



Department
for Education

Impact Assessments

Schools Bill

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1. Introduction

Purpose of the Bill

1. The bill will:
 - a. Deliver the core legislative changes needed to achieve the vision for a stronger and fairer school system that works for every child (**'School System Measures'**);
 - b. Deliver essential safeguarding measures to ensure that more children receive a suitable and safe education (**'Safeguarding Measures'**).
2. The main elements of the bill are:
 - a. Strengthening the regulatory framework for academy trusts, to support the development of a strong trust-led system. Establishing new statutory standards to drive clarity and consistency of expectations for academy trusts, underpinned by intervention powers to ensure action can be taken to tackle serious failure if it occurs.
 - b. Supporting more schools to become academies in strong trusts by removing barriers to conversion for faith schools and grammar schools bringing schools into the academy sector where this is requested by local authorities.
 - c. Enabling better, more targeted, and more consistent multi-agency support to the children and families who need it most across England by making necessary reforms to the attendance legal framework.
 - d. Ensuring that all schools are supported to deliver high standards by implementing a direct National Funding Formula, meaning that each mainstream school will be allocated funding on the same basis, wherever it is in the country, and every child will be given the same opportunities, based on a consistent assessment of their needs.
 - e. Enhancing the ability of local authorities to undertake their responsibilities related to children who are not in school by establishing 'Children Not In School' Registers, as well as creating a duty on local authorities to provide support to home educating families.
 - f. Improving safeguarding by expanding registration requirements for independent educational institutions, enhancing enforcement, and working with Ofsted to expand investigatory powers.
 - g. Strengthening the current teacher misconduct regime by widening its scope to include more educational institutions, increasing powers to

investigate individuals who commit misconduct and enact appropriate regulatory discipline procedures.

Impact of the Bill

3. We have assessed the impact of these two pillars of the bill – School System Measures and Safeguarding Measures – in two ways:
 - a. **Chapter 2.A and 3.A:** an appraisal of the policy impacts, including a regulatory impact assessment for those measures that impact upon business or charity;
 - b. **Chapter 2.B and 3.B:** an equalities impact assessment.
4. This assessment is a live document and will be subject to review if the Bill changes during passage.

Summary of the Bill measures

5. This document assesses the policy impact and equalities impact for the following measures:
 - a. Academy Trust Standards
 - b. Academy Trust Intervention
 - c. Academy Trust Land
 - d. Faith Schools academisation: Religious Education and collective worship
 - e. Faith Schools academisation: governance
 - f. Grammar Schools
 - g. Local Authority Academisation trigger
 - h. National Funding Formula reforms
 - i. School Attendance
 - j. Children Not in School Registration (CNIS) & School Attendance Order (SAO)
 - k. Independent Educational Institutions (IEI): Registration requirements
 - l. IEI: Material Change
 - m. IEIs: De-registration appeals
 - n. IEIs: Enforcement
 - o. IEI: Power to investigate
 - p. IEI: Data sharing
 - q. Teacher misconduct

2. School System measures

a. School System policy impacts: summary

6. The key policy objectives of systems measures are to strengthen the regulatory framework that underpins the academy trust system and address the barriers that some schools face to joining a strong multi academy trust. Taken together, these measures are intended to take key steps to deliver the vision that all schools benefit from being in a strong trust, as set out in the Schools White Paper.¹

7. Attendance reform is focussed on enabling better, more targeted, and more consistent multi-agency support to the children and families who need it most across England by making necessary reforms to the attendance legal framework. We expect the regulatory impact of the attendance reform measures to be low and full detail is set out below. The only businesses impacted are independent schools which, like state-funded schools, will see a one-off transition cost in staff time in AY 2023/24 to draw up an attendance policy, but only a small ongoing non-monetisable resource pressure to implement and review. Similarly, we expect there to be a one-off implementation cost to local authorities in FY 2023/24, but a non-cashable annual saving in attendance staff costs thereafter. We expect the measures to result in a number of ongoing non-monetisable benefits for pupils, parents, schools and wider society.

8. The national funding formula was introduced in 2018 with the aim of making the school funding system fairer. However, due to the way in which funding is allocated through local authorities, there continues to be disparities between mainstream schools in different areas of the country. The legislative reforms to the national funding formula in the bill will ensure that all mainstream schools are allocated funding on the same basis through a single national funding formula directly from the Secretary of State. There will be a positive impact for both maintained schools and multi-academy trusts who will benefit from having consistent funding. Local authorities will see a reduction in their role in setting funding allocations.

A Statutory Trust Standards document

Policy overview

9. The current requirements placed on academy trusts are spread across various legal documents in a complex regulatory system that was designed for a

¹ [Opportunity for all - Strong schools with great teachers for your child \(publishing.service.gov.uk\)](https://publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/100000/opportunity-for-all-strong-schools-with-great-teachers-for-your-child.pdf)

smaller number of schools. Now that more than half of all children are educated in academy trusts, it is the right time to update this framework so that it ensures quality and fairness and reflects the key role that academy trusts play in the system.

10. At present, requirements are placed on academy trusts largely through contractual Funding Agreements. Although we can update model funding agreements, updates do not modify existing contracts retrospectively and the version of the funding agreement to which a trust or academy is subject depends on when they entered into their contract. Trusts cannot be required to move on to the latest model, meaning academy trusts and different academies (even within the same trust) can be on different funding agreements, which has led to an inconsistent and complex system of regulation.

11. The contractual basis of funding agreements means that at present the Secretary of State has limited levers to intervene when an academy trust does not meet its obligations. The measure will help strengthen the enforcement regime so trusts, parents and schools are clear on what is required and what steps will be taken to address issues.

Objectives

12. The policy objective is to provide clarity on the requirements for academy trusts. We will achieve this by broadly standardising requirements both between trusts and, in some cases between schools within trusts, to overcome the differences and inconsistencies that exist in the current framework. We will establish a regulation making power that allows the Secretary of State to update the requirements uniformly.

13. Most of the requirements on academy trusts will move from their existing Funding Agreements to a new statutory regime known as the Academy Trust Standards.

14. In practice, this means that:

- a. academy trusts will benefit from a simplified legal framework;
- b. the vast majority of requirements with which academy trusts must comply will not change;
- c. statutory guidance will be published to support trusts in understanding and complying with their statutory requirements;
- d. academy trusts will have to meet all the applicable standards. There will no longer be cases where some requirements do not apply because an older Funding Agreement is in force;
- e. there will be a clear relationship between the requirements on academy trusts and the new intervention regime;
- f. the department will have more levers to enforce compliance with the standards in ways that are proportionate to the circumstances; and

- g. the department will be able to take steps to ensure that children are benefitting from their schools being in well-run academy trusts that deliver strong education and financial management.

Viabale policy options (including alternatives to legislation)

- 15. We have considered the following policy options:
 - a. **Option 1:** Do nothing – maintain the status quo. This would restrict our ability to achieve the objectives set out above given the complexity of the existing system.
 - b. **Option 2:** Legislate to give the Secretary of State a power to create a single overarching framework comprising provisions in primary legislation, secondary legislation and statutory guidance, together known as the Academy Trust Standards.
- 16. The new regulatory framework will apply these obligations equally to all academies, regardless of when their Funding Agreement was signed. This will ensure greater transparency of the requirements on trusts and will ensure that we have a consistent, proportionate intervention approach for any breaches. In addition, it will ensure that future changes to the standards will apply to all trusts and academies.
- 17. The new statutory approach will also give Parliament greater oversight of the obligations and responsibilities of the school system as we move towards the position where all schools are in multi-academy trusts.
- 18. The chosen option is Option 2 as this will best meet the policy objectives set out above.

