an independent educational institution – the type of institution that is regulated under Chapter 1 of Part 4 of that Act and as a result is required to register with the Secretary of State. The definition includes "independent schools". Independent schools are settings which satisfy the definition found in section 463 of the Education Act 1996 – any school at which full-time education is provided for (a) five or more pupils of compulsory school age, or (b) at least one pupil of that age for whom an EHC plan is maintained (or the Welsh equivalent) or who is looked after by a local authority (within the meaning of section 22 of the Children Act 1989 or section 74 of the Social Services and Well-being (Wales) Act 2014), and (c) which is not a school maintained by a local authority or a non-maintained special school. This definition allows some settings to offer a very narrow curriculum/education on a full-time basis but avoid the requirement to register.

66. As such, the 2008 Act does not apply to these settings which as a result operate without regulation and inspection against prescribed standards. We therefore have no way of knowing whether these education settings are safe and are affording children the best opportunity to develop.

67. **Evidence to support problem –** This is a well-documented issue, which is particularly prevalent in certain religious communities and has been raised on several occasions by lobby groups and Ofsted. See, for example, the recent policy position paper by the think-tank "Nahumu"[13] or evidence submitted by Humanists UK to the House of Commons Education Committee in July 2023.[14]

68. Reliable data on the number of children who regularly attend these settings on a full-time basis is not collected, or therefore published, by the department, nor on a national scale by any other organisation. This is because these settings operate outside the department's existing regulatory regime and so do not have an ongoing relationship with the Department for Education or other government bodies. In the absence of reliable data, however, some reasonable assumptions can be made (but care should be taken with these numbers)

    a. In 2018 Hackney Borough Council identified that 29 unregistered yeshivas offered religious teaching to approximately 1,000-1,500 boys within the Haredi Orthodox Jewish community. (Yeshivas are full-time educational settings which provide a wholly – or mainly – religious education to boys. At present they are not captured by the regulatory regime which applies to independent schools).[15]

    b. Publicly available data published by the Institute for Jewish Policy Research, and by the department's annual school census data can be used to estimate that around 2000 Haredi boys aged 13 to 16 are "missing" from registered schools.

69. This is in itself part of the problem that the department will address through changing s92 of the 2008 Act, because regulating these settings will give greater information on the size of the sector and number of children educated this way.

[13] https://nahamu.org/wp-content/uploads/2024/09/Education-Briefing-8-Sept-24.pdf
[14] committees.parliament.uk/writtenevidence/122829/html/
[15] See: Council investigation finds 'serious' failings in illegal schools policy | LocalGov

70. Government intervention to address this problem is essential to ensure that children will receive a safer education which helps them achieve and thrive. Further, the regulation and inspection of independent schools addresses a market failure related to imperfect information – in the absence of government intervention, parents lack reliable information about the quality of schools when making school choices on their children's behalf. This proposal is likely to bring a number of settings inside inspection arrangements, thereby addressing this market failure. Also, there is a 'merit good' type rationale for intervention, based on the idea that the state/society wishes to set minimum standards of education and safeguarding, and enforce this via the applicable standards and associated inspections. This proposal seeks to ensure that educational settings that are, in effect, akin to schools are subject to these minimum standards set by the state.

71. Finally, in the absence of action, these educational settings will continue to operate without registration and oversight and will not give assurance that the education provided meets prescribed standards with regards to the suitability and quality of the education they provide and the safety, health and welfare of pupils. This would perpetuate a safeguarding risk.

3. SMART objectives for intervention

72. These measures have as their common goal the delivery of a safer and higher quality education for children who attend independent schools and full-time settings. They support this goal either by making it easier to intervene against educational settings which are not demonstrating they meet the relevant standards, or by increasing the SoS's oversight of the education delivered to children, and so ensure that the applicable standards are being met.

SMART objectives for intervening in each problem outlined in section 2 are as follows.

Intervention summary	**Policy objectives from intervening,** to:
A. Take more proportionate emergency action against failing independent schools **('Suspension powers')**	1. Provide the SoS greater flexibility to act in cases where an independent school is placing children at risk of harm through failing to meet the Independent School Standards. We expect this to apply to around 5 to 10 independent schools per year. 2. Allow schools with severe failings, which put children at risk of harm but with capacity to make rapid improvements, a chance to do so, while keeping the children who attend that school safe.

Intervention summary	**Policy objectives from intervening,** to:
B. Require approval for more changes in how independent schools operate which could lead to them failing to continue to meet the Independent School Standards **('Material change approvals')**	3. Improve the wellbeing of children attending independent schools by reducing the use of unsafe/inappropriate buildings, by making ' the 'routine use of additional premises away from the registered address' a material change. 4. Improve safeguarding of children by (i) improving the options available to the Secretary of State to act against schools which have not followed the material change regime and have put children at risk, (ii) allowing us to, in effect reverse a material change by, for example, prohibiting use of classrooms we have found not to be safe, and (iii) increasing the deterrent impact against schools acting contrary to our regime and putting children at risk. 5. Increase departmental oversight of changes which, if made, can impact on the ability of the school to meet the ISS on an ongoing basis. 6. Allow schools flexibility to make changes which are beneficial to student's wellbeing, even if they do not result in the ISS being met.
C. Improve the effectiveness of SoS's existing powers to de-register independent schools with failures to meet the Independent School Standards which appeal decisions **('Appeals against de-registration')**	7. Reduce the number of scenarios in which independent schools with serious failures to meet ISS avoid de-registration by demonstrating improvements, but which cannot be sustained. 8. Reduce the number of children who attend registered schools which have failed to meet the ISS, either over a sustained period of time or in some critical respects, but which remain open pending an appeal against de-registration which will, in our opinion, have little likelihood of success either at appeal or afterwards. 9. Encourage independent schools with serious failings against the ISS to close, rather than launch an appeal which has little hope of success.
D. Remove gaps in the existing 'due diligence' processes used to determine the suitability of proprietors of independent schools **('Suitability of Proprietors')**	10. Reduce the number of people who are approved as proprietors of independent schools despite the department's concerns about their previous behaviour or track record, by giving government the legislative tools to reject such applications or by discouraging such applications in the first place.

Intervention summary	Policy objectives from intervening, to:
E. Strengthen inspection powers so that HMCI is able to collect evidence of criminal activity of unregistered independent schools, and registered independent schools acting unlawfully **('Inspectorate (Ofsted) Powers')**	11. Reduce to zero the number of inspections conducted by HMCI to determine if a criminal offence is being/has been committed which are unable to reach a determination on that matter. This will be achieved by: i. Facilitating entry into, and inspection of, a setting believed to be acting unlawfully by providing mechanisms to allow an inspection to take place regardless of the behaviour of those present during the inspection. ii. Encouraging cooperation on the part of those subject to inspection by reducing the existing incentives to withhold cooperation and so hinder the inspection.
F. Ensure full-time educational settings can be regulated and not rely on too narrow a curriculum to avoid regulation and inspection **('Registration of independent educational institutions')**	12. Extend the protections which apply to children who attend registered independent schools to children who attend other full-time educational institutions. 13. Promote the principle that full-time educational institutions, those most responsible for children's wellbeing should be regulated and subject to inspection.

Table C. SMART objectives from strengthening the regulation of independent schools.

4. Description of proposed intervention options and explanation of the logical change process whereby this achieves SMART objectives

73. Paragraphs 76 to 87 include a brief description of the preferred options to address each of the six problems evidenced in section 2 and how each achieves the SMART objectives outlined in section 3.

74. This is followed by a theory of change diagram (Table D), which shows how, taken together, the proposed interventions in independent schools will achieve the desired outcomes.

75. **Suspension powers:** Our **preferred option to achieve objectives 1 and 2**, above, is to introduce a legislative power which would allow the Secretary of State to temporarily suspend an independent school's registration for up to 12 weeks at a time and, in

conjunction and if appropriate, to require boarding to stop[16], where the independent school is failing against the ISS and because of this putting children at risk of harm. This suspension would be extendable by further tranches of up to 12 weeks if required.

76. This new power would allow the Secretary of State greater flexibility to act in situations where a school is displaying severe failings but has the capacity to put this right. This measure would supplement the existing powers available to the Secretary of State to apply to a court for an order to de-register (effectively close) a school under section 120 of the 2008 Act or take enforcement action against schools not meeting ISS under section 116 of the 2008 Act. The aim of this power is to enable quicker and more proportionate intervention, targeted at achieving objectives 1 and 2 above.

77. **Material change approvals:** Our **preferred option to achieve objectives 3-6**, above, is to make legislative changes to the existing material change regime. This change would have two goals: i. increasing the SoS's oversight of changes which may impact an independent school's ability to meet the ISS by making changes to what constitutes a "material change", which supports objectives 3, 5 and 6 above, and ii. increasing the Secretary of State's ability to act against schools which in making an unauthorised change have put children at risk. This supports objective 4, above.

78. **Appeals against de-registration:** Our **preferred option to achieve objectives 7-9**, above, is to change how an appeal against a decision to deregister an independent school under section 116 is determined. This will put the burden of proof on the appealing proprietor to demonstrate that there will be ongoing compliance with the standards and would require the FTT to have due regard to the principle that the standards should be met on an ongoing basis. This will require the FTT to attach greater importance to, and to scrutinise more thoroughly, a school being set up in such a way that it continues to have the processes, e.g., the systems and staff, in place to be compliant with the Independent School Standards into the foreseeable future.

79. By making such changes, we will reduce the likelihood of independent schools that cannot give sufficient assurance about future compliance succeeding on appeal (meeting objective 7). In turn, we expect there to be a disincentive effect for those independent school proprietors who know that they cannot evidence that they can put the systems and practices in place to sustainably meet the ISS from appealing in the first place, leading to failing schools closing sooner (meeting objectives 8 and 9).

80. **Suitability of proprietors:** Our **preferred option to achieve objective 10**, above, is to give the SoS a power to amend the ISS to stipulate a standard that permits the SoS to determine whether an individual is a "fit and proper person" before approving them as an independent school proprietor or Chair of a proprietor body.

81. This would give the department the latitude to prevent someone acting as an independent school proprietor when they are, in the SoS's view, unsuitable. Without this

[16] A "boarding institution" means an independent educational institution that provides boarding accommodation for some or all of its students. A "stop boarding requirement" is a requirement placed by the Secretary of State on the proprietor of an institution to stop providing boarding accommodation to its students.

change, as evidenced through real world cases, we are unable to reduce to zero the number of applicants who are approved as proprietors but who are in some way considered "unsuitable". Our preferred approach will confer a suitable discretion on the SoS to decide whether someone is fit and proper by making a standard incorporating a requirement that proprietors and those responsible for running a proprietor body are a "fit and proper person" to be judged by the Secretary of State. This delivers objective 10.

82. **Inspectorate (Ofsted) powers:** Our **preferred option to achieve objective 11**, above, is to increase Ofsted's powers of inspection with regards to unregistered independent schools ("s97 inspections") and inspections of registered schools acting unlawfully, only.

83. This will provide the Chief Inspector specific, targeted powers which can only be used in defined circumstances, where the Chief Inspector has reasonable cause to believe that a relevant offence as specified in the legislation is being committed. That reasonable cause could be based on many pieces of evidence, such as children of school age being seen regularly entering or leaving a building while carrying textbooks. If reasonable cause is identified, our preferred option will give the Chief Inspector the power to be permitted to act in the following ways (among others):

    a. Enter and inspect any premises with the agreement of the occupier.

    b. Seek a warrant to facilitate entry into premises, and under that warrant:

        i. "Search" (rather than "inspect") premises. "Searching" incorporates more intrusive activity than inspecting.

        ii. Access documents held on a computer or other digital storage, with a concomitant requirement (though it is not just limited to this) on people present during the inspection to provide access to these devices (produce passwords etc).

        iii. Require those present in the setting to provide assistance during the inspection – produce documents, answer questions etc. This is a positive and stronger obligation than the existing requirement of "not obstructing".

        iv. Seize evidence and remove it from the setting for consideration later. This builds on the existing power to "take copies of" documents.

    c. In addition, inspectors may obtain a warrant from the Magistrates' Court, authorising a police constable to attend a setting for the purpose of facilitating an inspection (such as to gain entry), using reasonable force if necessary.

12. This set of powers will ensure objective 11 is met. Our overall aim is to reduce the number of s97 inspections, and other inspections conducted to determine criminality by independent schools which are unable to reach a determination of whether a criminal offence is being committed, to zero.

13. To strengthen our regulatory regime here insofar as possible, our preferred option also includes strengthening the sentencing regime in this area to underpin the enhanced powers above. We intend to introduce several new criminal offences connected to activity which impedes inspectors in exercising these new powers. These new offences, which will exist alongside the existing offence of "obstructing" an inspection, will be:

a. Not producing a requested document (in the absence of a reasonable excuse),

b. Not producing a document held in electronic form, which may include not providing a password to a computer or other device (in the absence of a reasonable excuse),

c. Refusing to answer questions or provide information requested (in the absence of a reasonable excuse); and

d. Refusing to provide, when requested, facilities and assistance to inspectors (in the absence of a reasonable excuse).

87. **Registration of independent educational institutions:** Our **preferred option to achieve objectives 12 and 13**, above, is to extend the existing regulatory regime which applies to independent schools (primarily found in Chapter 1 of Part 4 of the 2008 Act) to other full-time educational settings. This legislative proposal is being proposed to promote the principle that full-time educational settings – those most responsible for children's wellbeing – should be subject to regulation and inspected against prescribed standards. Once this is done it will be a criminal offence to conduct one of the full-time educational settings in question, without it being registered, regardless of the breadth or nature of the education offered. Those running these settings will therefore need to (a) register with the Secretary of State, demonstrating that they will meet the prescribed standards (b) change their operations to part-time (since part-time settings are not to be regulated), or (c) risk criminal prosecution under section 96 of the 2008 Act, since it is already a criminal offence to run an independent educational institution without registration. This supports objectives 12 and 13.

Table D. Theory of Change Diagram from strengthening the regulation of independent schools.