Impact on key groups

- 19. The key groups affected by the Academy Trust Standards are academies and academy trusts, pupils, and parents.
- 20. **Academies and academy trusts:** the Academy Trust Standards will bring together the existing obligations placed on trusts and academies to create a single framework which provides greater coherence, consistency, and transparency.
- 21. The new statutory framework mostly replicates existing contractual requirements and most requirements on Academy Trusts will not change at the operational level so we anticipate that this will not place significant additional burdens on academies and academy trusts.
- 22. **Pupils and parents:** the framework will apply the requirements equally to all trusts and academies and will ensure the department has a consistent and proportionate intervention approach where lack of compliance is identified.

23. Parents and pupils will benefit from the consistency of the more transparent legal framework as it will enable the department to take the action required to ensure that schools are in well-run academy trusts that deliver strong education and financial management.

Academy trust intervention

Policy overview

24. Over time, the school landscape has evolved to place the multi academy trust at the heart of the system and as the key vehicle for driving up standards for pupils in schools. The intervention framework for trusts has not kept pace with these developments.

25. Except for legislation which applies directly to academies (e.g. the Independent School Standards), academies are largely regulated through Funding Agreements. The terms of Funding Agreements differ depending on when they were signed, meaning that the Secretary of State has different intervention levers from one academy to the next and Academies within the same multi academy trust may be subject to different intervention regimes, leading to an inconsistent set of requirements.

26. The current intervention framework facilitates intervention mainly at school, rather than trust level, and relies on a limited menu of powers, mostly contractual, which rely on terminating Funding Agreements. These limitations mean intervention activity can be slow or ineffective, risking the provision of education and costing significant amount of public funds. The current system is reliant on structural change - where a trust is failing, we can change its structure by moving its schools to new sponsors which is not always a proportionate response to weaknesses in trust management.

Objectives

27. Ministers are committed to building the capacity of high-quality trusts across the school system, an ambition that requires the development of strong and effective oversight to rapidly address any instances of failure.

28. The specific objectives are to:

- a. protect the provision of education – poor financial management and governance at trust level can negatively impact the education that children receive in school;
- b. protect public money – ensuring tax payer's money is well spent in schools;

- c. take action to ensure academy trusts have strong governance – recognising that governance is at the heart of the trust and that strong governance is essential for strong performance;
- d. support and strengthen academy trust capacity and capability – academy trusts are a crucial part of sector-driven school improvement;
- e. increase the department’s effectiveness as the principal regulator of academies.

Viabable policy options (including alternatives to legislation)

29. We have considered the following policy options:
- a. **Option 1:** Do nothing – maintain the status quo. This would restrict our ability to achieve the objectives set out above given the limitations of the existing powers.
 - b. **Option 2:** Legislate for a package of academy trust intervention measures which will equip the Secretary of State with powers to intervene at academy trust level, responding to the 2019 manifesto commitment to ‘intervene in schools where there is entrenched underperformance’. The proposed measures are:
 - i. A new power to issue a “Notice to Improve” to an academy trust where he is satisfied there are significant weaknesses in the management or governance of the academy trust;
 - ii. A new power to issue a direction to an academy trust where he is satisfied the academy trust has failed to discharge a duty imposed on it under certain Acts or if it is proposing to act in a way which would cause it to fail to discharge such a duty (including, but not limited to, the Academy Trust Standards);
 - iii. A power to replace the academy trust’s board of trustees with an Interim Trust Board where he is satisfied that an academy trust has failed to sufficiently address the weaknesses identified in a Notice to Improve;
 - iv. A power to appoint additional trustees where the Secretary of State is satisfied that an academy trust has failed to address the weaknesses identified in a Notice to Improve;
 - v. Move existing termination powers from funding agreements onto a statutory footing;
 - vi. Provide the Secretary of State with new termination powers at academy trust level;
30. The preferred option is Option 2 as this will best meet the policy objectives set out above.

Impact on key groups

31. The key groups affected by the intervention measures are academies and academy trusts, pupils, parents, staff, trustees and governors.

32. The measures will strengthen the Secretary of State's ability to intervene in individual academies and provide him with new statutory powers to intervene at trust-level. This is intended to drive up standards in academy trusts where needed to support trusts to deliver high quality provision for the children in their schools. This will improve the management and governance of the relevant academy trust, providing a longer-term, more sustainable solution than existing intervention powers currently do. Given that the impact of the intervention measures will be to improve educational standards, the overall impact on all key groups is considered to be positive.

Transfer of land by local authority

Policy overview

33. This proposed measure relates to academies where land is held by separate charitable school trusts rather than an academy trust company. Such trusts are most commonly, but not exclusively, linked to Church of England or Roman Catholic dioceses.

34. The measure is intended to address some of the differences in existing legislation between maintained foundation and voluntary schools and academies and involves the provision and transfer of a new site for an existing school with these trusts.

35. Many of these schools operate on land that was gifted or purchased to be held on a special trust which limits its use – for example to being used for a church school. There are occasions when it is necessary and/or advantageous to move a school to a new site which has been provided by a local authority.

36. Whilst schools remain as maintained foundation or voluntary schools, when a local authority provides a new site (other than playing field) it must transfer the legal interest it holds in the land (usually a freehold) to the trustees of the charitable school trust. This ensures parity between the assurance and control the trust has over the new site versus the old site which they have surrendered – the trustees had a freehold before and they would have a freehold in future.

37. However, this obligation does not exist when these schools convert to academies. The law allows local authorities to assist academies by providing land. However, this is normally through the provision of a 125-year lease as the same obligation to transfer the legal interest to the charitable site trustees when a school moves site does not apply, despite the former status. Providing land this way

changes the nature of the charitable school trustees' land holding, which they consider a barrier to agreeing to a conversion.

38. The proposed measure would in effect require local authorities to transfer freeholds to the charitable trustees of academies, as they do currently to the trustees of maintained foundation or voluntary schools, when there is a need to move site. This would provide some parity of treatment in that maintained foundation and voluntary schools that have converted would continue to have assurance that, as academies, should their charitable school trusts be asked to surrender a land interest in exchange for a new local authority provided site, they would receive the local authority's interest in return.

Objectives

39. The desired objective of the measure is to ensure the nature of existing trustee land interests continue after maintained foundation and voluntary schools become academies. It does this by extending to academies the treatment of local authority land for maintained foundation and voluntary school charitable trusts should those schools move site – i.e. the legal interest in the land must transfer from the local authority to the site trustees of the academy. At the same time, the measure would not affect the continuation of existing leasehold arrangements between local authorities and academy trust companies for all other types of academies.

Viable policy options (including alternatives to legislation)

40. Local authorities are not legally prevented from transferring land to academies. Anecdotal evidence suggests that in a few cases LAs transfer their land interest (normally freehold) in the circumstances where a new site for an academy is provided in return for the existing site or the proceeds from the land sale, even though they are not compelled to do so, but this is not universal. Whilst the usual academy 125-year lease option comes close, it is not the freehold interest that local authorities would be obligated to transfer had the schools not converted. Therefore, we consider the proposed measure offers a balanced approach to protect existing charitable trustee interest in the circumstances described whilst requiring nothing more of local authorities than would be expected had the schools not become academies.

41. Not legislating in this area – adopting the 'do nothing' approach – could result in unequal treatment across the system and would not provide guarantees to the existing trust. The proposed measure therefore provides reasonable parity with the maintained sector in terms of the assurance for trusts and the requirement on LAs.

Impact on key groups

42. The only group regulated by this new provision would be local authorities, who would be required to make freehold transfers of land provided for academies in limited circumstances.

43. However, the expected impact is relatively low as local authorities would have had to do this had the schools not converted. The requirement to transfer land extends only to those circumstances where a new site is provided for an academy which has a charitable school trust, and only then in circumstances where it is in exchange for the interest the trust holds or proceeds of sale. In practice this means situations where church schools relocate to a new local authority site. The local authority would have been under an obligation to transfer land in these circumstances had the school remained a maintained foundation or voluntary school.