Inputs	**Outputs**	**Change Mechanism**	**Outcomes**	**Impacts**
A. A new legislative "power of suspension" to supplement existing emergency intervention powers found in s120 of the 2008 Act.	Secretary of State will have more flexibility to respond in cases where children are at risk of harm – both in cases which are serious but in relation to which s120 action is unlikely to be sustained, and in cases where outright de-registration under s120 is disproportionate	Legislation is required to permit the Secretary of State to act in the desired fashion.	Children more readily removed from a source of harm	Children attending the schools in question will be required to attend an alternative setting or be electively home-educated. In the short term this will be disruptive but will bring long-term benefits as these children attend settings which more readily meet the ISS

Inputs	Outputs	Change Mechanism	Outcomes	Impacts
B. Legislative changes to the existing ”material change” regime which applies to independent schools	Secretary of State will have more oversight of the operations of independent schools which may contribute to a failure to meet the ISS and/or a risk of harm to children.	Legislation is required to permit the SoS to act in the desired fashion.	Independent schools will be less able to make changes in how they operate which has impact on their ability to meet the ISS and so potentially place children at risk of harm; and the Secretary of State will be better placed to take action against those schools which do so.	Changes which are made to how a setting operates are made with greater departmental oversight, meaning fewer children are attending independent schools which are unsafe or otherwise inappropriate as a result of a material change.
C. Changes to the appeals process against de-registration decisions	Fewer appeals are made against the Secretary of State’s decisions in cases where independent schools have long running or serious failures against the ISS and have not made the substantive changes needed to sustain an ongoing compliance with the ISS.	Legislation is required to change how the Tribunal determines a deregistration appeal to change the incentives to lodge such an appeal.	Schools which have displayed ongoing or serious failures and inability to meet the ISS and so are providing an unsafe and/or low-quality education will close more readily.	Fewer children receive an education in a setting which is failing to meet consistently the ISS and so if offering a poor-quality and/or unsafe education.

Inputs	Outputs	Change Mechanism	Outcomes	Impacts
D. A stronger "due diligence" process is carried out on prospective independent school proprietors.	The SoS may, in addition to existing due diligence determine whether an individual is a "fit and proper person".	Legislation is required to allow the proposed new standard of "fit and proper person" to be made. The new standard will enable unsuitable individuals to be rejected before they take responsibility for an independent school, or act as a deterrent against such individuals considering such a role	Fewer unsuitable individuals act as the proprietor, or are involved in the management, of an independent school	Benefits to children from not attending a school which is managed and overseen by an unsuitable individual
E. Her Majesty's Chief Inspector ("Ofsted") is given greater power to identify criminal activity with regards to independent schools	As a result of the new powers, Ofsted is better able to determine whether criminal activity has taken place and so whether further action is justified.	Legislation is needed to increase Ofsted's existing powers in this area, which are found chiefly in s97 of the 2008 Act.	Criminal behaviour is more readily identified, and there is an increased deterrence factor inhibiting such activity in the first place	Children who attend settings which are acting unlawfully, and may as a result be damaging children's wellbeing, are more readily removed from the setting.
F. More full-time educational settings are brought into regulation	The protections which apply to children who attend registered independent schools apply to more children	Legislation is required to extend the regulatory regime found in Chapter 1 of Part 4 of the 2008 Act other full-time settings. Secretary of State will be better able to act in those situations where a failure by a school to meet the ISS is placing children at risk of harm.	Impacted full-time educational settings will be required to either (i) register, demonstrating they meet the ISS, (ii) change their provision to operate part-time, or (iii) close. Children who attend independent schools which present a risk of harm will be more readily removed from these risks with less disruption than at present.	In scenario (i), left, children attending the setting will receive a broader, more well-rounded and safer education. In scenarios (ii) and (iii) left, the children attending the setting will be encouraged to attend another, safer setting to receive their full-time education

5. Description of shortlisted policy options carried forward

88. This section presents the shortlist of options that we considered to address each of the six problems identified in section 2.[17] As per the HMT Green Book Guidance, we identified 'Critical Success Factors' (CSFs) of options to solve the problems outlined in section 2. These were:

    1. **Adequacy:** whether the options meet the policy objectives in section 3 to a good enough extent.
    2. **Costs:** costs incurred on the inspector / government are able to be funded and proportionate to the size of the problem.
    3. **Efficiency:** the extent to which benefits from options outweigh costs.
    4. **Achievable:** whether options are able to be achieved (e.g., legislated for, guidance published) in the time available, to begin solving problems by the desired times.
    5. **Deliverable:** able to be operationalised by e.g., the Inspectorate.

89. For shortlisted options, we have presented their RAG status against each of the five CSFs.

90. Lastly, across all of the six problems that we appraised options to address, we have considered small and micro, and medium-sized, businesses to be in scope of the interventions. This is because exempting small, micro or medium-sized business from any of the interventions would risk allowing some children to receive an unsafe education and an education which was less safe than that provided to their peers in other institutions. This was considered unacceptable to the department.

91. Shortlist of options to address problems of **suspension powers**:

Shortlisted options (rated against critical success factors A to E)	**A**	**B**	**C**	**D**	**E**
BAU. Continue to only operate within the existing powers.	R	n/a	R	G	G
2. More vigorous use of existing legislative powers	R	G	R	A	A
4. Introduce a legislative power to temporarily suspend an independent school's registration for up to 12 weeks at a time.	A	G	G	G	A
5. Introduce a legislative power to temporarily suspend an independent school's registration until failings are resolved.	A	A	G	G	R

***Key for RAG: G** = Green. Meets CSFs, Preferred way forward. **A** = Amber. Meets CSFs but is less attractive, could carry forward. **R** = Red. Fails to meet CSFs, drop).*

92. The BAU approach of proceeding on the basis of existing legislation would not address the two identified gaps and weaknesses in the Secretary of State's existing powers: that action under section 120 ("s120") to de-register a school may not be sustainable, meaning that emergency intervention is not always an option, and that outright de-

[17] Note – as per the final stage impact assessment template, we have removed the longlist from the published version.

registration under s120 may be a disproportionate response in situations where a registered school has capacity to improve. We have taken this option forward to a shortlist as a baseline.

93. Having reviewed the shortlist against the Critical Success Factors, we ruled out options 2 and 5.

94. Option 2 would not require legislative change. Instead, the SoS would use her existing powers more vigorously and take s120 action against those types of cases which, to date, have not been considered suitable. On reflection, while this option is desirable because it would not involve legislative change, and the parliamentary time that comes with that, this option carries a significant risk in that a Justice of the Peace may not agree to make the order sought. It also does not address the identified issue that outright de-registration under s120 is often too blunt a tool to respond to serious but remediable failings in an independent school.

95. Under Option 5, Inspectorates would not have the capacity or be resourced to continuously check whether failings have been addressed across different timescales or to be 'on call' to inspect a school whenever the leadership thought that the ISS were met. This option would also create difficulties for the parents of the children attending a setting whose registration is suspended indefinitely (as opposed to a fixed-term suspension) and would make it harder to put alternative arrangements in place.

96. Option 4 is the only option that would give the department the means to achieve both policy objectives, but it will do so in a proportionate way that can be delivered by the inspectorates. Adopting a fixed-term approach would also give clarity to proprietors with regards to what is expected of them and to parents who would have a better understanding of how long they would need to have alternative arrangements in place.

97. Shortlist of options to address problems of **material change approvals**:

Shortlisted options (rated against critical success factors A to E)	**A**	**B**	**C**	**D**	**E**
BAU. Keep material change regime as it is.	R	n/a	R	G	G
1. Write to schools to request that they tell us where they are changing their provision type regarding SEND provision.	R	G	A	G	A
2. Write to schools to request that schools tell us of use of additional premises, in advance, on a voluntary basis.	R	G	A	G	A
4. Make legislative changes to the material change regime found in the 2008 Act	G	A	G	A	G

***Key for RAG: G** = Green. Meets CSFs, Preferred way forward. **A** = Amber. Meets CSFs but is less attractive, could carry forward. **R** = Red. Fails to meet CSFs, drop).*

98. We have ruled out 'business as usual' because the identified gaps and weaknesses in our regulatory regime would remain with associated risks to safeguarding children.

99. Options 1 and 2 are options that involve voluntary behaviour to resolve the problems evidenced in section 2. For this reason, they are not suitable to the problem being addressed. Under a voluntary system it would be unclear what action could be taken if schools did not, for instance, inform the Secretary of State about the use of buildings away from the registered address. Further, it is reasonable to assume that those schools which are most likely to make unsuitable changes are those which are least likely to abide by a "voluntary" scheme. The probable outcomes of a voluntary scheme will be that those settings most likely to abide by the rules will bear the costs of compliance, but those least likely to comply will face no sanction.

100. Therefore, only a legislative option, which introduces, by statute, possible sanctions for non-compliance will guarantee that the required information is provided in all cases since non-provision of information will carry real costs. These changes tackle weaknesses in our existing regulatory regime which mean that independent schools can currently make changes to their provision which reduce their compliance with the Independent School Standards and so potentially harm children's wellbeing without our approval and oversight. It also increases the Secretary of State's ability to act against such settings.

101. Shortlist of options to address problems of **appeals against de-registration**:

Shortlisted options (rated against critical success factors A to E)	**A**	**B**	**C**	**D**	**E**
BAU. Continue to operate the existing appeals scheme.	R	n/a	R	G	G
3. Strengthen departmental correspondence to discourage appeals	A	G	A	G	G
4. Legislate to change how a Tribunal hears an appeal against de-registration.	G	A	G	G	G

***Key for RAG: G** = Green. Meets CSFs, Preferred way forward. **A** = Amber. Meets CSFs but is less attractive, could carry forward. **R** = Red. Fails to meet CSFs, drop).*

102. We have ruled out the BAU option because, as outlined in section 2, the current appeals process in the regulatory regime is leading to children continuing to attend schools that present risk of harm.

103. Option 3 – strengthening departmental correspondence in this area - has been rejected as a stand-alone measure (although is regularly undertaken as part of BAU activities). The reason it is not a preferred option is because it does not wholly solve the fundamental issue – appeals lodged in cases which are very unlikely to succeed and/or which open up the possibility of temporary, illusory improvements which in effect "reset" regulatory action.

104. Therefore, from the shortlist the preferred way forward is Option 4. Changing how appeals are determined is the only identified way to disincentivise the sort of appeals we wish to target.

105. By including in primary legislation a requirement for the Tribunal to take into account the likelihood that the institution will meet the ISS on an ongoing basis, to have due regard to the principle that there should be compliance on an ongoing basis, and by

putting the burden of proof on the proprietor to satisfy the Tribunal that there will be ongoing compliance, gives sufficient safeguards against the current problem occurring more into the future.

106. Shortlist of options to address problems of **suitability of proprietors**:

Shortlisted options (rated against critical success factors A to E)	**A**	**B**	**C**	**D**	**E**
BAU. Continued the existing specified checks on new proprietors.	R	n/a	R	G	G
1 More vigorous use of the Secretary of State's existing powers, especially under s128 of the 2008 Act.	A	R	R	A	G
2 Non-legislative test	A	A	A	G	R
4. Legislate to introduce a "fit and proper person" test.	G	G	G	G	G

***Key for RAG: G** = Green. Meets CSFs, Preferred way forward. **A** = Amber. Meets CSFs but is less attractive, could carry forward. **R** = Red. Fails to meet CSFs, drop).*

107. We have ruled out BAU because not acting would allow a perpetuation of the existing situation where individuals whose previous track record or behaviour raises concerns about their suitability for the role of an independent school proprietor cannot be lawfully prevented from so acting. This can place children who attend the independent school for which this person is responsible at a risk of harm since, it places unsuitable people in positions of great responsibility for children's wellbeing.

108. Option 1 is a more vigorous use of the SoS's existing powers in this area, specifically section 128 of the 2008 Act. ("s128 action") We have dismissed this option for several reasons, chiefly practical. The process by which s128 action may be taken is laborious, requiring for instance, the giving of notice to the intended recipient and granting them 60 days to respond. While this process plays out the application (either to open a new school or change the proprietor of an existing school) would be, in effect, on hold while a decision was reached. This is costly and inefficient.

109. Taking forward a test without legislation, simply using non-statutory guidance as the basis for rejecting proprietors, would not be sustainable legally, since it is what the regulatory standards contain that permits proprietors to be rejected either on application to register an institution or for a material change involving a change of proprietor.

110. We are taking forward option 4 because this change is necessary to close the existing legislative gap and in turn prevent such individuals from holding positions of responsibility with regards to children's wellbeing will bring large safeguarding benefits. While we are not required to, the department intends to produce guidance to help those impacted by this change understand what is meant by a "fit and proper person" in this context and the process to be followed if necessary.

111. Shortlist of options to address problems of **inspectorate (Ofsted) powers**:

Shortlisted options (rated against critical success factors A to E)	A	B	C	D	E
BAU. Continue current inspectorate regime	R	n/a	R	G	G
1 Do minimum – no change in powers and more vigorous use of existing offence of "obstruction"	A	A	R	G	R
5 Increase Ofsted's ability – in certain circumstances to both "enter" premises and then "search" those premises.	G	A	G	G	A

***Key for RAG: G** = Green. Meets CSFs, Preferred way forward. **A** = Amber. Meets CSFs but is less attractive, could carry forward. **R** = Red. Fails to meet CSFs, drop).*

112. A particularly important Critical Success Factor for this specific intervention is 'A. Adequacy', because it is essential that the option that is taken forward is strong enough that inspectors are able to gather evidence of criminal behaviour. Critical Success Factor E is also important, given that the approach taken must be able to be effectively operationalised.

113. We have ruled out the option of BAU. If we were not to proceed, this would mean that Ofsted would continue to inspect suspected criminal offences using the powers currently found in the 2008 Act. This would perpetuate the current situation whereby some settings, which pose a risk to children's wellbeing, can avoid inspection and consequent regulatory action.

114. The non-legislative option would involve a more vigorous use of Ofsted existing powers in this area. This would rely more on the existing power in s97 with regards to "obstructing" an inspector and using this as a method to encourage those subject to the inspection to make available evidence of criminality (or otherwise). However, this approach scores lowly against critical success factor A since there are lots of behaviours which are not "obstructive", but which do not hinder an investigation. It would be a risk to investigate a criminal offence without a mechanism to require assistance/compliance from those subject to the investigation.

115. Shortlist of options to address problems of **registration of independent educational institutions:**

Shortlisted options (rated against critical success factors A to E)	A	B	C	D	E
BAU – require registration of independent schools only	R	G	A	G	R
2 Expand existing regulatory regime to incorporate more full-time educational settings	G	G	A	G	R

***Key for RAG: G** = Green. Meets CSFs, Preferred way forward. **A** = Amber. Meets CSFs but is less attractive, could carry forward. **R** = Red. Fails to meet CSFs, drop).*

116. The BAU option would require no change to existing legislation. It is therefore the cheapest, more deliverable option.

117. However, this would also entail a perpetuation of the existing situation whereby some children (those who attend full-time educational settings which are not schools) receive an education which is not subject to regulation and inspection against prescribed

standards and is therefore less safe and lower quality than that offered to their peers. This is not therefore a preferred option.