Faith schools academisation: religious education and collective worship

Policy overview

44. This measure is part of a wider strategy to remove barriers that deter local authority-maintained schools designated with a religious character from voluntarily converting to become academies. Maintained schools with a religious character are subject to statutory protections relating to Religious Education and Collective Worship, particularly as set out in Sections 69 to 71 and Schedules 19 and 20 of the School Standards and Framework Act 1998. This legislation does not extend to academies with a religious character. Instead, these protections are currently provided to academies through their funding agreements and are contractual.

45. The reliance on contractual provisions does not provide adequate reassurance to providers of schools with a religious character that protections in relation to Religious Education and Collective Worship are sufficiently enshrined, particularly in the context of the development of a fully trust led system, disincentivising the voluntary conversion of schools with a religious character. Sector bodies have called for these provisions to be given a statutory underpinning.

Objectives

46. The Government is committed to removing barriers which act as a disincentive to faith groups, including the Catholic Church and Church of England (“the Churches”), in converting their schools.

47. The specific objective is to ensure that the freedoms and protections provided in maintained school legislation (particularly sections 69-71 and Schedules 19 and

20 of the School Standards and Framework Act 1998) apply in a similar way to academies designated with a religious character by enshrining them in statute.

Viable policy options (including alternatives to legislation)

48. We have considered the following policy options:
- a. **Option 1:** Do nothing –maintain the status quo. This would restrict our ability to greater incentivise voluntary conversion of schools with a religious character by removing barriers to conversion.
 - b. **Option 2:** Legislate to apply the protections provided in maintained school legislation (particularly Sections 69-71 and Schedules 19 and 20 of the School Standards and Framework Act 1998) in a similar way to academies. This legislation would apply to:
 - i. academies whose predecessor school was voluntary aided;
 - ii. academies whose predecessor school was voluntary controlled;
 - iii. academies whose predecessor school was voluntary controlled but have through the academies' significant change process adopted voluntary aided characteristics in parallel with converting to an academy;
 - iv. academies whose predecessor schools were foundations schools with a religious character;
 - v. academies which did not previously have a religious character but have, through the significant change process, been designated with a religious character; and
 - vi. new provision academies (also known as "free schools").
49. Broadly, the way in which provisions apply to academies will be similar to the way in which they apply to equivalent maintained schools.
50. The preferred option is Option 2 as this will best meet the policy objectives set out above.

Impact on key groups

51. The key groups affected by these measures are national and local religious bodies for schools with a religious character, maintained schools and academies with a religious character, academy trusts which include academies with a religious character, pupils, parents, staff, trustees and governors of academies with a religious character.
52. The measures are likely to have a positive impact on the national and local religious bodies for schools with a religious character, who we expect to welcome them. The measures are likely to create an incentive for the Churches in particular to

work with their maintained schools and Dioceses to bring about the conversion of schools into academy trusts.

53. We expect the measures will have minimal to no impact on other key groups considered as the changes will not materially change the way in Religious Education and Collective Worship is delivered in academies with a designated religious character.

Faith schools academisation: governance

Policy overview

54. This measure is part of a wider strategy to remove barriers which are a disincentive to faith groups converting their schools to academy status as part of a strategy to bring all schools into strong multi academy trusts.

55. At present, the protections relating to the roles of religious bodies, academy trusts and governing boards to protect and develop the religious character of academy schools with a religious designation are non-statutory and managed through a combination of model articles of association that apply to academy trusts and clauses in academy trusts' funding agreements. This arrangement is significantly weaker than the protections provided in relation to maintained schools with a religious character. For these schools, the Secretary of State has a power to make regulations setting out religious bodies' role and involvement in the appointment and removal of governors. Religious bodies have campaigned for a long time for equivalent protections to be set out in legislation for academy schools with a religious character, as currently exist for maintained schools with a religious character. This would help to guard against the proprietor of an academy school (for example a multi academy trust) amending their articles of association to weaken the religious nature of a designated academy in their trust. Ministers have decided that they wish to legislate to provide this reassurance and we expect that faith groups and religious bodies will be supportive.

Objectives

56. The specific objective is to create a regulation-making duty and power to help ensure that there are comparable, statutory religious protections when a maintained school converts to academy status and joins a strong trust. We envisage that the regulations would set out, for example, matters such as: the powers of the proprietor, the minimum number or proportion of members and directors appointed by or to represent the interests of the relevant religious body, requirements to consult or obtain the consent of the relevant religious body before making appointments such as staff appointments, delegation of matters to any committee (such as a local

governing body), and provisions restricting the alteration of an academy trust's articles of association in certain situations. Most of these areas are broadly comparable (albeit maintained schools don't have equivalent governance structures or articles of association) to areas that maintained schools with a religious designation are subject to by regulation and these provisions would level the playing field in terms of statutory religious protections.

Viabale policy options (including alternatives to legislation)

57. We have considered the following policy options:
- a. **Option 1:** Do nothing – maintain the status quo. This would restrict our ability to incentivise voluntary conversion of schools with a religious designation - barriers to conversion would still exist and would jeopardise Ministers' vision for all schools in or on their way to joining a strong trust, including those with a religious character.
 - b. **Option 2:** Legislate to create a regulation-making duty and power so that the Secretary of State can make regulations to ensure academy trusts' (which have academy schools with a religious character) articles of association and scheme of delegation protect the role of religious bodies and that the relevant parts of the tiers of governance are constituted so as to protect the religious character of schools in the trust. The legislation would cover academy trusts that have *any* type of academy with a religious character. There will likely be different requirements in the regulations for different types of academy trusts to ensure that appropriate distinctions are made (such as where an academy trust only has one academy of a certain type, in comparison to other academy trusts which have many academies of a certain type).
58. The preferred option is Option 2 as this will best meet the policy objectives set out above.

Impact on key groups

59. The key groups affected by this academy governance regulation-making duty and power are national and local religious bodies for schools with a religious character, maintained schools and academies with a religious character, academy trusts which include academies with a religious character, pupils, parents, staff, trustees and governors of academies with a religious character.

60. The measures are likely to create a positive impact on the national and local religious bodies for schools with religious character, who we expect will welcome them. The measures are likely to create an incentive for the Churches in particular to

work with their schools and Dioceses to bring about the conversion of schools into academy trusts.

61. We expect the measures will have minimal to no impact on other key groups considered as the changes are entirely technical. They will not materially change the effect of the governance arrangements in practice but will protect them and enshrine them in law so they cannot be eroded.

Grammar schools

Policy overview

62. State-funded grammar schools are permitted to select all or substantively all their pupils by high general academic ability. There are 20 maintained grammar schools, which are designated in law. There are also 143 wholly selective academy schools ('grammar academies') which were formerly designated as maintained grammar schools and terms in their funding agreements permit them to continue selecting by ability.

63. For maintained grammar schools, legislation prescribes that selection can only be removed either by (i) a ballot of eligible parents where eligible parents petition for one, or (ii) the governing body, who can propose to remove selection. For grammar academies, the funding agreement states that selection can be removed either by (i) a ballot of eligible parents where eligible parents petition for one, much like the process for maintained schools, or (ii) the trust can initiate a ballot of parents of children registered at the school. This means that the regimes for maintained grammar schools and grammar academies are different. The fact that the process for grammar academies is contractual rather set out in statute means an academy trust and the Secretary of State could mutually agree to remove a grammar school's selective status by amending the funding agreement contract.

64. Provisions in the Bill will enable the designation of grammar academies (both existing grammar academies and those still to be converted), and state that the only way for selection to be removed is following a public ballot of eligible parents. This would apply the same arrangements to grammar academies to those that currently exist in the Schools Standards and Framework Act 1998 for local authority-maintained grammar schools. Ensuring parents have the power to initiate the removal of selection plays an important part in preserving their rights.