118. Our preferred option is costly, since it involves parliamentary legislation. However, we are content that it is the only way to achieve the desired policy goal.

Small and Micro Business and Medium-sized Business Assessment

119. The department does not collect, or therefore publish, data on the size of independent schools measured by number of employees since this is not a concern of the regulatory regime.

120. Based on pupil data and data published by other organisations, we know or can reasonably assume:

a. Many independent schools are Small or Micro Businesses (SMBs) or medium-sized businesses. Independent schools are either association schools (and inspected by the Independent Schools Inspectorate ("ISI")) or non-association schools (inspected by Ofsted). Association schools tend to be larger and longer established than non-association schools. By contrast, most independent special schools and minority faith schools are non-association. These school types tend to have smaller student numbers. The mean average "association" school caters for 284 pupils while the mean average "non-association" school caters for 73 pupils. It is therefore reasonable to assume that the average independent school caters for around 150 pupils. While there is not a direct link between the number of pupils and number of staff, it follows that that the average independent school is a small business (fewer than 49 employees), since employing 50+ staff to cater for 150 pupils would be excessive.

b. These measures fall into one of two categories. They are either changes to existing processes used by registered independent schools, or they expand the existing regulatory regime. For the first category, the familiarisation costs will be small. Independent schools will already be aware of the regulatory regime in which they operate and/or part of an association to provide assistance and/or will have access to published guidance and support offered by the department. We have already directed the Independent Schools Council, Chinuch UK (representing Orthodox Jewish schools), and others to the proposed draft legislation so it can prepare whatever support they consider necessary. For the second category, which captures settings not part of a regulatory regime, the familiarisation costs will be higher as detailed in below.

c. Finally, one measure involves strengthening interventions into unregistered and illegal independent schools (and independent schools acting unlawfully). We have not attempted to evidence whether SMBs or medium-sized institutions of this kind are more likely to be impacted, because we have been advised by the Regulatory Policy Committee that under the Better Regulation Framework guidance they do not count as legitimate businesses for this purpose (because of their illegality as unregistered independent schools).

121. Impact 1 on SMBs and medium-sized businesses: There will be a higher-than-average likelihood of SMBs, and medium-sized businesses being affected by changes to powers of suspension and/or the appeals process.

122. As outlined in Section 2, there are fewer than ten cases per year where the SoS closes (de-registers) an independent school either under emergency powers (section 120) or enforcement powers (section 116). It is not possible to reliably infer from such a small sample of total independent schools (c.2450) whether independent schools with the same characteristics are more or less likely to be subject to the new powers for the Tribunal on appeals and/or temporary suspension.

123. However, it is reasonable to suggest based on the department's experience of operating the independent school regulatory regime to date that smaller, less well-funded settings are more likely to be impacted. This is because larger, better funded independent schools will be less likely to display the severe and/or ongoing failings which will lead to de-registration; and/or will be better able to quickly remedy such failings if they appear.

124. However, as outlined in Section 3, our best estimate is that we would consider using this new power for between 5 to 10 independent schools per year, which is between 0.2% to 0.4% of total independent schools per year. Therefore, while the impact on those institutions affected will be significant, it will impact relatively very few SMB and medium-sized independent school businesses.

125. For those few that are impacted, it is the department's strong view that impacts will be entirely justified because they will only face regulatory action is they fail to meet the prescribed standards. Any impacts would be entirely justifiable, to achieve the benefit of preventing pupils who are attending these settings from the risk of suffering harm.

126. Even still, the preferred option *does* mitigate the impact of regulation on affected SMBs and medium-sized businesses compared to if enforcement action were taken against them under the BAU position. This is because these business's revenue will be impacted temporarily, not permanently, while they have a 12-week window to resolve failings against the ISS before reopening.

127. <u>Impact 2 on SMBs and medium-sized businesses:</u> The impact of reporting (administrative burden) from changes to the 'material change' regime will be relatively higher on SMBs and medium-sized businesses, where it will represent a greater proportion of available staff time and revenue than for larger businesses.

128. These changes are likely to have a differential impact as larger, better funded and administered settings will be better able to adjust to the change in regime – perhaps because they have greater numbers of administrative staff. It has not been possible to estimate the administrative burden placed specifically on small independent schools due to resource constraints and proportionality considerations. Further, these costs will be one-off events occurred only when a school is seeking to make a material change. We have considered exempting some settings from the material change regime but to do so will create a two-tier regime under which some children (those attending larger schools) are better protected than other (those attending smaller schools). This approach is not therefore preferred.

129. A small subset of schools – those who make unauthorised material changes - will face additional charges if we are better able to act against these settings by imposing a "relevant restriction" on them. This will involve legal costs and income foregone from, for instance, not being able to admit new pupils. These costs, while greater, cannot be effectively estimated since it will depend on the particularities of the individual case. Further, since we would only impose a relevant restriction in cases where an unauthorised material change has been made and would likely only exercise the power where there are aggravating features - such as associated non- compliance with the ISS or children being put at risk - these additional costs are clearly justifiable. (See our published guidance: Independent schools: regulatory and enforcement policy statement for information on the circumstances under which we may impose a relevant restriction under current powers).

130. During the longlisting, we assessed ***whether small and micro businesses and medium businesses should be in scope of the interventions.*** Regarding **suspension powers**, exempting SMBs or medium-sized businesses would not achieve policy objectives outlined in Section 3, as it would allow independent schools of these sizes that are demonstrating failings with the ISS, which are not egregious enough to justify intervention under s120 of the 2008 Act, to continue to operate. This would place pupils attending that setting at risk of suffering harm, and therefore not necessarily be in the best interests of pupils. Furthermore, exempting businesses from changes to **appeals against deregistration** would continue to allow some independent schools to avoid deregistration for a period of time, even in cases where it is in the best interests of pupils. In both cases, irrespective of business size, it is fundamentally important to pupil safeguarding and wellbeing that the ISS are met, so we determine it to be proportionate to these sized businesses to be in scope of new suspension and appeals powers that would only 'bite' if they were to fail to meet the ISS. Similarly, it would not be appropriate to exclude SMBs or medium-sized businesses from the policy concerning **suitability of proprietors**, as it would result in potentially unfit proprietors being able to successfully open and operate an independent school, just because it is small. Lastly, we considered exempting small settings from the new **registration** requirements. We have rejected this for two reasons. The first is that many already-registered schools are also small businesses – not applying this new provision to small businesses could also see us (inadvertently) remove from regulation settings which are already registered with the SoS as an independent school. The second is because we think all children deserve a safe education which allows them to fulfil their potential. Exempting some settings would allow some children (those attending smaller settings) to receive a less safe education in a two-tier system.

6. Regulatory scorecard for preferred options

Part A: Overall and stakeholder impacts

(1) Overall impacts on total welfare		Directional rating
(i) Description of overall expected impact	Overall, these changes tackle weaknesses in our existing regulatory regime of independent schools, which will positively impact total welfare by keeping children who attend these schools safe and ensure they are receiving an appropriate education. Specifically: • Our preferred way forward on 'suspension powers', 'appeals against de-registration' and 'material change approvals' will make it easier for the Secretary of State to remove children from educational settings which are posing a risk of harm, in some cases with long-standing failures to meet the ISS. While this may be disruptive to the children's education temporarily, it will help keep them safe and improve their wellbeing in the long run. There are significant non-monetised benefits from ensuring that more children in independent schools receive an education which is safe and complies with the ISS. • Our preferred way forward on 'suitability of proprietors' will bring benefits from there being fewer proprietors of independent schools whose track record and/or behaviour lead the SoS to consider them unsuitable for a position of responsibility over children's wellbeing or education. This will avoid the costs created when an independent school fails to meet the ISS as a result of poor and/or inadequate leadership and so fails to provide children with a safe education that enables them to achieve and thrive. • Our preferred way forward on 'inspectorate powers' will enable Ofsted to determine in significantly more cases whether a criminal offence is being committed in a setting, and so whether regulatory action (up to and including prosecution) is required. This will improve the wellbeing of children, bringing significant non-monetised benefits. • Our preferred way forward on 'registration of full-time independent schools' will bring more educational settings into regulation, requiring those settings to either offer a broader/safer education subject to greater government oversight, or change their mode of operation so that the	**Positive** **Based on all impacts (incl. non-monetised)**

(1) Overall impacts on total welfare		Directional rating
	children currently attending these settings are encouraged to receive a full-time education elsewhere.	
(ii) Monetised impacts	**The total estimated Net Present Social Value of the department's proposals to strengthen the regulation of independent schools is -£28.5m (-£93.7m to -£2.0m).** This is broken down as follows across the six identified problems and interventions: • **Suspension powers:** -£6.9m (-£27.5m to -£1.7m) • **Material change approvals:** -£0.6m (-£5.7m to -£0.3m) • **Appeals against de-registration:** -£18.1m (-£36.3m to £0.0m) • **Suitability of proprietors:** -£0.9m (-£1.7m to £0.0m) • **Inspectorate (Ofsted) powers:** -£2.0m (-£22.4m to £0.0m) • **Registration of independent educational institutions:** £0m[18] (-£0.1m to £0m) These figures only include monetised *costs* to business and households. We have not been able to monetise *benefits* due to a lack of quantifiable evidence, but we have explained these qualitatively and deem them to be significant. The department's view is that these costs are justifiable for the necessary benefits of safeguarding of children at affected independent schools. Unless otherwise stated below, these estimates are made up of costs associated with familiarisation and/or administration for independent schools from our preferred ways forward. Evidence and further explanations are set out in the 'Evidence base' annex. As there is uncertainty on the assumptions used, we have conducted sensitivity testing, which is reflected in the ranges presented. This is also explained in the 'Evidence base'. Other specific monetised impacts include the following: <u>Suspension powers</u> The preferred way forward is likely to create costs for local authorities, specifically where independent schools that offer some boarding elements are suspended, local authorities may need to provide board for displaced students for up to 12 weeks. We estimate that the net present value of these costs equates to c.£6.9m over the 10-year appraisal period, however this figure should be seen as a sense of scale, as the costs associated with	**Negative** **Based on likely £NPSV**

[18] These costs round down to £0.0m over the 10-year appraisal period. The central estimate should be slightly negative.

(1) Overall impacts on total welfare		Directional rating
	reboarding displaced pupils are highly uncertain, as is the number of boarding pupils that may have to be reboarded. Appeals against de-registration The preferred way forward is likely to lead to loss of earnings, outlined in the 'expected impacts on households' section below. Inspectorate (Ofsted) Powers This estimate is based on the costs to teachers who teach at those settings and who may not have employment for a period in the event of school closure.	
(iii) Non-monetised impacts	Overall, these changes are expected to generate significant, non-monetisable safeguarding benefits. They will prevent children from attending educational settings which pose a risk of harm, and in turn keep children safe and support them to receive a good, appropriate education. Specific non-monetised impacts include: • A reduction in the number of "material changes" which independent schools make to better protect children, for example, the use of new buildings which have not been assured to be safe. • Preventing situations where an independent school fails to ensure children's wellbeing or provide a good education as a result of unsuitable leadership. • Bringing more educational settings into the regulatory regime will mean they are subject to regular inspections, which will determine, among other things, whether the education offered is suitable to children's needs and development and is offered in a safe environment. There will be some additional costs to Ofsted as a result, through an increased number of inspections, however, these costs will be very small, particularly given the low number of businesses expected to be impacted. • A promotion of the principle that full-time educational institutions should be regulated and inspected, setting a clear expectation on those running a full-time educational institution, that they are responsible for children's wellbeing while in education.	**Positive**
(iv) Any significant or adverse	There are no distributional impacts not already flagged in the sections for businesses and households below.	**Negative**

(1) Overall impacts on total welfare		Directional rating
distributional impacts?		

(2) Expected impacts on businesses		
(i) Description of overall business impact	Overall, these changes to regulation and enforcement action of independent schools will impose additional costs on businesses than at present, but for an overwhelming majority of businesses this will involve very minor costs only. The two broad types of cost impacts from these changes are: • Familiarisation costs experienced by all c2,450 independent schools through having to read guidance about these changes. As outlined in Section 9, we have attempted to mitigate costs from this by keeping guidance as simple and easy/quick to read as possible, so these are small costs. These costs are explained below in the '(ii) Monetised impacts' section and 'Evidence base' annex. • There will only be significant costs where: i. there are failings against the (ISS, ii. for illegal, unregistered schools or registered independent schools suspected of acting unlawfully, and/or iii. where settings are providing a full-time education without registration or regulation due to delivering too narrow a curriculum. These costs are explained as follows. Impacts The first 3 preferred ways forward on 'suspension powers', 'approval of material changes' and 'appeals against de-registration' will impact some businesses by resulting in temporary suspension, or possible permanent suspension in the case of a failed appeal, becoming a more likely outcome than at present. While in theory any of the c2450 registered independent schools may be subject to this impact, the changes will only apply to independent schools which are failing to meet the ISS. In practice – using the current arrangements to provide an estimate of the number of businesses impacted by the new changes – very few independent schools display failings which justify deregistration under our current policy. Only around 6-7% of the c2450 independent schools do not meet the ISS at a given time,	**Negative**

and the SoS only de-registers around 4-5 schools per year for significant failings.[19]

Each business impacted by temporary or permanent suspension will, however, face significant costs. They will (i) incur legal and administrative costs if they challenge our decisions or make representations when invited to, (ii) perhaps forego income for the period for which they are suspended, and (iii) in most cases need to pay for rapid improvements to put right the failings which led to the suspension in the first place. Since every case will be different, it is impossible to provide accurate estimates of how much 'suspension' will cost each impacted school, although our attempts to do so are outlined below.

Such costs are justifiable. Businesses suspended under our preferred ways forward on 'suspension powers', 'approval of material changes' and 'appeals against de-registration' will have been found to be failing to meet the ISS and therefore exposing the children in their care to a risk of harm. It is important for children's wellbeing that such settings cease to be a source of harm. Also, the costs imposed by the need to do remedial work will arguably be costs that should have been incurred earlier so that the ISS (or Early Years Foundation Stage, EYFS) were met in the first place. These costs are only applicable to non-compliant schools (those failing to meet the ISS), and, as such, are not counted as costs to legitimate businesses or included as monetisable costs. This is outlined more in the '(iii) Non-monetised impacts' below.

Other specific impacts on businesses include:

- Suitability of proprietors: The preferred way forward will lead to all new proprietors of independent schools being subject to the new 'fit and proper person' test. These costs will, however, be minimal and occur very infrequently.