65. The measure will also remove the ability of governing bodies to propose to remove selection, and the right of the trusts to initiate a ballot to remove selection. This will provide greater security to grammar schools in MATs by ensuring that selection can only be removed where it is what parents want. The change will bring consistency to the regimes for maintained grammar schools and grammar academies.

Desired objectives

66. We committed in the Schools White Paper that we would ‘ensure that selective schools are secure in multi academy trusts (MATs)’. We want to ensure that the current 163 grammar schools remain selective *unless* parents choose for them to become comprehensive though successfully balloting for the removal of selection, and that any future Secretary of State could only change this by amending primary legislation.

Viable options to achieve the desired objectives

67. We have considered the following policy options:
- a. **Option 1:** To protect a grammar school’s right to select when in a MAT we considered whether we could legislate to require the inclusion of a ‘selective ethos’ object in the Articles of Association. However, this will not achieve the desired objective of protecting academy grammar schools because selection could still be removed by amending the funding agreement. We are still exploring this as a potential non-legislative option.
 - b. **Option 2:** Legislate to:
 - i. provide the Secretary of State with the power to designate all 163 maintained and academy grammar schools;
 - ii. prescribe that selection can only be removed if decided by a ballot of eligible parents. This will effectively move ballot requirements that are currently in the funding agreement into statute by applying the legislation that applies to maintained grammar schools to grammar academies; and
 - iii. remove the current ability for governing bodies or trusts to propose to remove selection.

68. Option 2 will achieve the desired objective. It will put the 143 wholly selective academies’ selective status onto a legal footing rather than the current contractual basis. This will ensure that grammar schools are secure in MATs and that parents have the right to ballot for the removal of selection maintained.

Impact on key groups

69. **Parents:** The changes will have no effect on parents. The 163 schools which currently select by ability will be able to continue to select by ability in the same way and, as now, parents will be able to ballot to remove selection.

70. **Grammar schools:** The changes will provide reassurance to grammar

schools that their selective status will be protected within MATs. The changes will remove the current right of the governing bodies of LA maintained grammar schools to propose to remove selection via a prescribed alteration. Doing so will strengthen the rights of parents as it will mean that selection can only be removed where it is what eligible parents want. It will also ensure the provisions within the maintained and academy sectors are consistent.

71. **Multi academy trusts:** The changes will remove the current right a trust has to remove selection at a grammar school if it can obtain the agreement of the majority of parents of registered pupils at the grammar school. We believe this is proportionate as the process to remove selection is more democratic if it is taken out of the hands of trusts: selection will only be removed if a majority of parents living in the LA area, or whose children attend feeder schools, vote to remove selection in a wider ballot.

72. **Contractors providing selection tests:** Contractors, currently GL assessment, CEM and other smaller providers charge grammar schools for providing selection tests and marking them. This is a key part of their business. We are not privy to the costs involved (as this is commercially sensitive information between the school(s) and contractor).

73. The changes we are making will make no change to the current relationships between these businesses and their customers.

74. **Grammar school ballot agency/contractor:** Whilst a body (Electoral Reform Ballot Services Ltd) is named in regulations as being responsible for conducting and overseeing any ballot seeking to change a grammar school into a comprehensive school, its contract was terminated in 2007. No body is named in academy funding agreements.

75. Although there has been no attempt to call a ballot since 2011 the absence of a body to undertake the process does leave a void. If a petition results in a ballot being initiated, we will need to procure a new contract for a ballots agency.

Local authority academisation power

Policy overview

76. It is the Government's policy that all schools should be part of strong academy trusts. For a local authority maintained school to join a strong trust, it must convert into an academy. A school converts by means of an Academy Order issued by the Secretary of State. The Secretary of State may issue an Academy Order either at the request of the governing body or because the school is eligible for intervention (and if a school is judged Inadequate by Ofsted the Secretary of State *must* issue an Academy Order). The Government wants local authorities to be able to plan and co-ordinate the process of bringing schools in their areas into strong trusts. Existing

legislation does not enable local authorities to request the conversion of schools which they maintain.

Objectives

77. The desired objective is to enable local authorities to play a role in ensuring that schools in their areas join strong academy trusts by asking the Secretary of State to issue Academy Orders to some or all of the schools that they maintain. As well as being in the interests of schools and the pupils they serve, this will support the development of a more coherent school system in with clear roles and responsibilities for each actor in the system, including local authorities and academy trusts. In particular, the measure will support local authorities wishing to establish new multi academy trusts in areas where too few strong trusts exist and bring high performing schools into those trusts.

Viabale policy options (including alternatives to legislation)

78. Maintained school governing bodies are able to apply individually to convert into academies and join strong trusts and the Secretary of State may bring underperforming schools into trusts through intervention. Doing nothing would mean that schools continued to convert into academies and join strong trusts in an ad hoc way, with limited planning and co-ordination. While it is open to local authorities to encourage their schools to join trusts, they have no formal role in the academisation process. We envisage that local authorities may wish to accelerate the move to a fully trust-based system in their areas but will be hindered from doing so by a lack of powers, if only individual governing bodies can apply for Academy Orders. We also envisage that where local authorities take up this process to co-ordinate the conversion of their schools, this will remove some of the administrative burdens from smaller schools with limited resource to whom this has previously been an obstacle to conversion. The department is also exploring how local authorities might apply to establish trusts. We envisage that the local authority would be able to reduce the administrative burden on schools converting to join its trust (subject to Secretary of State approval) by being able to initiate the process on behalf of the schools involved. Hence, we consider that legislation is necessary to give local authorities the power to apply for Academy Orders in relation to some or all of their schools. The decision whether to issue an Academy Order in relation to any school will remain with the Secretary of State.

Impact on key groups

79. **Local authorities:** The measure will give local authorities a power to apply for Academy Orders in relation to some or all of their schools, but will not place any additional duties on them except duties which are consequential to the exercise of the power, in particular duties to consult schools and facilitate their conversion into academies as described below. Local authorities considering exercising the power will be expected to discuss their plans with the Department for Education regional directors, including plans to establish new trusts. They will be required to consult their schools, and other bodies as necessary (such as foundation bodies appointing governors to schools, and bodies holding land on trust for schools), on the timing of conversion and the trusts that it is proposed that schools should join. Where the Secretary of State issues Academy Orders, the local authority will be subject to a duty to facilitate the conversion of schools, for example by making arrangements for the transfer of land. We assume that having the ability to plan and co-ordinate conversions at scale will enable local authorities to achieve efficiencies in relation to the costs both of conversion and managing the school system locally (because they will no longer be responsible for maintaining schools).

80. **Schools, pupils and parents:** The measure will not place any specific duties on schools unless and until the Secretary of State issues an Academy Order to a school, at which point the governing body will be subject to a duty to facilitate conversion. We expect local authorities to involve schools in the development of their plans to form new trusts; and local authorities will be required to consult schools formally before applying to the Secretary of State for Academy Orders. We envisage that this process will generally be consensual, but there may be circumstances in which a local authority asks the Secretary of State to make an Academy Order in relation to a school against the wishes of the school, in order to achieve its strategic plans. In these circumstances it would be for the Secretary of State to decide whether to issue the order, taking account of the views of the local authority, the school and other stakeholders. We envisage that the measure will have a positive impact, particularly for smaller schools, with regards to the local authority co-ordinating the process of transferring schools to trusts and shouldering any administrative burden which may have been a barrier to conversion for some schools previously. This will have a subsequent benefit for pupils and parents, as school resource can remain focussed on providing education rather than facilitating the transfer of the school.

National Funding Formula reforms

Policy overview

81. Before the introduction of the national funding formula (NFF) in 2018, schools serving pupils with similar characteristics could attract significantly different levels of funding based on data that was over a decade out of date. The NFF aims to make the funding system fairer, allocating funding based on schools' and pupils' needs and characteristics – not accidents of location and history.