- Ofsted powers: The preferred way forward will see some businesses receive more robust intervention to collect evidence of possible criminal activity. The businesses impacted will be unregistered schools or registered independent schools suspected of acting unlawfully who, to date, have been able to avoid a determination of whether a criminal offence under Part 4 of the Education and Skills Act is being committed. The initial direct cost to these businesses is that they will need to allow inspections in the future. There is some small administrative burden placed on these businesses, associated with the time spent showing an

[19] Although some schools close voluntarily following a notice from us that we have decided to de-register them or when they are midway through an appeal process, so the number of actual closures is likely to be higher but still small and a very small proportion of total independent schools.

(2) Expected impacts on businesses		
	inspector around a setting. These costs are very small, particularly given the expected number of settings impacted. We have monetised these costs because, while some schools affected will be operating illegally, some will be registered and suspected of acting unlawfully but may in fact be operating lawfully. These therefore are compliant businesses and the costs should be monetised. Similarly to 'impacts from suspension', we have not monetised costs from potential closure of schools following s97 Ofsted inspections because this would only apply to businesses which are currently profiting by operating illegally. This is outlined more in '(iii) Non-monetised impacts' below. • Registration of independent educational institutions: We only know of a very small number of settings which will definitely be brought into regulation via this measure. If these settings respond to this measure by seeking registration they will incur direct costs in various ways, but we cannot accurately estimate the precise cost to each impacted setting since that will depend on its precise circumstances and these costs would have to be met to be compliant with the legislation. These are therefore outlined in '(iii) Non-monetised impacts' below. We think it is likely that many impacted settings will instead change their hours of operation and so avoid regulation by operating as "part time". This approach may mean that the setting can charge less for its provision (since it is providing fewer hours of education) but, since we understand that these settings in the most part are likely to be funded via the community, we think this is unlikely.	
(ii) Monetised impacts	**The total estimated equivalent annual net direct cost to business (EANDCB) of the department's proposals to strengthen the regulation of independent schools is £0.2m (£0.0m to £0.7m).** This is broken down as follows across the six identified problems and interventions: • **Suspension powers:** £0.0m[20] • **Material change approvals:** £0.1m (£0.0m to £0.6m) • **Appeals against de-registration:** £0.0m[20] • **Suitability of Proprietors:** £0.1m (£0.0m to £0.1m) • **Inspectorate Powers:** £0.0m[20] • **Registration of full-time independent schools:** £0.0m We do not expect any costs from business to be passed through to households. While some costs could be passed on through greater school fees, we feel this is unlikely as the monetisable	**Negative** **Based on likely business £NPV**

[20] These figures are positive but round down to £0.0m. We have conducted sensitivity analysis, but even high-range estimate rounds down to £0.0m. This is explained further in the 'Evidence base' section.

(2) Expected impacts on businesses		
	costs faced by all independent schools (i.e., not the significant costs faced by the very few affected) are very small. Since monetisable impacts are uncertain, we have conducted sensitivity testing, which is i. reflected in the ranges and ii. explained in the 'Costs and benefits to business' calculations section of the 'Evidence Base'. <u>Suspension powers</u> EANDCB: £0.0m *(positive but rounds down to £0.0m)* We have monetised the familiarisation costs faced by all c.2,450 independent schools who may be impacted by this regulatory change. Due to the very small amount of additional guidance, and based on assumptions outlined in the 'Evidence base', the total costs equate to less than c.£10k and are all felt in the first year. Crucially, this figure rounds down to £0.0m in the IA calculator, and as such, has no impact on headline estimates. <u>Material change approvals</u> EANDCB: £0.1m (£0.0m - £0.6m) The primary monetisable cost associated with this regulation is familiarisation time for independent schools. Since any independent school could theoretically require a material change, all c.2,450 independent schools will face these familiarisation costs. Using the assumptions outlined in the 'Evidence base', the total present value of familiarisation costs equates to c.£0.6m and are all felt in the first year. The other potential cost to business is administrative time when applying for material changes. Based on assumptions outlined in the 'Evidence base', the additional admin cost associated with the new provisions is estimated at less than £10,000 over the 10-year appraisal period. We have conducted sensitivity testing on the assumptions used, but this figure always rounds down to £0.0m over the 10-year appraisal period. <u>Appeals against de-registration</u> EANDCB: £0.0m *(positive but rounds down to £0.0m)* We believe that all c.2,450 independent schools will face some direct familiarisation costs as a consequence of this legislation, as they will all need to read additional guidance we produce connected to the changes. Due to the very small amount of additional guidance, the total costs equate to less than c.£20k and are all felt in the first year. It is very difficult to estimate the number of businesses that will be directly impacted further by this legislation. We have	

(2) Expected impacts on businesses		
	identified two ways in which settings may be impacted by being deregistered when they otherwise may not have been: i. Any setting that would have previously been able to continue operations by meeting the standards by the time of the appeal hearing. ii. Any setting that would have previously been given the opportunity – due to the length of the process – to 'voluntarily' close to avoid deregistration. It is difficult to estimate the number of providers who may be impacted by either scenario. Settings who fit in category (i) will likely face a greater loss of earnings, whilst settings who fit in category (ii) would be closed either way, meaning their loss of earnings would have been the same in the absence of legislation – although having some control of when they close may have limited these losses more. Crucially, these settings are non-compliant, and consequently, any potential foregone profits are excluded from the direct costs to business. <u>Suitability of proprietors</u> EANDCB: £0.1m (£0.0m - £0.1m) The primary monetisable cost associated with this regulation is familiarisation costs for prospective proprietors, alongside some small administration costs and loss of wages. Our present value estimate for familiarisation costs equates to c.£0.9m over the 10-year appraisal period, for additional administrative to c.£0.2m[21] and loss of wages to c.£0.0m[21] over the 10-year appraisal period. We do not expect any costs from business to be passed through to households. While some costs could be passed on through greater school fees, we feel this is unlikely as the costs are very small (c.£170 total cost per prospective proprietor). <u>Inspectorate (Ofsted) powers</u> EANDCB: £0.0m *(positive but rounds down to £0.0m)* We have monetised the direct costs of administrative burden on impacted providers. We have not monetised costs from lost profits for providers who we suspect will be forced to close following inspection for reasons outlined in the next row down. We have monetised the administrative burden faced by impacted providers who would have to show Ofsted inspectors around their settings where they would not have had to do so previously. As the impacted settings are likely to be small, we have chosen to assume the time cost will be faced by a headteacher (or equivalent), with their time value based on the	

[21] Note: This figure rounds down to £0.0m annually, meaning it does not appear in the IA calculator.

(2) Expected impacts on businesses		
	average salary of a headteacher in England, inclusive of employer NICs and pension uplift. We have also assumed that each inspection will take a half day (4 hours). We believe that both of these assumptions are very conservative, but even then, this cost is very insignificant, and always rounds down to £0.0m. Registration of independent educational institutions EANDCB: £0.0m We have identified some familiarisation costs to be incurred by impacted settings. Based on assumptions outlined in the 'Evidence base', we estimate that the total familiarisation costs for this policy will be c.£6k, and all incurred in the first year. We conducted sensitivity testing as outlined in the 'Evidence base', and the EANDCB still rounds down to £0.0m. Furthermore, as a result of these changes, we expect some businesses will change their hours of operation and not register as an independent school. Any setting that does choose to seek registration will incur a £2,500 cost for a pre-registration inspection, alongside any costs incurred to meet necessary standards, however there is no obligation for any setting to take this option unless it operates full-time. We have discussed the costs associated with this further in the 'costs and benefits to business' section of the 'Evidence base'.	
(iii) Non-monetised impacts	Suspension powers Where independent schools are temporarily suspended as a result of our preferred way forward, the school would face the cost of foregone profits and any other costs associated with closure. Since these schools would be non-compliant by failing to meet the Independent School Standards – which all independent schools must demonstrate they are meeting at all times – they do not count as legitimate businesses in the Better Regulation Framework and these costs are therefore non-monetisable. In cases where an independent school is temporarily suspended, what will happen beyond the initial, maximum suspension of 12 weeks will depend to what extent the school resolves the issues that led to their temporary suspension. It is possible that some schools that are unable to resolve failings, despite temporary suspensions, will be deregistered and forced to close. Alternatively, it is possible that schools which previously would have faced permanent closure sooner, under section 120, will use the period of suspension to put right their failings and so be able to remain open by demonstrating compliance with ISS. In that respect, this preferred way forward will benefits some settings. Material change approvals	**Negative**

(2) Expected impacts on businesses		
	A small subset of schools – those who make unauthorised material changes – will face additional charges if we are better able to act against these settings by imposing a "relevant restriction" on them. This will involve legal costs and income foregone from, for instance, not being able to admit new pupils. These costs, while greater, cannot be effectively estimated since it will depend on the particularities of the individual case. <u>Appeals against de-registration</u> There may be some further costs associated with deregistration and closing, for impacted providers. These costs could be things like redundancies for staff or contract exit fees. We have not monetised these costs as we do not have any data to support estimates, and they will likely vary based on the specific circumstances. <u>Suitability of proprietors</u> The recommended option could negatively impact business owners in situations where the school is not allowed to register and operate as an independent school because the proprietor is deemed not to satisfy the fit and proper person standard. The proprietor would be negatively impacted by foregone earnings, but we are unable to estimate the scale of this due to a lack of data on the average yearly earnings of proprietors of existing independent schools. This cost is deemed to be acceptable in the aim of preventing pupils from attending schools that have an unsuitable proprietor that could lead to safeguarding issues in the school. The independent school will be able to apply to register and operate under a different proprietor, so the needs of the community for an independent school could still be met, as could the needs of the pupils. <u>Ofsted powers</u> The primary costs from this intervention will be based on the results of inspections carried out under the new, strengthened powers. We see four potential results: i) the setting is confirmed to be operating legally and is not an independent school, ii) the setting is confirmed to be operating illegally, and must either a) register, b) change their operations, so that they're not an independent school, or c) close. Under category (ii)(a), providers would face costs of registering, but it is already a legal requirement to do so. Under category (ii)(a) or (b), providers would face some minor costs from registering and/or operational changes, but have to do so.	

(2) Expected impacts on businesses		
	Under category (ii)(c), these providers will face costs of foregone profits. Since these schools would be non-compliant by failing to register they do not count as legitimate businesses in the Better Regulation Framework and these costs are therefore non-monetisable. Based on evidence in section 2, we assess that very few settings will fit into category (ii)(c), and that the settings impacted are likely to be small. Our central estimate – which is conservative in its own right – is that 10 providers will be impacted in the first year, then 1 provider per year in all following years. Since 2016, all five settings that have been prosecuted have catered for fewer than 75 pupils. It is worth reiterating that no settings which are operating legally but refusing inspections will incur these indirect costs of the regulation, and the estimated range of foregone earnings would only apply to businesses which are currently profiting by operating illegally. The largest business costs associated with the preferred option are felt by settings that are currently operating illegally and thus would be negatively affected by Ofsted inspections. That these settings may predominantly be classed as small businesses should not be a relevant consideration. There may be some further costs associated with deregistration and closing, for impacted providers – however, these will once again be indirect consequences of the legislation. These costs could be things like redundancies for staff or contract exit fees. We have not monetised these costs as we do not have any data to support estimates, and they will likely vary based on the specific circumstances. <u>Registration of independent educational institutions</u> Costs include, (i) paying the fee for a pre-registration inspection (a current requirement of registration is that a setting can demonstrate via inspection that it meets the prescribed standards), (ii) costs incurred in training and hiring any staff that may be needed to broaden the curriculum offered (at present these settings only offer a very narrow curriculum) and (iii) any remedial work to improve buildings and facilities; we have some evidence that some of these settings are in a poor state of repair. These costs will vary depending on the setting involved and, for example, its current state of repair. In most cases the cost of registering these settings is likely to be high (£10,000s), but necessary to comply with the legislation. These negative impacts on the businesses impacted are justified by the need to promote the principle that full-time educational institutions should be regulated and inspected, and these costs such as the cost to demonstrate compliance with the ISS as a condition of registration are already borne by the c2450 already registered	

(2) Expected impacts on businesses		
	independent schools, and any new such schools registered in the future.	
(iv) Any significant or adverse distributional impacts?	We have identified two distributional impacts on types of providers by size and geography. Despite this, these are necessary changes to achieve the non-monetised benefits of keeping children who attend independent schools safe and ensuring they receive an appropriate education. **SMBs and medium-sized businesses** As detailed in Section 6, the department does not collect data on the size of independent schools measured by number of employees, since this is not a concern of the regulatory regime, but based on several assumptions about the size of these businesses, we expect: • a higher-than-average likelihood of SMBs and medium-sized businesses being affected by changes to powers of suspension and/or the appeals process, and • the impact of reporting (administrative burden) from changes to the 'material change' regime to be relatively higher on SMBs and medium-sized businesses, where it will represent a greater proportion of available staff time and revenue than for larger businesses. It is important to stress that the first three interventions on 'powers of suspension', 'material change approvals', and 'appeals against de-registration' will only apply to all independent schools not meeting the ISS or making a material change and failing to continue to. Furthermore, changes to 'suitability of proprietors' will only apply where there is evidence to suggest a possible proprietor is not a 'fit and proper person' to run an independent school. Based on current evidence, these changes will only affect a small proportion of independent schools, and, even then, it is these schools' responsibility to meet the prescribed standards in this area. The final two interventions on 'inspectorate powers' and 'registration of independent educational institutions' will affect schools that are unregistered or have avoided inspection to check for unlawful activity, which justify the imposition of regulation and costs to protect children. Across all interventions, there is not sufficient, quantifiable evidence to better analyse which, or which types of, independent schools are likely to be affected; beyond the assumptions and analysis in Section 6. **Geographical and faith impact** Lastly, the 'registration of full-time independent educational institutions will apply to some currently unregulated independent	**Negative**

(2) Expected impacts on businesses		
	full-time educational institutions and other such settings established in future. Since these settings do not currently have a relationship with the department, we have an incomplete picture of how many will be impacted by this policy change. However, we are aware of a specific concentration of impacted settings which currently cater for boys in the Hackney/North London area. We do not have precise figures, but suspect that these are few in number, as we estimate that around c1500-2000 boys aged 13-16 (plus others above compulsory school age) attend these settings. In addition, there will likely be a further cohort of impacted settings which are not currently known to us such as language schools or other religious settings catering for children of other faiths. If the outcome of this policy is that these children receive education in either a registered setting which meets prescribed standards or another registered setting while attending yeshiva 'part time', this will have non-monetised benefits since more children will be receiving a regulated and therefore safer and broader education which is better for children's wellbeing.	

(3) Expected impacts on households		
(i) Description of overall household impact	These changes to the regulatory regime of independent schools will have significant non-monetisable benefits on households, albeit a very small proportion of households. Children will spend less time in an educational setting which, in failing to consistently meet the ISS, is failing to provide a safe and appropriate education. It will be easier to remove children from the very small proportion of educational settings where there are risks of harm, and prevent independent schools from making changes to their provision which reduce compliance with the ISS and so lead to worse outcomes for children. Furthermore, by reducing the number of unsuitable proprietors of independent schools, more children should receive an education which is safe, provides an appropriate education and which gives children the opportunity to develop. Also, by making changes to facilitate the closure, or other "regularisation" of settings currently providing an unregulated, unlawful and unsafe education to children, there will be benefits from children receiving a safer education which better equips them for the future. There will be some costs to households, because parents of children at schools which have their registration suspended will likely face some costs. However, due to the suspected low number of suspensions, we believe these costs will be	**Positive**

(3) Expected impacts on households		
	small overall, and outweighed by the benefit of prevention of harm and ensuring a suitable education.	
(ii) Monetised impacts	**We have estimated the total estimated equivalent annual net direct cost to households (EANDCH) of the department's proposals to strengthen the regulation of independent schools at £2.1m (with a sensitivity analysis range of £0.0m to £4.2m).** These costs are made up of loss of income to teachers of independent schools as a result of increased likelihood of school closure/deregistration from changes to **appeals against de-registration** and **Inspectorate powers.** The benefits to households identified have not been monetised due to the difficulty of monetising the benefit to households in terms of their children receiving a safer education from attending regulated schools. These are instead explained qualitatively in the rows above and below. There are not expected to be any costs which business will pass through to households, as the additional administrative burden is small and very unlikely to require schools to pass the cost onto households in the form of higher school fees (where applicable). <u>Costs to employees (teachers)</u> Teachers account for the largest portion of staff in schools. We've tried to estimate the potential cost to them to illustrate the potential impact of a school closure/deregistration. We've not conducted analysis on the different types of staff in these settings, where these costs to households would be smaller than the estimates for teachers, but would present more costs to households, due to resource constraints and proportionality considerations. Whilst we do not have any evidence on the contractual obligations of impacted settings, it's likely that teachers working in impacted schools which have to close will face costs associated with unemployment, such as foregone wages. We believe that these costs will only be additional in cases where the school would've otherwise been able to continue in operation for a prolonged period of time – where a teacher would otherwise not have been unemployed. For settings that are deregistered faster, we believe the additional costs to impacted teachers are significantly smaller. From changes to '**appeals against de-registration**', we assume that 5 settings will be forced to close per year, who wouldn't have had to close in the absence of this legislation, and also assume that each impacted setting will support 241	**Negative** **Based on likely household £NPV**

(3) Expected impacts on households

pupils, based on the average number of pupils per independent school.

Crucially, we do not expect that these costs will be additional in most cases (i.e. the 5 per year estimate used), as the deregistration is often just delayed. These unemployment costs will only be additional in cases where the school would have otherwise been able to continue operating indefinitely – where we also assume that the impacted teachers would have never been unemployed. Despite this, we have chosen to estimate and present these costs to demonstrate the sense of scale, because there is a significant amount of uncertainty surrounding the impacted schools.

From changes to '**Inspectorate powers**', we use the estimates set out in the expected impacts on business section, where we assume that 10 settings will be forced to close in the first year and 1 setting per year in years to follow, and also assume that each impacted setting will support 75 pupils (although this is a high estimate).

We do not know how many teachers each impacted provider will employ. In England, the average student to teacher ratio is 20.8 for primary schools, and 16.8 for secondary schools.[22] We do not know whether the impacted schools will be primary schools, secondary schools, or a combination of the two. As such, we assume that there is an equal proportion, and each impacted school employs an average of c.13 teachers.

The average classroom teacher in England earns c.£45,500 per year (in 2024/25 prices). We uplift this by 39% to account for employer NICs and pension contributions, this is a conservative assumption, as some of these costs will not impact teachers directly and in the case of 'Inspectorate (Ofsted) powers' this is a very high-end estimate given the nature of illegal settings. We think it very unlikely that such settings – particularly those who will be targeted by this change are making pension contributions of paying the market rate for qualified teachers.

Lastly, it's unlikely that teachers will remain long-term unemployed. We have assumed that each teacher will face unemployment for 6 months following closure of their school.

Using the assumptions set out, we estimate that:

- From changes to '**appeals against de-registration**', the total present value cost is c.£18.1 over the 10-year appraisal period. This will be faced specifically by

[22] School workforce in England, Reporting year 2023 - Explore education statistics - GOV.UK (explore-education-statistics.service.gov.uk)

(3) Expected impacts on households		
	teachers who lose their job as a consequence of their provider closing. • From changes to '**Inspectorate (Ofsted) powers**', the total present value indirect cost is c.£2.0m over the 10-year appraisal period. This will be faced specifically by teachers who lose their job as a consequence of their provider closing. Due to the inherent uncertainty across all assumptions, we have conducted sensitivity testing, set out in the costs and benefits to household calculations section, and reflected in the ranges used throughout the IA. <u>Other types of costs on households</u> We have not monetised costs to households from increased suspension powers, e.g., childcare costs while a school is suspended, because: i. as explained above, the number of schools which will have their registration suspended is very low, ii. suspension will be a result of an independent school failing to comply with the ISS and therefore posing harm to children, so any subsequent costs are highly likely to be considered justifiable and proportionate, and iii. lack of evidence about where possible temporary suspensions would be to inform sensible enough assumptions to monetise costs on households. Such costs are instead explained in the 'non-monetised impacts' section.	
(iii) Non-monetised impacts	These policies will make it easier to remove children from an educational setting which is a source of harm. This will have significant non-monetisable benefits. There would likely be some costs to parents of children who are attending an independent school which is temporarily (and possibly permanently) suspended. These costs may include short-term time off work, travel time to collect children from the affected school, and childcare costs throughout the suspension period. We believe that any direct costs would be low and limited heavily by the low number of impacted providers. It's highly unlikely that businesses will pass on any costs to households as they are incredibly insignificant, particularly per provider. Unsuitable proprietors can damage children's wellbeing by not running an independent school in ways which satisfy the Independent School Standards. By reducing the number of such proprietors more children should receive an education which is safe, provides an appropriate education and which gives children the opportunity to develop.	**Positive**

(3) Expected impacts on households		
	There may be some additional costs to teachers at school which are suspended, however it's unclear what contractual obligations independent schools may have, and as such, we cannot monetise these costs. We think households will benefit from this policy in non-monetisable ways. There are benefits from children receiving a safer education which better equips them for the future. Households may choose to have their children attend a different school (independent or state-funded) if the current setting they attend reduces the hours of education provided to remain out of scope of regulation, and households feel their children's educational needs are no longer being met. Choosing to attend a different setting has an uncertain impact on the attainment of the pupil, and it is unclear whether this would be a net cost or benefit to the household, although we consider that a child receiving an education at a registered full-time setting will have better outcomes than from attending a non-registered setting. This impact on households has not been monetised due to this uncertainty.	
(iv) Any significant or adverse distributional impacts?	Broadly no significant or adverse distributional impacts are identified on particular households from low incomes or other impacted groups. There will, however, be a particular impact on households based on regionality. The preferred way forward on 'registration of independent educational institutions will apply to currently unregulated full-time educational institutions and such settings established in future. We are aware of a specific concentration of impacted settings which currently cater for boys in the Hackney/North London area. Beyond this, since these settings do not currently have a relationship with us, we have an incomplete picture of how many will be impacted by this policy change. Other than this, these changes in theory apply to all registered independent schools and any full-time settings registered in future. It is impossible to anticipate which schools will in future satisfy the criteria before which these powers can be used, and/or who in future will fail to satisfy the fit and proper person test and so incur the minimal costs this will trigger.	**Positive**

Part B: Impacts on wider government priorities

Category	Description of impact	Directional rating
(i) Business environment	Broadly, these changes do not impact on the ease of doing business in the UK in relation to independent education. The regulatory changes allow us to remove pupils from a small number of independent schools which are unsafe (from failing to meet the ISS), to prevent criminal behaviour (from failing to register an independent school with the inspectorate), and to ensure regulation and oversight of schools that are currently able to circumvent this through a narrow curriculum offer. They will only impact on a very small number of independent school businesses and expedite the issues being resolved. Beyond familiarisation with guidance around these issues, which does affect all independent schools, quantified above, these regulatory changes do not otherwise affect how independent schools generally operate and would have no impact on the administrative barriers to set up and register an independent school. Our assessment is that such costs can be justified to support the objective of keeping more children safe at school.	**Neutral**
(ii) International Considerations	These regulatory changes are not expected to impact international trade and investment.	**Neutral**
(iii) Natural capital and Decarbonisation	These regulatory changes are not expected to impact natural capital or decarbonisation. Any carbon saved from schools that are suspended would likely be used elsewhere at alternative provision.	**Neutral**

7. Monitoring and evaluation of preferred option

131. As outlined in the Guide to Making Legislation, “The review stage [of impact assessments] requires a post-implementation review impact assessment (where applicable) to capture the actual impact of the implemented policy, and assess any modifications to the policy objectives or its implementation recommended as a result of the review.” Requirements around the final review stage of the Act as a whole, which this measure will be one part of, will therefore be followed up on. However, as set out in section 5 of the overarching Act enactment impact assessment, the costs of these proposals are small (c.£200k) and will mostly be generated by the secondary legislation which is planned to provide the detail with regards to the implementation of the policies

brought about by this legislation. In line with the 2023 statutory guidance on post-implementation (PIR) reviews of secondary legislation (Final PIR stat guidance draft.docx), to carry out a PIR on the impact of these planned regulations would be disproportionate.

132. Finally, when the costs associated with these policies are more than largely nominal and associated mainly with familiarisation costs, these costs will fall on settings which in failing to meet the ISS, or any other Standards prescribed in future in serious and/or long-standing ways are harming children's wellbeing. We consider that any costs imposed on these settings would be justified to ensure adherence to the Department's regulatory regime.

133. Instead, the impact of these changes will be monitored on an ongoing basis and in one of three ways, determined by the existing arrangements, and what is appropriate and proportionate in each case:

a. Business-as-usual activities, including stakeholder feedback.
b. Qualitative reviews / deep dives of complex cases which have required use of these powers.
c. Proxies of impact

134. The success or otherwise of these measures will be assessed against two questions – (i) do these changes deter the types of things we wish to see stopped, or, alternatively allow the SoS to more effectively intervene in such cases, and hence meet the SMART objectives outlined in section 3, and (ii) do these changes impose too great a burden on schools – beyond what is estimated for in the costs of the regulatory scorecard outlined above – to outweigh the benefits from the preferred ways forward?

135. While we will ask questions (i) and (ii) above against each of the proposals in this impact assessment, in practice we will put more weight on one or other of the questions depending on the nature of the proposal and on whom the impacts will be felt.

Material change and fit & proper person

136. For the interventions that impact on registered independent schools on an ongoing/regular basis (e.g., material change and fit & proper person), questions (i) and (ii) are relevant. The application and interpretation of these policies will need to strike a balance between keeping children safe, while acting proportionately by not imposing too great a cost on businesses seeking to comply with the regulatory regime. In the first instance, we need to be sure that our policies properly prevent unsafe practices (material changes which put children at risk, or unsuitable proprietors of independent schools), as outlined in our SMART objectives.

137. We will **evaluate this mainly through business-as-usual activities.** We will monitor this via our usual sources of intelligence. In the main these are inspection reports from either independent school inspectorate and, in some cases, the media and similar sources, all of which draw our attention to complex cases, as outlined in section 2. In addition, we have strong relationships with the seven independent school

"associations" (who form the Independent Schools Council which represents "association" schools) and similar groups who speak for registered independent schools. These groups already contact us on an *ad hoc* basis when issues arise and provide, in effect, real-time monitoring of the impact of our policies on compliant businesses. We expect this to continue and particularly if the implementation of these new powers imposes too great a financial or time cost on settings seeking to comply with our regulatory regime.

138. Finally, we will continue to track the number of material changes, including those which involve an inspection to ensure continued adherence to the ISS. This will allow us monitor and evaluate both the impact on businesses of these measures, and the practical benefit of the change - especially where we are being sighted on matters, we previously would not have been and, as a result can intervene in a way that protects the quality of education and wellbeing of pupils. While we do not expect to prevent a large number of individuals from becoming proprietors under the "fit and proper person" test, since we expect a large deterrent effect from this measure, where the power is used we will keep a record. This will allow us to monitor our core assumptions that (i) this power will not be used very often and (ii) where it is used it is being used appropriately for the purposes of protecting pupil's education and wellbeing.

139. We will keep this position under review, including by contributing to any Act-level post-implementation review.

Powers of suspension and changes to the appeals process

140. Our second category captures interventions which impact on registered independent schools only in specified circumstances or not at all. These are the power of suspension and the changes to the appeals process. These are our strongest and most impactful interventions and they will only impact those independent schools which are failing or have failed to meet the Independent School Standards. Since these schools are placing children at risk of harm, our primary concern is whether our intervention leads to safer outcomes for children (usually their removal to a safer setting). The costs on businesses from these changes will be in one of two categories; the vast majority of settings (c99%) will incur nominal costs through familiarisation with these changes. A very small number will face major costs as they are closed, either temporarily until the ISS are met or permanently. These major costs are justified since they will fall only on those settings displaying very serious and/or long-running failures against the ISS.

141. We anticipate using these powers infrequently. We will **therefore monitor the impact of these policies predominantly through individual case studies and deep dives.** The question we will mainly ask ourselves is whether these new powers have worked as intended and more effectively removed children from settings which, in not meeting the ISS, are unsafe. We think this is a proportionate use of departmental resources because, as outlined in section 3, we estimate using this power fewer than 5 times per year, so while each case study would be resource intensive, it is highly unlikely that there will be many cases and therefore the department is able to resource this monitoring and evaluation approach within existing capacity.

142. We will keep this position under review. While we consider it unlikely, it is possible that these powers are used more frequently than intended. If this emerges to be the case, we will consider a proportionate and practical means of assessing the impact and responding. in which case a deep dive on every usage would be impractical. We also note that use of these powers will also be subject to external scrutiny since their use, in nearly all cases, follows the commissioning of external legal advice and an appeal to the courts. These provide in-built checks against the Secretary of State using these powers too liberally and thereby imposing costs on settings which do not meet the pre-conditions for these powers' use.

143. We are aware of the risk that departmental systems are insufficiently nuanced to determine whether a given setting has closed *because* of regulatory action, or whether the setting closed voluntarily *while under* regulatory action. This will create difficulty in isolating and reviewing those cases where these powers have been used; however, cases should be sufficiently rare as to allow manual "deep dives" into relevant case files.