82. The introduction of the NFF means that the funding system is now much more responsive to changes on the ground and reflects the current patterns of deprivation and additional needs across the country. Whilst this was a great advance in creating fairness in funding between local areas, it remains the case that funding levels between individual schools – with similar intakes and similar circumstances – can vary significantly simply because of where they are in the country.

83. Currently the Department for Education, through the NFF, calculates funding allocations in relation to each individual mainstream school, based on its particular characteristics. These individual school-level allocations are then aggregated for each local authority (LA). The LA, from its aggregated total, then determines individual schools' final funding allocations through a local formula, which it is responsible for setting. While the department has set some parameters within which local formulae must operate, LAs have had discretion about the amount of funding put towards each factor and some flexibility over which factors to use in their local formulae.

84. With this discretion and flexibility, there continues to be significant differences in the way some LAs allocate funding compared to the NFF. For example, in the 2022-23 funding allocations, the amount of additional funding a secondary pupil with English as an additional language (EAL) attracts to their school ranges from £206 in the East Riding of Yorkshire to just over £2,860 in Westminster. The figure in the NFF is £1,530. The amount of additional funding for a primary pupil with low prior attainment varies from £356 in St Helens to just over £2,475 in Newham, compared to £1,130 in the NFF. The amount of lump sum funding a secondary school attracts ranges from just over £83,000 to £175,000 depending on the LA the school is located in. The NFF provides £121,300.

85. Such disparities mean that schools do not all operate on a level playing field, and we are not fully delivering the fairer funding system the schools NFF is designed to achieve. We want to make the funding system fairer still, by ensuring that each mainstream school is allocated funding on the same basis, wherever it is in the country, and every child is given the same opportunities, based on a consistent assessment of their needs.

Objectives

86. In our 2016 consultation on the national funding formula, we consulted on the principles which should underpin a new school funding system. The majority of the sector supported the principles of a funding system for mainstream schools that:

- a. **Is fair:** each mainstream school should be funded on the same basis, wherever it is in the country, and every child given the same opportunities, based on a consistent assessment of their needs.
- b. **Is efficient:** a single national formula through which funding is matched to relative need means that resources can be distributed across the system as efficiently as possible. It will also support head teachers, governing bodies and academy trusts to compare their income, spending and outcomes with other schools and identify ways to improve.
- c. **Is transparent:** a single national formula will mean that the funding an individual school receives and the basis on which it was calculated will be transparent to all in the system.
- d. **Is simple:** one national formula is simpler to understand and engage with than 150 different local formulae.
- e. **Is predictable:** A single national funding approach will create greater predictability in funding, supporting the system to make best use of resources.

87. These principles have guided our work in developing the NFF through a lengthy consultation process. The Government introduced a “soft” NFF for 2018-19 and made a commitment over time to move to an NFF that would be directly applied to set schools’ budgets, without the use of local formulae. The soft NFF was always intended as a transitional step to the eventual goal of fully fair funding through a single, national formula.

Viable policy options (including alternatives to legislation)

88. The Secretary of State for Education allocating funding directly to schools is the only way to ensure mainstream school funding is allocated in a fair, consistent, transparent, efficient and predictable way.

89. Currently, the department provides support, guidance and a notional formula for LAs to use to support these objectives, within the context of LAs setting their own funding formulae for schools.

90. Since 2018-19, we have seen a general movement of LA formulae towards the NFF, and an increasing number of LAs are now ‘mirroring’ the NFF in their local funding formulae. However, it remains the case that a minority of LAs’ formulae remain significantly different from the NFF. This leaves us with legislation as our only viable option to ensure that we are funding schools on a fair and consistent basis under a ‘direct’ NFF.

Impact on key groups

91. **Schools:** The NFF will ensure a level playing field between schools, resourced on a consistent basis to meet the needs of their pupils, rather than two schools with fundamentally similar intakes and circumstances being allocated significantly different funding simply due to being located in different LAs. Schools that are historically low funded, due to the operation of their local funding formulae, will benefit from reforms through an increase in the funding they are allocated.
92. **Multi Academy Trusts (MATs):** MATs will have the certainty that all the schools within their trust, even where this is across LA boundaries, will have funding allocated on a consistent basis – supporting them to make the best and most efficient use of resources.
93. **Local Authorities (LAs):** LAs will see a significant reduction of their role in setting funding allocations for mainstream schools.
94. **Parents and guardians:** Parents can more easily understand what funding is being allocated to an individual school and how that reflects the school’s pupils and context. Parents can have increased confidence of consistent funding across schools.

School attendance

Cost to business of preferred (or more likely) option (£m)

Total Net Present Value	-£1.0m
Business Net Present Value	-£0.3m
Equivalent Annual Net Direct Cost to Business	£0.03m

Table 1: Costs to business of preferred (or more likely) option (£m)

Policy overview

95. We recognise the impact that the pandemic is continuing to have on children’s education, and although recent trends in attendance levels have been largely driven by COVID-19, there are numerous entrenched, long-standing patterns of absence which existed prior to the pandemic. The government is therefore determined to

address the wider underlying causes of children not being in school because it is the best place for their development and wellbeing. The four attendance measures are:

- a. requiring schools to have an attendance policy, and have regard to statutory guidance on the expectations of schools, academy trusts and governing bodies of maintained schools on attendance management and improvement;
- b. introducing guidance on the expectations of local authority attendance services;
- c. a clearer more consistent national framework for the use of attendance legal intervention, including a new regulatory framework for issuing fixed penalty notices for absence;
- d. bringing the rules for granting leaves of absence in academies in line with other state funded schools.

96. These measures are intended to deliver greater consistency of support for families across England and focus better, more targeted multi-agency support on pupils who need it most. Further, attendance support should always be offered first and only where support does not work or is not engaged with, should legal intervention be used.

Viable policy options (including alternatives to legislation)

97. We have considered the following policy options:

98. **Schools, academy trusts and governing bodies:**

- a. **Option 1 (intended):** Requiring schools to have an attendance policy and have regard to statutory guidance on the expectations of schools, academy trusts and governing bodies on attendance management and improvement. Building on existing effective practice, we intend to expect schools to: develop a culture of high attendance, accurately complete admission and attendance registers, utilise attendance data to target strategies, work with families to remove attendance barriers, and work collaboratively with LAs and other schools. Additionally, we intend new guidance to include specific expectations of academy trusts and governing bodies of maintained schools, including: promoting attendance across schools, ensuring school leaders fulfil expectations, utilise attendance data, ensure staff receive adequate attendance training, and share effective attendance practice.
- b. **Option 2:** More detailed non-statutory guidance AND **Option 3:** Continue to share good practice – without a statutory footing we would not be able to hold schools to account, meaning change is unlikely to be quick enough or comprehensive enough to improve consistency of attendance support or tackle entrenched, long-standing patterns of absence.