144. We will keep this position under review, including by contributing to any Act-level post-implementation review (PiR).

Ofsted inspection powers and registration requirements

15. The final changes impact on settings with which we do not have a pre-existing relationship. Both policies here aim to see fewer children attending an unregulated setting for their full-time education (either because the setting is question has been found unlawful and so closed, or because the setting has registered with the Secretary of State). Question (i) above is therefore most relevant. Success in these areas is set out in our SMART objectives for each measure, and in both cases we will rely on **proxies** to monitor the impact of these changes and so whether our objectives have been met.

16. With regards to increasing Ofsted's inspection powers, the aim is to ensure that inspectors can always confidently reach a determination as to whether relevant offence is being committed. This is largely a subjective judgement, but evidence to reach this judgement is already gathered through **business-as-usual** activities. All activity in this area is already reviewed at an official-level monthly meeting between Ofsted and the Department for Education. This meeting, by reviewing all inspections under this power, will be able to test whether the SMART objectives have been met.

17. Monitoring the impact of the changes to the registration regime will be harder, given the lack of certainty as to the number of children currently attending unregulated full-time settings and the uncertainty as to how impacted settings will respond to this change (whether they register with the Secretary of State as a requirement of operating full-time, change their hours of operation to operate part-time, or close). The metrics for success here are less clear and there is no (to our knowledge) existing stakeholder group representing those settings to be brought into regulation – possibly because of the variety of settings so impacted.

18. Some proxies do, however, exist. For example, some (if not most) of the settings known to be impacted are in Hackney/North London and we are aware that Hackney LBC has a long-standing interest in the number of children in their area officially missing in education (missing partly because they attend unregistered settings). We are already in correspondence with Hackney LBC and this will continue so that their findings of the impact of this policy change "on the ground" can be learned and these findings fed into a subsequent Act-level PIR.

19. We will also, as now, continue to record data on new registration applications. A spike in new registration applications (especially from areas where we anticipate that this measure may have a particular impact) may be a proxy for the impact of this policy change. If this is the case, we will be able to review applications in the time period and make a judgement as to if the setting has been driven to register because of our new policy. We will monitor this carefully and contribute any findings to any Act-level post-implementation review.

8. Minimising administrative and compliance costs for preferred option

1. As noted above, the costs of these proposals are incurred by businesses (independent schools and the institutions that will be newly caught) on a one-off or situational basis – i.e. only when they wish to make a material change, or when they fail egregiously and/or for a long time to meet regulatory standards. Existing guidance will be updated alongside the passage of legislation and, in line with the Guide to making legislation will be published and shared with key representative groups in advance of the policies which flow from this legislative change coming into effect.

2. Those policies which impact on registered schools which are meeting the ISS and/or wish to do so (material change, fit and proper person, and changes to the registration requirement) carry a nominal administrative cost to the schools impacted. The department already publishes guidance setting out how to apply for the required change – broadly this entails sending an email with specified information included. We will update this guidance as appropriate, in consultation with relevant stakeholder groups, but do not see any meaningful administrative costs arising from these proposals, since they involve a minor variation of a low-cost administrative process,

3. Similarly, those policies which will impact on registered independent schools which are not meeting the ISS (power of suspension and changes to the appeals process) will receive bespoke case-specific correspondence from the SoS which explains the circumstances of the case and why she is acting. While this letter may generate some costs for the businesses concerned (commissioning legal advice etc) these are not administrative; regardless, such costs are wholly justified given the objective of the correspondence.

4. Finally, the change to Ofsted's inspection powers does increase compliance costs in the sense that settings which are currently acting unlawfully may no longer be able to do so. However, because we have been advised by the Regulatory Policy Committee that under the Better Regulation Framework guidance they do not count

as legitimate businesses for this purpose we have not concerned ourselves with the costs in this area.

Declaration

Department:

Department for Education

Contact details for enquiries:

Legislation.division@education.gov.uk

Minister responsible:

Minister Bailey

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:

Date: 11.06.2026

Summary: Analysis and evidence

Costings and quantifiable evidence of shortlisted options

Price base year: 2026/27

PV base year: 2026/27

It should be noted that benefits have been unmonetisable, so the NPSV of each intervention is negative, but benefits are expected to be significant, due to protecting children's safeguarding, wellbeing and providing better oversight of children receiving a good and appropriate education.

[Continued on next page with summary tables].

1. Suspension powers

	Business as usual (baseline)	Option 2. More vigorous use of existing legislative powers (non-legislative)	Option 4. Temporary suspensions for up to 12 weeks at a time *(preferred way forward)*	Option 5. Indefinite suspension until failings are resolved
Net present social value	£0m	Given our qualitative assessment at the shortlist stage that this option carries significant risks and does not address the evidenced problems, as outlined in section 6, we did not quantify benefits or costs.	-£6.9m (-£27.5m to -£1.7m) This includes estimates of familiarisation costs to independent schools and the cost of boarding that would be faced by local authorities if independent schools were temporarily suspended.	A minimum of -£6.9m (-£25.8m to -£1.7m) We have not separately calculated costs for this option, as it is not possible to estimate the length of time it would take for independent schools to meet ISS requirements that they were failing to, if this were to take longer to redress than the 12-week temporary suspension in the preferred option. Crucially, if under this option any independent school received a longer temporary suspension than the maximum 12 weeks for the preferred option, the costs for this option could only be higher than the preferred option. As such, while this option's minimum cost is the same as the preferred option, it would be likely to incur higher costs.
Public sector financial costs	£0m		£8.0m (£2.0m - £30.0m)[23] These costs include the costs faced by local authorities to reboard displaced boarding pupils.	£8.0m (£2.0m - £30.0m)[24] These costs include the costs faced by local authorities to reboard displaced boarding pupils.

[23] Undiscounted, cash term costs.
[24] Undiscounted, cash term costs.

	Business as usual (baseline)	Option 2. More vigorous use of existing legislative powers (non-legislative)	Option 4. Temporary suspensions for up to 12 weeks at a time *(preferred way forward)*	Option 5. Indefinite suspension until failings are resolved
Significant un-quantified benefits and costs	No additional costs or benefits	There would be costs to the department from resourcing more attempts at use of s120 orders to attempt to make more compelling cases that failings against the ISS, but ones not deemed egregious enough for de-registration at present, do warrant re-registration. There would be benefits of deregistration of such schools, but we expect the bar would still be higher than for temporary suspensions under options 4 or 5 so those options would reach more schools.	We have not been able to monetise the effects of safeguarding benefits as we do not have any evidence on how many such cases will be avoided because of this policy. A case of non-fatal child maltreatment is estimated to have a lifetime cost to the victim of £0.07m. This option has further benefits to households as suspensions are capped at a maximum of 12 weeks, this provides parents and pupils with significantly more certainty, and consequently more confidence in processes.	We have not been able to monetise the effects of safeguarding benefits as we do not have any evidence on how many such cases will be avoided because of this policy. A case of non-fatal child maltreatment is estimated to have a lifetime cost to the victim of £0.07m. This option is similar to the preferred option but involves indefinite suspension until the schools meet requirements. This option would result in more uncertainty for parents and pupils, and therefore potentially higher household costs if they choose to change schools because of this uncertainty.
Key risks	N/A	There is a significant risk that a Justice of the Peace may not agree to make increased s120 orders sought by the department.	Some assumptions used are highly uncertain, explained further in the 'Evidence base' below. We have mitigated this by using conservative assumptions where possible and though sensitivity analysis.	Some assumptions used are highly uncertain, explained further in the 'Evidence base' below. We have mitigated this by using conservative assumptions where possible and though sensitivity analysis.
Results of sensitivity analysis	N/A	N/A	We have conducted sensitivity analysis, explained in the 'NPSV' and 'costs and benefits to business' sections of the 'Evidence base' below.	We have conducted sensitivity analysis, explained in the 'NPSV' and 'costs and benefits to business' sections of the 'Evidence base' below.

2. Material change approvals

	Business as usual (baseline)	Options 1/2: Voluntary reporting of SEND and/or additional premises material changes (non-legislative)	Option 4: Legislative changes to material change reporting *(preferred way forward)*
Net present social value	£0m	Maximum of -£0.6m (-£5.7m - -£0.3m) It is possible that the costs for this option would be slightly lower, as some independent schools may choose to not read guidance that is non-legislative, however, we do not have any evidence to support this, so have set cost estimates to assume that all independent schools will face these costs.	-£0.5m (-£5.0m - -£0.3m) As we have not been able to quantify benefits, this figure only includes our estimate for business costs.
Public sector financial costs	£0m	£0.0m We have not monetised any public sector financial costs linked to this policy. It's likely that any public sector costs would be even smaller for this option, because of the non-legislative nature potentially restricting the number of independent schools that follow guidance.	£0.0m We have not monetised any public sector financial costs linked to this policy. There may be some additional administrative time for the department and local authorities due to the suspected small increase in material change requests, but these costs would be small and affordable within existing budgets.
Significant un-quantified benefits and costs	No additional costs or benefits	Option 2 is similar to option 1, but due to the lack of legislation, we feel that it's significantly less likely for the same magnitude of benefits to occur.	This proposal will allow for improved child safeguarding through improved processing regimes at independent schools.
Key risks	N/A	We have not separately calculated costs and benefits for this option but feel this is low risk as costs are largely insignificant and will likely be lower for this option.	We have mitigated risks by choosing conservative assumptions on i) reading time, and ii) administrative time. We have also conducted sensitivity testing.
Results of sensitivity analysis	N/A	-	Sensitivity testing conducted and explained in costs and benefits to business calculations section of Annex B.

3. Appeals against de-registration

	Business as usual (baseline)	Option 3. Discourage appeals (non-legislative)	Option 4. Legislate to make changes to appeals and tribunals *(preferred way forward)*
Net present social value	£0.0m	-£18.1m (-£36.3m - -£0.0m) These estimates incorporate costs mainly to households and to businesses.	-£16.4m (-£33.7m - -£0.0m) These estimates incorporate costs mainly to households and to businesses.
Public sector financial costs	£0.0m	£0.0m We have not monetised any public sector financial costs. There may be some impact on the department, as it is possible that there will be more de-registrations, however each deregistration should require less time, which would be expected to offset this. Crucially, this option will not present any significant additional costs.	£0.0m We have not monetised any public sector financial costs. There may be some impact on the department, as it's possible that there will be more de-registrations, however each deregistration should require less time, which would be expected to offset this.
Significant un-quantified benefits and costs	N/A	It is likely that there will be significant safeguarding benefits to households with pupils at impacted schools, alongside some potential attainment benefits. As this option would not be backed up by legislative power, we believe that it will be significantly less effective than the preferred option at discouraging appeals, and consequently lead to more pupils spending longer in potentially unfit settings.	We have not monetised any benefits to this policy. It is likely that there will be significant safeguarding benefits to households with pupils at impacted schools, alongside some potential attainment benefits.
Key risks	N/A	The analysis is uncertain due to the lack of data on impacted providers. We have mitigated uncertainty by using conservative estimates and conducting sensitivity analysis.	The analysis is highly uncertain due to the lack of data on impacted providers. We have combated uncertainty by using conservative estimates, and conducting sensitivity testing.
Results of sensitivity analysis	N/A	We have conducted sensitivity analysis, explained in the 'NPSV' and 'costs and benefits to business/households' sections of the 'Evidence base' below.	We have conducted sensitivity analysis, explained in the 'NPSV' and 'costs and benefits to business/households' sections of the 'Evidence base' below.

4. Suitability of proprietors

	Business as usual (baseline)	Options 1/2: Non-legislative options of vigorous use of existing powers or a non-legislative test	Option 4: Legislate to introduce a 'fit and proper person' test *(preferred way forward)*
Net present social value	£0m	A maximum of -£0.9m (-£1.7m - £0.0m) We have not separately monetised this option, but believe costs would be similar to our preferred option. However, it's likely that the costs for this option would be lower if prospective proprietors chose to not read guidance due to its non-legislative nature. However, benefits would similarly be lower.	-£0.9m (-£1.8m - £0.0m) These costs include the costs faced by businesses mainly from familiarisation with guidance, and administration and loss of wages.
Public sector financial costs	£0m	£0.0m We have not monetised any public sector financial costs. It's likely that costs to the department would be smaller for this option, as prospective proprietors would not be legislatively required to comply.	£0.0m We have not monetised any public sector financial costs. There may be some additional burden to the department with additional checks, however, these costs are likely to be small, particularly as they often already occur.
Significant un-quantified benefits and costs	No additional costs or benefits	Options 1 and 2 are likely to offer some benefits of reduced safeguarding risks, but as these options are non-legislative, these benefits are likely to be significantly lower than for option 4. It is also possible that there could be some legal challenge from prospective proprietors, which would incur legal costs to the department.	There will be costs to rejected proprietors who would have otherwise been able to open and run a school, however these costs would be eclipsed by the avoided risk associated. The primary benefit to this legislation is reduced safeguarding risks. It has not been possible to monetise these benefits, however we do estimate that the discounted lifetime cost per victim of non-fatal child maltreatment is worth c.£0.07m, and as such, any avoided case of child maltreatment would result in a benefit of this amount. We cannot estimate how many such cases may be avoided, if any.

	Business as usual (baseline)	Options 1/2: Non-legislative options of vigorous use of existing powers or a non-legislative test	Option 4: Legislate to introduce a 'fit and proper person' test *(preferred way forward)*
Key risks	N/A	-	We have mitigated the risk of overestimating familiarisation time by conducting sensitivity analysis. In the absence of information on prospective proprietors, we have also estimated the value of their time using average head teacher wages as a conservative assumption.
Results of sensitivity analysis	N/A	-	If the time taken for familiarisation was twice as long, the associated costs would also double to c.£1.0m over the 10-year appraisal period.

5. Inspectorate (Ofsted) powers

	Business as usual (baseline)	**Option 1. More vigorous use of existing powers**	**Option 5. Increase Ofsted powers *(preferred option)***
Net present social value	£0.0m	A maximum of -2.0m (-£22.4m - £0.0m) These estimates incorporate direct and indirect costs to business and households. The costs would be likely to be lower than the preferred option as non-legislative option would result in fewer closures, but we do not have evidence to quantify the difference.	-£2.0m (-£20.7m - £0.0m) These estimates incorporate direct and indirect costs to business and households.
Public sector financial costs	£0.0m	£0.0m We have not monetised any public sector financial costs for this option for the same reason as in column 4.	£0.0m We have not monetised any public sector financial costs. Ofsted will face some administrative burden as they will need to conduct some additional inspections where they may have previously been turned away, but this is able to be done within existing capacity.
Significant un-quantified benefits and costs	N/A	N/A	We have not monetised any benefits to this policy. It's likely that there will be significant safeguarding benefits to households with pupils at impacted schools.
Key risks	N/A	N/A	The analysis is incredibly uncertain due to the lack of data on impacted providers. We have mitigated uncertainty by using conservative estimates and conducting sensitivity testing.
Results of sensitivity analysis	N/A	N/A	Sensitivity testing has been conducted and is included in the costs and benefits to business and household calculations sections as ranges.