99. **Local Authorities:**
- a. **Option 1 (intended):** Introducing statutory guidance on the expectations of local authority attendance services. There is considerable variation between local authorities in the attendance service they offer. We intend that statutory guidance sets out a minimum set of components for every local authority attendance service, namely: track local attendance data, improve attendance of children with a social worker, and have an attendance support team which provides communication and advice, multi-disciplinary support for families, and legal intervention where support is not successful or engaged with.
 - b. **Option 2:** More detailed non-statutory guidance AND **Option 3:** Continue to share good practice – without a statutory footing we would not be able to hold local authorities to account, meaning change is unlikely to be quick enough or comprehensive enough to improve consistency of attendance support or tackle entrenched, long-standing patterns of absence.
100. **Attendance legal interventions:**
- a. **Option 1 (intended):** Improved guidance on the use of the full suite of parental responsibility measures and replacing individual local authority codes of conduct with a new national regulatory framework for Fixed Penalty Notices. We intend that the new statutory guidance will set out our expectations for use of the parental responsibility measures, including recommendations on local authorities' existing duties and requirements. Local authorities would remain independent prosecutors and would continue to decide which (if any) parental responsibility measure they use for each individual case. Additionally, we intend to replace each local authority's existing duty to create a code of conduct under the Education (Penalty Notices) (England) Regulations 2007, as amended, with a new regulatory framework for the issuing of fixed penalty notices requiring individual case by case decisions.
 - b. **Option 2: Sharing good practice** - without a statutory footing local authorities cannot be held to account meaning they may not implement good practice, so this alone is unlikely to solve the consistency issues between local authorities or the entrenched, long-standing patterns of absence.
101. **Granting leaves of absence:**
- a. **Option 1 (intended):** Bringing the rules for granting leaves of absence in academies in line with other state funded schools. This would extend the power granted by section 551 of the Education Act 1996 to allow regulation of leaves of absence in all state-funded schools (community schools, foundation schools, voluntary aided schools, voluntary controlled schools, community special schools, foundation special schools, academy schools, free schools, university technical colleges, city technology

colleges, pupil referral units, alternative provision academies, state boarding schools and special schools not maintained by the local authority).

- b. **Option 2 (do nothing):** There is no alternative option aside from ‘do nothing’ as academies can already choose to follow the existing Regulation if they wish to and not all do.

Impact on key groups

102. **All students:** will be subject to their school’s processes should they be absent; schools may also choose to recognise and reward high and/or improved attendance. Any student with attendance issues should receive earlier support from their school and local authority to overcome barriers to attendance. We expect this to improve access to education for students with attendance issues, and subsequently benefit their wider development, wellbeing and attainment.

103. **All parents:** should have a clear understanding of attendance expectations and processes from their child’s school. Parents of pupils with attendance issues should receive earlier and more consistent support from their school and LA, and only face legal interventions where this support does not work or is not engaged with.

104. **Schools, trusts and their staff:** will be required to publish a clear attendance policy and follow statutory guidance on attendance support and management. This may require a small amount of initial implementation time but will result in clearer expectations and processes for staff, as well as pupils and parents, supporting improved attendance management. The statutory expectations for LAs will also benefit schools and trusts as they will know what support to expect from their LA, reducing duplication.

105. **Local authorities:** will have a far clearer understanding of what is expected from their attendance service. Although this will require some implementation changes for some local authorities, it will result in better alignment with wider early help and other support services, reducing duplication and unnecessary resource burdens. Further, improved and earlier support for pupils with attendance issues should reduce the volume, severity and cost of more intensive later stage support. By moving to a national framework for issuing Fixed Penalty Notices, the burden for local authorities to set their own code of conduct for issuing fixed penalty notices will be removed. This should provide consistency and clarity for pupils, parents, schools, multi-academy trusts (particularly those supporting geographically spread schools) and local authorities of the circumstances in which fixed penalty notices can be issued.

106. **Courts:** Introducing a new regulatory framework for issuing penalty notices will provide a standard approach across the country. Our aim is not to increase or

decrease the number of penalty notices issued, it is to have better consistency across the country. In time, the expectations set out in the guidance of supportive approaches being explored first should reduce the number of cases for irregular attendance requiring legal intervention (and therefore the number of fixed penalty notices issued for irregular attendance).

Direct Costs to Business or charity

107. The only businesses impacted by these measures are **independent schools** which only have new responsibilities under measure 1 (see above in this assessment). We expect the burden on independent schools to be minimal, with many schools already having an attendance policy and undertaking some or all expectations, and some components requiring much less of independent schools, e.g. where there are a high proportion of boarders. Further, schools are already required to publish a behaviour policy. We therefore expect there to be a one-off transition cost in 2023 to draw up a policy or amend an existing one to meet the new expectations, but only a small ongoing non monetisable resource pressure to implement and review, which should be absorbed as part of the school's usual business and existing budget.

108. We assume that it would take 10 hours for a school to draw up and implement a new policy. This cost would be split between a deputy headteacher (3 hours to review and discuss) and administrative staff (7 hours - 1 to read guidance, 4 to review, 1 to write the new policy, and 1 to publish). We estimate it would take 4 hours for a school to amend an existing policy, split between a deputy headteacher (1 hour) and administrative staff (3 hours). Schools with an existing policy not needing any amendments will only incur a 1-hour familiarisation cost to the deputy headteacher from reading the new guidance². For academy schools there may also be a small increase in paid staff time required for governance (in the trust's role as the proprietor) but this is very difficult to quantify due to the variation in trusts. Due to limited burdens data, time assumptions are based on anecdotal evidence but the Independent Schools Council was comfortable with them.

109. The 2020/21 average FTE salary for leadership teachers (excluding headteachers) was £56,446³ and the average wage for administrative staff was £29,000⁴. State funded school workforce census data is used as a proxy for leadership teachers due to a lack of available data on independent school pay. Monetising deputy head teachers' and administrative staff's time, gives a total hourly

² Due to limited data on burdens available these time cost assumptions are based on anecdotal evidence.

³ School workforce in England, Academic Year 2020/21 <https://explore-education-statistics.service.gov.uk/find-statistics/school-workforce-in-england> "Other Leadership teachers" - £56,446 Average Pay 2020/21

⁴ An average of school business manager wage and school secretary wage was used for administrative staff giving an average of £29,000 for 2021/22. <https://nationalcareers.service.gov.uk/job-profiles/school-business-manager> <https://nationalcareers.service.gov.uk/job-profiles/school-secretary>

wage (including non-wage costs and uprating for inflation⁵) of £37.72 and £19.31 respectively for 2023/24.

⁵ A labour cost multiplier of 1.22 is applied to salaries to account for non-wage costs in total labour costs <https://ec.europa.eu/eurostat/documents/2995521/10624905/3-31032020-BP-EN.pdf/055df0e0-980d-27b9-a2a9-83b143d94d5b>

Wages are uprated for inflation using the latest GDP deflators: <https://www.gov.uk/government/statistics/gdp-deflators-at-market-prices-and-money-gdp-october-2021-budget-and-spending-review>

110. From initial desk-based research⁶ we found that two thirds of state-funded schools had a policy; we assume this is similar for independent schools. Therefore, we estimate that 1,609 independent schools have a policy (two thirds of the 2,414⁷ independent schools in England), of which three quarters (1,207) will need to amend their policy under the new guidance, and a quarter (402) will not need any amendments⁸. The remaining third (805) of independent schools will not have a policy, and therefore will need to develop a new policy. As we believe only the minority of independent schools will be impacted in this way, and our estimates for time are reasonable given the online resources and planned guidance, the true cost may be lower.

111. Independent schools' transition costs (2023/24):

Category	Schools with a policy requiring no amendments	Schools with a policy requiring amendments	Schools with no policy	Total
Number of Independent schools⁹	402 (17%)	1,207 (50%)	805 (33%)	2,414 ¹⁰
Time Cost Assumption¹¹	1 hour (1 hour deputy head at £37.69)	4 hours (3 hours admin staff at £19.31, 1 hour deputy head)	10 hours (7 hours admin staff, 3 hours deputy head)	-
Total cost	£15,176.66	£115,441.38	£199,811.03	£330,429.07
Total cost per school	£37.72	£95.64	£248.32	-

Table 1: Independent schools transition costs (2023/24)

112. We expect the measure to result in a number of ongoing non-monetisable benefits for pupils, parents, schools and wider society. This includes: reducing

⁶ Desk based research on sample of 30 state-funded schools: We do not have data on the proportion of schools that currently have a policy, but a rapid scan of 30 schools (12 Secondary, 12 Primary and 6 Special) showed 66% had one published on their website and of those that did there was significant variation in quality.

⁷ GIAS <https://www.get-information-schools.service.gov.uk/> 03/01/2022

⁸ Assumptions for the proportions of schools with attendance policies needing to make amendments are based on the sample of 30 state-funded schools. We found the majority would need some form of amendment to meet the guidance.

⁹ Number of schools are rounded in the independent schools transition costs table

¹⁰ GIAS <https://www.get-information-schools.service.gov.uk/> 03/01/2022

¹¹ Staff costs per hour given in the independent schools transition costs table include non-wage costs.

absence, reducing negative societal impact, improving attainment, improving consistency for pupils and parents, earlier identification of vulnerable children, earlier and more targeted intervention, reduced requirement for later stage more intensive intervention, reduced duplication of service provision, and clearer inspection expectations on attendance for schools. One persistently absent pupil has a lifetime cost to the wider community estimated at £62,640¹², accounting for costs to the education system, lost earnings, health, crime, and social services.

113. The total monetisable costs and benefits impacting businesses give an Equivalent Annual Net Direct Cost to Business of £31,255, a total Net Present Social Value of -£1m and a Business Net Present Value of -£0.3m.

114. It is possible that these measures could have a knock on impact on **charities** which support school attendance, however, these measures do not require anything of them and we would expect any impact to be low.

Wider Impacts and Transfers

115. **State funded schools:** With many schools already having an attendance policy and undertaking some or all expectations, we expect there to be a one-off transition cost in 2023 to draw up a policy or amend an existing one to meet the new expectations, but only a small ongoing non monetisable resource pressure to implement and review it, which should be absorbed as part of the school's usual business and existing budget.

¹² [NPC \(June 2007\) Misspent Youth report](#). The NPC unit cost of persistent truancy updated to 2021/22 prices is £62,640. This includes costs to the education system, lost earnings, health, crime, and social services.

Category	Schools with a policy requiring no amendments	Schools with a policy requiring amendments	Schools with no policy	Total
Number of state-funded schools¹³	3,677 (17%)	11,031 (50%)	7,354 (33%)	22,062
Time Cost Assumption¹⁴	1 hour (1 hour deputy head at £37.69)	4 hours (3 hours admin staff at £19.31, 1 hour deputy head)	10 hours (7 hours admin staff, 3 hours deputy head)	-
Total cost	£138,702.38	£1,055,040.45	£1,826,110.55	£3,019,853.38
Total cost per school	£37.72	£95.64	£248.32	-

Table 3: Transition costs for state-funded schools

116. The contents of the statutory guidance is about making better use of existing resource and schools will be able to decide how they meet the outlined expectations within their current resourcing. Similarly, it will be for multi-academy trusts to decide how they can meet expectations and DfE guidance will outline what this could proportionately look like for different sized MATs, and so we expect that this will be met as part of their usual business.

117. The same ongoing non-monetisable benefits listed under independent schools will also apply.

118. We expect measures 2 and 3 to benefit schools and trusts through providing clarity, reducing duplication and increasing the level of support they receive from their LA. Measure 4 should result in a drop in the number of requests for leaves of absence in academies, subsequently reducing the processing burden on academies.

119. **Local authorities:** We are in the process of completing a full new burdens assessment for the measures impacting local authorities. As part of this process, we have estimated costings based on the approximate cost of local authority attendance

¹³ GIAS <https://www.get-information-schools.service.gov.uk/> 03/01/2022. A rapid scan of 30 state-funded schools showed 66% had an attendance policy on their website, the majority of which would need some form of amendment to meet the new guidance.

¹⁴ Time Cost Assumption is the same as for Independent Schools – please see previous page and footnotes. Hourly wages include non-wage costs.

staff nationally per pupil population¹⁵, compared to cost of attendance staff in local authorities whose attendance support services already closely reflect the expectations which will be set out in the new guidance¹⁶. Through this process we expect there to be an annual saving in local authority attendance staff costs of £274,743¹⁷ across all local authorities. However, we do not expect this to be a cashable saving and there will be a one-off implementation cost in FY 2023/24. Given the variation between local authorities, it is difficult to accurately estimate this cost, however, we would expect that most local authorities will take less than 80 FTE staff hours to implement the changes. Assuming implementation requires 80 FTE LA attendance staff hours, this would equate to £251,101¹⁸ in one-off implementation costs in FY 2023/24 across all authorities, or £1652 per individual local authority. Therefore, our assessment shows there are no additional costs to local authorities as estimated costs are cost neutral or less than the estimated costs of current local authority attendance services. These costs are estimates, and the new burdens assessment will be published alongside the guidance.

120. **Courts and justice system:** We are in the process of completing the Justice Impact Test for introducing a new regulatory framework for issuing penalty notices. This will set the circumstances in which issuing a penalty notice should be considered when support does not work or is not engaged with, or support is not appropriate for example with term time holidays. We propose introducing single national thresholds at which a penalty notice is considered to replace the existing thresholds which differ in each local authority area and introducing a single national limit on the number of penalty notices that can be issued to a parent for each child in an academic year. We are working with LAs and schools to determine appropriate thresholds and will consult on them in due course.

121. Our aim is not to increase or decrease the number of penalty notices issued, it is to have better consistency across the country. Calculating any change to the number of penalty notices is challenging as there is not a direct correlation between

¹⁵ Number of FTE attendance staff per pupil population nationally was derived from anonymous, self-reported data submitted by 119 local authorities via a department survey in July 2021. We assume that the LAs in the survey are representative of all LAs nationally. For all 152 LAs, there are on average 5,490 pupils per member of LA attendance staff. Given total number of pupils in England, 8.9 m, we estimate nationally there are currently approximately 1,623 FTE LA attendance staff. Education Welfare Officers' (EWOs) average wage (£31,395 including non-wage costs for FY 2023/24) was used to proxy attendance staff wages across all LAs. This gives a total current annual LA attendance staff cost of £50.96m in FY 2023/24.

¹⁶ To calculate costs for all LAs running a delivery model meeting expectations, we use a sample of 4 local authorities already operating the model. The sample size is small as the number of local authorities currently running a delivery model meeting expectations is low (8). Given limited data, we assume the sample is representative of all LAs meeting the expectations. The sample's average number of pupils per LA attendance staff was approximately 6,985. Accounting for all 8.9m pupils, this suggests 1,276 FTE attendance staff would be needed if all LAs adopt the new model. The average wage from the sample data for FTE attendance staff is approximately £39,730 in FY 2023/24. Across all LAs, this gives a total annual LA staff attendance cost of £50.69m in FY 2023/2024.

¹⁷ Savings are indicative of the annual reduction in resource needed if all LAs were to meet the new expectations. We do not expect there to be a reduction in overall local authority staff numbers.

¹⁸ Based on informal consultation, we assume implementation takes approximately 80 hours per LA. This resource cost is monetised using the average LA attendance staff wage from the LA sample.

absence data and penalty notices issued, therefore just because a pupil's absence met the threshold it does not mean the circumstances of the actual incident would have met the threshold. Moreover, even if an incident met the threshold, there remains discretion about whether a penalty notice is appropriate, not least in future because of this measure, and whether sufficient support has been provided and other options exhausted. Over time however, supportive approaches being explored first should reduce the need for legal intervention.

122. The resulting costs and savings from measures 1 and 2, forecast over a 10 year appraisal period result in a total Net Present Social Value (NPV) of -£1m. The NPV is negative as we are not able to monetise the variety of benefits resulting from measure 1. We are not currently able to accurately monetise costs and benefits of measures 3 and 4 (neither of which have a business impact).

Impacts on Small Businesses

123. The only businesses impacted by these measures are independent schools which are only impacted by measure 1. We have calculated the total possible impact on independent schools as £330,429 across all independent schools, however, the true impact is likely to be lower (see "Direct costs to businesses" box) and we would expect the implementation to be proportionate to the school size. Hence we do not anticipate a disproportionate impact on small businesses.