6. Registration of independent educational institutions

	1. Business as usual (baseline)	2. Option 1: Preferred way forward	3. Option 2: New standards	4. Option 3: Small business exemption
Net present social value	£0	£0.0m (-£0.1m - £0.0m) This figure is rounded up. It is slightly negative due to small familiarisation costs. We are unable to quantify the meaningful benefits which are non-monetisable.	We have not estimated NPSV for these options. We discuss why in the NPSV section below.	
Public sector financial costs	£0	£0.0m We have not monetised any public sector financial costs for this option.	£0.0m We have not monetised any public sector financial costs for this option.	£0.0m We have not monetised any public sector financial costs for this option.
Significant un-quantified benefits and costs	N/A	We have not monetised any benefits with this option, the primary benefit to the policy is increased safeguarding regulations for learners.	There would be significant costs to attainment through allowing pupils to receive a narrower education. We have not monetised any benefits to this option, but there would be similar safeguarding benefits to this option.	We have not monetised any benefits for this option. This option would lead to some safeguarding benefits, but significantly fewer than the alternative options as fewer settings would be impacted.
Key risks	N/A	There are two key risks to the analysis: uncertainty in i) the number of impacted settings, and ii) the familiarisation time. These risks are very minor as shown in sensitivity analysis.	N/A	N/A
Results of sensitivity analysis	N/A	We have explored sensitivity analysis. Results are shown below in the NPV to business section.	N/A	N/A

Evidence base

Problem under consideration, with business as usual, and rationale for intervention

1. The problems under consideration and rationale for intervention are extensively outlined in Section 2 of the main body.

Policy objective

2. Objectives have been detailed in Section 3 of the main body.

Description of options considered

3. Longlists and shortlists of options have been detailed in Sections 5 and 6 of the main body.

Summary and preferred option with description of implementation plan

4. Preferred options have been detailed in Section 4 of the main body.

5. Regarding implementation planning, the preferred ways forward have been legislated for in the Children's Wellbeing and Schools Act 2026. Now the Bill has achieved Royal Assent, these legislative powers will be able to be used (or not, as the case may be) to strengthen regulation of independent education institutions.

6. Implementation of **suitability of proprietor** assessments would happen by adapting existing 'due diligence' processes, already used by the department to approve independent school proprietors. Regarding **inspectorate powers**, enhanced powers would become available for any future inspection conducted by Ofsted into whether one or more of the specified relevant offences – including conducting an unregistered independent school and breaching a 'relevant restriction' imposed on the school proprietor – is being committed. Department officials would work with Ofsted officials to implement this proposal.

NPSV: monetised and non-monetised costs and benefits of each shortlist option (including administrative burden)

<u>Suspension powers</u>

NPSV: -£6.9m (-£27.5m to -£1.7m)

7. These estimates exclude safeguarding benefits, which are unmonetisable but the key goal of the policy.

8. These estimates include the additional familiarisation costs faced by all independent schools who need to read a small amount of new guidance.

9. This legislation is likely to create some costs for local authorities. Specifically, in the cases where independent schools that offer some boarding elements are suspended, local authorities will be expected to provide board for displaced students for up to 12 weeks. To estimate these costs, we have assumed that:

    a. The cost to local authorities to board one pupil is c.£1,000 per month. This is based on secondary research; however, the department does not hold any evidence of such costs.

    b. All suspended schools will be suspended for the full 12 weeks as a conservative estimate.

    c. We estimate that approximately 5 independent schools will be suspended each year. We conducted sensitivity testing on this figure due to its uncertainty.

    d. Data on boarding schools is very weak, and as such, we have used conservative estimates to present them. We do not know what proportion of suspended schools will be boarding schools, but a conservative estimate is that approximately 20% of independent schools offer boarding.

        i. This estimate is based on departmental data, which tells us that 2,421 independent schools in England in AY2024/24.
        ii. The department does not have published data on the number of boarding schools. Unsubstantiated online evidence suggests that there are 500 across the UK, and as such, 20% (484 equivalent) represents a conservative estimate for the number in England.
        iii. Most boarding schools offer both boarding and non-boarding, to remain conservative, we have assumed that all impacted pupils at an impacted boarding school will need to be reboarded by a local authority. This also means that no pupils are supported by parents or guardians.
        iv. We also assume that there is an equal chance of suspension for boarding schools and non-boarding schools.

10. The average independent school has c.250 pupils.

11. Due to the assumptions and uncertain evidence base, the NPSV is highly uncertain, and as such should be used as a sense of scale.

12. We have conducted sensitivity analysis by changing assumptions due to the high level of uncertainty:

    a. If the number of schools suspended each year increases to 20, the present value of these costs equates to £26.7m over the 10-year appraisal period.
    b. If the suspended schools are larger than average, and each has 1,000 pupils, the present value of these costs equates to £27.5m over the 10-year appraisal period.

c. It is also possible that the number of impacted learners who are boarding is significantly lower than estimated here. If the number of impacted learners who are boarding was 4 times lower, the present value of these costs equates to £1.7m over the 10-year appraisal period.

13. The calculated costs and benefits from unpaid school fees are cancelled out, as households would benefit at a cost to business; as such we have excluded these costs from the NPSV.[25]

14. A final consideration is the benefit or costs on pupil attainment. Overall, it is uncertain what the impact of this regulation will be on pupil attainment. During the period of suspension, pupils attending the suspended school will be moved to another educational setting. There is some evidence to suggest in-year movement of pupils could negatively affect their attainment by disrupting learning. However, pupils might experience improved attainment if they attend another school with a safe environment that allows them to focus on learning and their wellbeing is not negatively impacted. It is plausible, but not backed by evidence, that schools with sufficient safeguarding risks that warrant a suspension are more likely to have poor attainment outcomes. This might make it more likely that pupils could experience an improvement in attainment by moving to another setting. Given the uncertainty over the direction and size of the impact on attainment, we have chosen not to monetise this impact.

Material changes

NPSV: -£0.6m (-£5.7m to -£0.3m)

15. We have not been able to monetise any benefits for this policy. However, we feel that these costs are worth paying for the long-term benefits to safeguarding of children at independent schools otherwise making unreported material changes.

16. We have monetised familiarisation costs and administration costs associated with additional material changes.

17. We have not separately calculated costs and benefits for options 1-2 as we believe attempting to do so would be disproportionate. We estimate that the costs for these options will be similar in magnitude to our preferred option. It is however possible that the costs could be lower if not all independent schools choose to read guidance, knowing that it is non-legislative.

[25] The NPSV shown in the IA calculator does not match these figures as a consequence of this, however, as those indirect costs to households and business are directly linked, it would be inappropriate to include a scenario where the business costs were included without household benefits.

Appeals

NPSV: -£18.1m (-£36.3m to -£0.0m)

18. These estimates incorporate all costs to business and households set out in Section 7 of the main body. The range presented reflects sensitivity testing undertaken and explained in the calculations sections below. We have not monetised any benefits.

Suitability of Proprietors

NPSV: -£0.9m (-£1.7m - £0.0m)

19. The benefits to this policy will be felt by households and society through a reduction in safeguarding risks. Unfortunately, it's not possible for us to accurately quantify the effects of this as it is not clear how much these risks may be reduced, and crucially, it is difficult to tell exactly how many safeguarding breaches could be avoided and are attributable specifically to the regulatory change in question. Despite this, there are clearly significant benefits to reducing safeguarding risks.

20. An individual who does not return a positive match against any of the checks already specified in legislation, and: i. is not barred from regulated activity with children, ii. is not prohibited from managing an independent school under s128 of the Education and Skills Act 2008 (the 2008 Act), and iii. does not have a relevant criminal record, may not necessarily be suitable for a role overseeing the education of children. An example may be an individual who has previously been involved in schools which through poor management has exposed children to harm, or someone whose prior political activity raises concerns that they will be able to provide a curriculum which meets the Independent School Standards with regards to, for example, not undermining fundamental British values, or someone who, while not in possession of a relevant criminal record, has been questioned on several occasions by the police with regards to alleged sexual misconduct. In cases such as these, being able to prohibit such an individual from running an independent school – or, to at least seek further information from such an individual before approving their application – will bring great benefits to children's wellbeing.

21. Academic literature on this subject is sparse, and there is a lack of evidence of the impact from similar regulation, mainly because of how difficult it is to accurately quantify. The NSPCC found that the discounted lifetime costs per victim of non-fatal child maltreatment is estimated to be c.£72k,[26] and as such, avoiding such cases would result in an estimated benefit of this amount.

22. While we cannot estimate the benefits attributable to this policy, we can use the estimated benefit per case avoided above, alongside our cost estimates, to measure the 'breakeven point'. The breakeven point in this case is the required number of cases avoided over the 10-year appraisal period for benefits to equal costs. Given the low

[26] 2026-27 prices. The study was conducted based on maltreatment in the victim's home. As such, the figure we have used excluded the costs associated with social care (c.£54k in 26-27 prices), which is unlikely to be relevant in cases of maltreatment at school.

expected costs of the regulation, this equates to just 12 cases over the 10-year appraisal period for the preferred option, or 1.2 cases per year. However, we recognise that the 'fit and proper test' covers a number of checks, and not all prospective proprietors that are rejected would have had a serious direct impact on pupils. Therefore, this should solely be used as a sense of scale for the potential benefits.

23. We have monetised the costs associated with familiarisation and administration for prospective proprietors. We estimate that these costs will have a net present value of £0.9m over the 10-year appraisal period. We have conducted sensitivity tests on all assumptions and discuss this in the costs and benefits to business calculations section. Results from sensitivity testing are reflected in ranges presented.

24. We have not separately calculated costs for option 2, this is because it is not possible to estimate how many fewer prospective proprietors would comply with non-legislative guidance. We believe the costs associated with this option could be lower than for the preferred option as a consequence of proprietors choosing to not follow guidance as they would not be bound by legislation. This also means that the benefits would be significantly reduced for this option, particularly because proprietors that elected to ignore guidance could potentially be more likely to have failed fit and proper person tests.

Inspectorate (Ofsted) powers

NPSV: -£2.0m (-£22.4m - £0.0m)

25. These estimates incorporate direct and indirect costs to business and households, explained below.

Registration of independent schools

NPSV: £0.0m (-£0.1m - £0.0m)

26. This NPSV estimate reflects the small costs to business as a consequence of this legislation. Our central estimate is slightly negative, due to small familiarisation costs for impacted businesses, but rounds up to £0.0m.

27. We have not quantified effects for either of the other options. This is due to the small scale of impacts, particularly given these options would impact even fewer settings than our preferred option and time constraints, and as such it would be disproportionate to quantify these options.

28. We believe that these options would not achieve the same scale of potential benefits to households and society, particularly as both options would allow some settings to continue to provide a narrower education to its pupils, likely resulting in lower attainment.

29. The costs to business from this proposal (Option 2) would not be substantially different than those in the preferred option, which are already expected to be small. In contrast, this option could potentially introduce a large social cost through limiting the number of children that receive a well-rounded, quality education that equips them with necessary

skills. It is not possible to quantify the scale of this potential impact as these settings are currently unregulated so there's a lack of information on the specific education and curriculum pupils are receiving (and it cannot be compared to the National Curriculum).

Costs and benefits to business calculations

30. Throughout the interventions, as an input to the calculation of familiarisation costs, we have used a researched, published reading rate.[27]

Suspension powers

Business net present value: -£0.0m (£0.0m - £0.0m)[28]

31. For familiarisation costs, we have assumed that each independent school will have a headteacher and an administrative assistant read additional guidance, which is less than 1 page long. We have valued their time based on average wages for their roles in England, inclusive of an uplift to account for employer NICs and pension. We assume that the additional guidance will take them 3 minutes to read, based on average reading times. Due to the very small amount of additional guidance, the total costs equate to less than c.£10k and are all felt in the first year.

32. We have conducted sensitivity testing on this assumption. If reading speed was a particularly low estimate of 50 words per minute, these costs would still only equate to c.£40k in the first year only. Crucially, this figure rounds down to £0.0m in the IA calculator, and as such, has no impact on headline estimates.

Material change approvals

Business net present value: -£0.5m (-£5.0m - -£0.3m)

33. The primary monetisable cost associated with this regulation is familiarisation time for independent schools. Since any independent school could theoretically require a material change, all must read the changes to the guidance, meaning all c.2,450 independent schools will face these familiarisation costs in the first year. We assume that both a headteacher and an administrative assistant will have to read the guidance at every school. We have valued their time based on average wages for each role in England, inclusive of an uplift for employer NICs and pensions. The full guidance on material changes is estimated to take 2 hours to read per person. While it's likely that independent schools will already be familiar with the guidance we have used this 2 hours per person as our central estimate. To test this assumption, we have also accounted for a 20-hour read per person, to demonstrate the low magnitude of these costs. Even in this extreme case, the time costs would equate to £5.7m. As the assumption of 2 hours is uncertain, and this number could be lower, we have also shown the results if additional guidance only takes 1 hour per person, with the costs equating to £0.3m.

[27] How many words do we read per minute? A review and meta-analysis of reading rate - ScienceDirect
[28] These estimates all round down to £0.0m annually

34. The other potential cost to business is admin time when applying for material changes. Currently, we receive around 400 material change requests per year. We estimate that this regulatory change will lead to an additional 50 requests per year. We assume that a request will take an administrative assistant 1 hour, however this is likely to be a conservative estimate as the process is very simple. Based on these assumptions, the additional admin cost associated with this regulation is less than £10,000 over the 10-year appraisal period. We have conducted sensitivity tests on this assumption by increasing both the time spent, to 2 hours, and the number of additional requests, to 100, but even then, the total present value cost is less than £40,000 over the 10-year appraisal period.

Appeals against de-registration

Business Net Present Value: -£0.0m (£0.0m - £0.1m)

35. We have monetised familiarisation costs, which will be faced by all c.2,450 independent schools in the first year of the regulation only. New guidance is likely to very short, at just 2 pages. We have assumed that each independent school will have both a headteacher and administrative assistant read additional guidance, their time is valued based on the average wage of their respective job roles in England, inclusive of an uplift for employer NICs and pensions. We assume that the additional guidance will take each person 6 minutes to read, based on average reading times. Based on these assumptions, our central estimate for the total cost of familiarisation is c.£20k and all felt in the first year. Notably, this figure rounds down to £0.0m in the impact assessment calculator, where we must round to the nearest £0.1m, and consequently does not impact the headline figures.

36. We have conducted sensitivity tests on this estimate. If everybody reading the guidance instead read at a slower speed of 50 words per minute, the familiarisation costs would equate to c.£0.1m (c.£80k rounded up) in the first year. Since our central estimate rounds down to £0.0m, we have not conducted a lower range sensitivity estimate.

Suitability of proprietors

Business net present value: -£0.9m (-£1.8m - £0.0m)

37. The primary monetisable cost associated with this regulation is familiarisation costs for prospective proprietors, alongside some small administration costs. Any prospective proprietor will need to read c.30 pages of guidance to understand their requirements, this will take each person an average of 1.05 hours based on average reading times. We estimate that each proprietor will also spend 0.5 hours on additional administration for their application. This administrative burden is likely to be very small, and 0.5 hours is thought to be on the conservative side. We currently receive c400 applications per year. This is unlikely to increase because of this policy and is more likely to decrease if prospective proprietors read the guidance and choose not to apply. However, we have chosen to assume 600 applicants per year as a conservative estimate. It's not clear what the wage of the average prospective proprietor might be, which would be used to calculate the value of their time. Consequently, we have chosen to value their time based on the wage of the average head teacher, inclusive of employer NICs and pension uplift, which may be a conservative estimate as head teachers earn significantly more than the average earner in the UK.

38. Regarding administration costs, in a very small number of cases, we may seek further information, and it is possible that in these situations there will be a slight administrative burden on the applicant/their business. In a given year we estimate this cohort to be c400 people. In the vast majority of cases (c99%) we do not expect any additional burdens to be imposed since we intend to continue to apply our current tests related to suitability on the basis of either publicly available information or information otherwise shared with us.

39. Our central estimate for present value familiarisation costs is c.£0.9m over the 10-year appraisal period. Our central estimate for present value administrative costs is c.£0.3m over the 10-year appraisal period, however, as this figure rounds down to £0.0m per year, it is not included in the headline business NPV.

40. As some assumptions used are uncertain, we have conducted sensitivity testing. If the average number of prospective proprietors each year was on the lower end of our historic range, at 400 per year, both familiarisation costs and additional administrative costs would round down to £0.0m per year – but they would still exist.

41. We have tested our assumption on familiarisation cost by assuming that each prospective proprietor takes double the average reading time to familiarise themselves with guidance. In this scenario, the present value familiarisation costs still equate to c.£0.9m over the 10-year appraisal period, as annual costs round down to £0.1m (whereas they round up to £0.1m annually in the central estimate). We have also tested our assumption on additional administrative costs by doubling the estimated time taken to one hour, this results in total present value administrative costs reaching £0.9m over the 10-year appraisal period.

42. The primary benefit to this legislation is the reduction in safeguarding risks. It has not been possible to monetise these benefits, however we do estimate that the discounted lifetime cost per victim of non-fatal child maltreatment is worth c.£0.07m, and as such, any avoided case of child maltreatment would result in a benefit of this amount. We cannot estimate how many such cases may be avoided as a consequence of this policy, if any.

Inspectorate (Ofsted) powers

Business Net Present Value: -£0.1m (-£0.1m - £0.0m)

43. As set out in Section 7, we have monetised direct administrative costs to be faced by impacted providers, and calculated (but not counted as monetised) costs associated with foregone profits for providers who we suspect will have to close.

Direct administrative costs

44. Our estimates for administrative costs are very small, even with the conservative estimates used. The total scale is limited heavily by the number of providers we suspect will be impacted. Our central estimate – which is conservative in its own right – is that 10 providers will be impacted in the first year, then 1 provider per year in all following years.

To test this assumption, we have also assumed that 10 providers will be impacted every year, to a total of 100 impacted providers over the appraisal period. Even with this high estimate, administrative costs are £0.1m over the 10-year appraisal period.

Indirect foregone earnings

45. The estimates provided on foregone earnings are highly uncertain. However, we believe the estimates presented reflect a conservative sense of scale for the potential costs to business, as it's unlikely that i) all impacted settings will have to close, ii) the number of impacted settings is as high as we have estimated, iii) the impacted settings each have 75 pupils, and iv) the impacted settings each charge average fees, and earn average profit per pupil. Despite this, given the uncertainty, we have conducted sensitivity testing on these assumptions.

46. It is possible that no schools will have to close as an indirect consequence of this legislation. If the schools that have been turning Ofsted inspections away turn out to be not officially classed as an independent school, or change their operations to avoid being officially classed as an independent school, they will not face any costs outside of the administrative costs discussed above. Therefore, our low estimate is that these costs will be £0.0m over the 10-year appraisal period.

47. Our highest estimate on these costs occurs if we conduct the same test as above in the administrative costs section and assume that 10 settings will be impacted every year. This leads to a total present value cost of £22.4m over the 10-year appraisal period. As noted in Section 7, this figure assumes that lost profits are cumulative (i.e. businesses that close in year 1 lose profits for the full 10-year appraisal period).

Loss of profit (not counted as monetisable)

48. Ofsted conducted 854 inspections using their existing powers between January 1st 2016 and March 31st 2024.[29] In only four of these have inspectors been unable to reach a determination about whether a crime is being committed – equivalent to less than 0.5 settings per year. We have also been told of some settings which have not yet been inspected in expectation that entry and inspection would not be facilitated.

49. It is likely that, upon legislative change, known settings will be impacted in the first year. Therefore, based on the evidence above, we have assumed that 10 settings will be impacted in the first year, and 1 per year in the following years. This is likely to be a conservative assumption, but we have conducted sensitivity testing, which is explained in the costs and benefits to business section.

50. These costs are indirect, as the legislation does not directly cause these costs, but we do suspect they will occur. We have elected to monetise these costs, and not the alternative outcomes of illegally operating settings (register/change operations), as i) we feel this is the most likely outcome, and ii) this is the costliest outcome, and thus, a conservative estimate. To be clear, while some of the impacted settings may have been

[29] Unregistered schools management information - GOV.UK (www.gov.uk)

making a profit, they are likely doing so whilst operating illegally as an unregistered independent school, however, we have chosen to monetise these costs to business anyway to demonstrate impact. No legally operating independent schools will have to close because of this legislation.

51. In the absence of data on the impacted settings, we have assumed that each setting forced to close as a consequence of this legislation charges average independent school fees, which are c.£20k per year in 26-27 prices. This is certainly an overestimate based on the business models of settings we have identified to date as acting unlawfully and this average figure will include prestigious educational settings and settings catering for children with very complex needs (which, as a result, charge high fees). Settings impacted by this change are likely charging fees much below the average. Most independent schools are not-for-profit.[30] The IFS estimate that the average independent school makes c.3% of profit on school fees.[31] Using these estimates, we assume that impacted settings will make c.£600 of profit per pupil per year.

52. We also assume that there are 75 pupils per impacted school, this is because, since 2016, all five settings who have been prosecuted have catered for fewer than 75 pupils, and as such, 75 per setting is likely to be a conservative estimate.

53. Based on these figures, alongside our estimate on the number of settings impacted (10 in year 1, 1 per year following), we estimate that the total present value cost to business associated with lost profits after being caused to close are c.£2.7m over the 10-year appraisal period, or £0.3m per year. This figure also assumes that lost profits are cumulative (i.e. businesses that close in year 1 lose profits for the full 10-year appraisal period).

Registration of independent educational institutions

Business Net present value: £0.0m (£0.0m - £0.1m)

54. We have identified some small familiarisation costs to be incurred by impacted settings. We are aware of c1500 pupils who are likely attending settings impacted by this change, as outlined in Section 2 of the main body. We estimate that fewer than 20 settings may be impacted by this regulatory change, and therefore need to read guidance. The guidance consists of two documents and a combined 79 pages. We assume that this guidance will be read by a head teacher (or equivalent) and one administrative assistant. Their time is valued based on average wages for these roles, inclusive of uplifts for employer NICs and pensions. We estimate that each person will require c.3 hours to read the guidance based on academic evidence on reading speed. We estimate that the total familiarisation costs for this policy will be c.£7k, and all incurred in the first year.

55. We have conducted sensitivity testing on these assumptions. If the number of settings is significantly more than we estimate, and 100 settings are impacted, the total familiarisation cost would still only equate to c.£35k. Likewise, if we take a conservative estimate of reading speed, and readers only read 50 words per minute, the total familiarisation cost would only equate to c.£28k.

[30] https://www.isc.co.uk/media/8858/economic-impact-report-2022.pdf
[31] *Tax, private school fees and state school spending (ifs.org.uk)

56. We expect that all impacted settings will take the “no cost” option and instead change their hours of operation. Any setting that chooses to seek registration will incur a £2,500 cost for a pre-registration inspection. To demonstrate impact, we have conducted sensitivity testing by showing the effect if all 20 settings impacted by this regulation incurred these costs, the total cost would equate to £50k, likely all in the first year. This figure rounds up to the £0.1m high estimate shown above.[32]

57. These settings would also incur costs for training and hiring the staff needed to broaden the curriculum offered (at present these settings only offer a very narrow curriculum) and the costs associated with remedial work to improve buildings and facilities. We cannot accurately estimate how much these costs may amount to, as they will vary from setting to setting, but they could be significant. Crucially, there is no obligation for any impacted setting to seek registration (unless it continues to operate fulltime), or to incur these additional costs as they can simply change their hours of operation without any other behavioural change.

Impact on small and micro businesses

58. Our assessment of the impact on small, micro and medium-sized businesses is presented in Sections 6 and 7 of the main body.

59. Regarding calculations, there could be disproportionate costs to SMBs from suspension, however, the familiarisation costs are very low. Furthermore, we have not attempted to monetise the impacts to SMBs as we lack data on the number of independent schools which are SMBs. We also feel that it would be a disproportionate use of time given the low costs to business overall (e.g., c.£200 of familiarisation costs per setting from changes to material change reporting, or x.£170 of familiarisation and administrative costs per potential setting from suitability of proprietor changes).

Costs and benefits to households’ calculations

60. Throughout the options, we have been unable to monetise **benefits to households.** We estimate that the discounted lifetime cost per victim of non-fatal child maltreatment is worth c.£0.07m, and as such, any avoided case of child maltreatment would result in a benefit of this amount. We cannot estimate how many such cases may be avoided because of this policy, if any. As outlined in Section 7 of the main body, we believe that there are significant benefits to households through greater reassurance to parents of children attending independent schools, broadly that their child is attending a school that is registered, meets Independent School Standards, and has a ‘fit and proper person’ as its proprietors. Safeguarding risks at independent schools would be reduced which is a significant unmonetisable benefit.

61. We have been able to monetise some **costs to households**.

Loss of earnings

[32] As this estimate is less than £0.5m over the 10-year appraisal period, EANDCB always rounds down to £0.0m.

62. We have monetised the expected cost to teachers of their employer being forced to deregister as a result of changes to **appeals to deregistration**, resulting in foregone wage and employment benefits. As with the costs to business, these impacts are highly uncertain, and as such, we have conducted sensitivity testing on these assumptions.

63. As noted in Section 7, we believe that in most cases applicable to this legislation, the school would have otherwise still been deregistered, just following a delay (the 12-18 month assumption used in our business costs estimates). In these cases, we believe there would not be any additional cost to teachers, as they would have still faced these costs, just after a delay. Based on this, if we assume that all deregistration that occurs would have happened anyway, there would be no additional cost to the impacted teachers, and the present value costs would be £0.0m.

64. To test the maximum potential costs to households, we have assumed that there are 10 impacted schools per year, every year, which is likely to be a significant overestimate. Using these assumptions, the present value cost to households is c.£36.3m over the 10-year appraisal period.

65. We have also monetised the expected indirect cost to teachers of their employer being forced to close following an inspection that is now allowed to happen from changes to **Inspectorate (Ofsted) powers** of currently unregistered schools, resulting in foregone wage employment benefits. As with the indirect costs to business, these impacts are highly uncertain, and as such, we have conducted sensitivity testing on these assumptions.

66. As with the indirect costs to business estimated above, it is possible that no impacted schools have to close. In this case, there would be no foregone earnings for impacted teachers, and therefore no indirect costs to households.

67. To test the maximum potential costs to households, we have assumed that:

    a. There are 10 impacted schools per year, every year, in line with our assumption to test costs to business
    b. Impacted teachers are unemployed for a whole year, and therefore face foregone salary benefits for a whole year

68. Using both of these assumptions, the indirect present value cost to households is c.£2.3m over the 10-year appraisal period.

Pupil attainment

69. There may be some indirect impacts on pupils' attainment, however, as set out in Section 7, it's not clear whether these will be net costs or benefits.

70. There may be some costs to households in scenarios where a child must seek a new education provider. However, this would only be in cases where their current education is insufficient, and as such, any costs would be eclipsed by significant benefits to those learners.

Business environment

71. Impacts on the business environment have been outlined in the regulatory scorecard, Section 7.

Trade implications

72. None identified.

Environment: Natural capital impact and decarbonisation

73. None identified. Any of the individual six interventions, or the interventions taken together, are very unlikely to drastically change the number of new independent schools that will be created, which might have otherwise created additional greenhouse gas emissions through more or less construction of such schools.

Other wider impacts (consider the impacts of your proposals)

74. None identified

Risks and assumptions

75. Regarding **suspension powers**, it is assumed that registered independent schools will continue to fail to meet the ISS and do so in ways which place children at risk of significant harm at the same rate as at present, i.e. around 10 times per year. This is a reasonable estimate based on experiences running the existing regulatory regime, but there is in theory no upper limit on the number of settings against which this power may be used, provided the stated conditions are met.

76. Regarding **registration of independent schools**, our estimate on the number of settings which will be brought into regulation by this chance is an estimate based on publicly available information regarding children missing from education. This publicly available information is here; Assessment of the 2021 Census data on Haredi (Strictly Orthodox) Jewish children in England, Institute of Jewish Policy Research and from this some reasonable assumptions can be made. It is possible, however, that there are many more settings within scope of this regulatory change. Although this would not change our overall approach since it is important to defend the principle that all full-time

educational institutions are registered, regulated and subject to regular inspection. We also conducted sensitivity tests assuming the number of impacted settings is substantially higher, and have demonstrated that the costs of the regulation will still be modest.