Implementation and evaluation

124. We intend to publish non-statutory guidance on the expectations of schools, trusts, governing bodies, and LAs ahead of academic year 2022/23. This will then become statutory following enactment, this will be no earlier than September 2023. This will provide schools and LAs with at least a year to implement changes before the law requires it. During this year we will also seek feedback on guidance and make any required amendments before it becomes statutory. This will continue following enactment, and we will monitor attendance, prosecutions, School Snapshot and Teacher Omnibus surveys, and Ofsted inspections data.

b. School System equalities impact: summary

126. This set of reforms to the school system will ensure that the system is underpinned by a strong and consistent regulatory framework and ensure that barriers preventing certain types of school from benefiting from strong academy trusts are addressed. They will ensure that schools are fairly and consistently funded across the country. Through these measures, we will also drive national consistency in the school attendance framework.

127. There are five school system measures that reform the academy trust legal framework. These are: a statutory trust standards document; academy trust intervention; academy trust land; faith school academisation (Religious Education and collective worship and faith governance) and a local authority academisation power.

128. In summary, we do not expect any negative impact on those with protected characteristics in relation to advancing equality of opportunity, fostering good relations or eliminating discrimination. The statutory trust standards document and academy trust intervention reforms intend to strengthen the regulatory framework and increase educational standards on a national scale. The measure pertaining to faith school academisation are designed to take steps to support schools with a faith designation. The proportion of pupils in faith schools is a rough proxy for the number of pupils with the protected characteristic of faith and belief. Our assessment on this basis is that the reforms will advance equality of opportunity, including by ensuring existing faith protections relating to academies with a religious character are set out in legislation.

129. The reforms to the National Funding Formula will mean more consistent and fairer funding allocations to schools across the country. Funding will be allocated based on school needs rather than where it is based, this will therefore support disadvantaged pupils and those with a disability.

130. The reforms relating to the school attendance framework are designed to bring greater consistency of support and focus it on pupils who require it most. This is expected to help advance equality of opportunity and help to reduce any discrimination in attendances processes that pupils and parents with particular protected characteristics may experience.

A Statutory Trust Standards document

Protected characteristic	Type of impact
Disability	Positive
Pregnancy and maternity	Positive
Marriage or civil partnership	Neutral
Race	Positive
Religion or belief	Positive
Sex	Positive
Sexual orientation	Positive
Gender reassignment	Positive
Age	Neutral

Table 4: Impact of Academy Trust Standard

Policy Context

131. This measure is intended to consolidate and strengthen the academy regulatory framework by creating a single overarching framework comprising provisions in primary legislation, secondary legislation and statutory guidance, together known as the Academy Trust Standards.

132. **Is it possible the proposed policy or activity or change in policy or activity could discriminate or unfairly disadvantage people?** – We have considered the impacts of policy against the protected characteristic groups but as the policy is intended to largely consolidate existing contractual requirements by placing them on a statutory footing, we predict its impact will be neutral and have no reason to believe that the policy is likely to disadvantage any of these groups, relative to other persons.

133. **Does bringing greater coherence, consistency, and transparency to the academy regulatory framework amount to a positive impact on protected groups?** – Yes. By improving the regulatory framework that multi academy trusts operate within, greater consistency will filter down to pupils attending schools within a trust and those with protected characteristics. The standards cover obligations on a range of topics including curriculum, governance, and safeguarding. Consistency across these areas ensure that pupils are given an appropriate environment to thrive in. This in turn will advance equality of opportunity between persons who share a

relevant protected characteristic and persons who do not share it.

Academy trust intervention

Protected characteristic	Type of impact: Power to appoint Interim Trust Board, or additional trustees	Type of impact: Power to issue notices to improve, or termination warning notices and directions at Trust level	Type of impact: Move existing termination powers onto a statutory footing
Disability	Neutral - Positive	Neutral - Positive	Neutral
Pregnancy and maternity	Neutral - Positive	Neutral - Positive	Neutral
Marriage or civil partnership	Neutral - Positive	Neutral - Positive	Neutral
Race	Neutral - Positive	Neutral - Positive	Neutral
Religion or belief	Neutral - Positive	Neutral - Positive	Neutral
Sex	Neutral - Positive	Neutral - Positive	Neutral
Sexual orientation	Neutral - Positive	Neutral - Positive	Neutral
Gender reassignment	Neutral - Positive	Neutral - Positive	Neutral
Age	Neutral - Positive	Neutral - Positive	Neutral

Table 5: Academy trust intervention

Policy Context

134. This measure takes forward a package of academy trust intervention measures which will equip the Secretary of State with powers to intervene at academy trust level.

Protected characteristics that are significantly impacted:

135. To provide an indicative understanding of the potential equalities impact of the academy trust intervention measures, the current characteristics of academy pupils, staff, trustees and governors have been considered, as far as the data allows. These are set out below.

136. **Disability, Pregnancy and maternity, Marriage or civil partnership, Sexual orientation and Gender reassignment:** as the policy is ultimately intended to increase educational standards in academies and academy trusts, we anticipate a positive impact for all pupils, including those with these protected characteristics.

137. For staff, trustees and governors we anticipate a neutral impact on equality of opportunity relative to others and have not identified that the measures will impact on the other two limbs of the PSED (eliminate discrimination and foster good relationships).

138. Pupils, staff, trustees and governors: there is limited data available in relation to the proportions of pupils, staff, trustees and governors sharing each of these protected characteristics. As the policy is ultimately intended to increase educational standards in academies and academy trusts, we anticipate that the measures will have a positive impact on all pupils, including pupils with these protected characteristics. We have no reason to believe that the policy is likely to disadvantage staff, trustees or governors sharing any of these protected characteristics relative to other persons. We do not anticipate the measures will impact on the other two limbs of the Public Sector Equality Duty.

139. **Race:** We anticipate a positive impact for all pupils including those with this protected characteristic. For staff, trustees and governors we anticipate a neutral impact on equality of opportunity relative to others and have not identified that the measures will impact on the other two limbs of the PSED (eliminate discrimination and foster good relationships).

140. Pupils: the overall proportion of minority ethnic pupils in academies is 32% but this varies significantly between academies. As the proposed powers are intended to increase educational standards in academies and academy trusts, we anticipate a positive impact on equality of opportunity for all pupils, including those with this protected characteristic.

141. Staff: the table below illustrates the proportions of ethnic minority teachers in state-funded schools by phase and type. The aim of the academy trust intervention measures is to be able to intervene quickly and proportionately in an academy/academy trust where needed, and as such we do not anticipate a negative impact on equality of opportunity for staff.

School/trust type	Nursery and primary	Secondary	Special or AP
LA maintained	11.76%	20.92%	14.73%
MAT	11.02%	17.45%	13.61%
SAT	10.14%	17.54%	13.60%

Table 6: Proportions of ethnic minority teachers in state-funded schools by phase and type

142. Trustees & governors: there is limited data available showing the ethnic breakdown of trustees and governors. We have no reason to believe that the policy is likely to disadvantage trustees and governors sharing this protected characteristic, relative to other persons.

143. **Religion or belief:** We anticipate a positive impact for all pupils including those with this protected characteristic. For staff, trustees and governors we anticipate a neutral impact on equality of opportunity and have not identified that the measures will impact on the other two limbs of the PSED (eliminate discrimination and fostering good relationships).

144. Pupils: the proportion of pupils in faith schools is a very rough proxy for religion and belief and only limited assumptions can be made about the religion of pupils attending them. As the measures will increase educational standards we anticipate a positive impact for all pupils, including those with this this protected characteristic as a result of the proposed measures.

145. Staff, Trustees & governors: data is not available on the proportion of trustees and governors sharing this protected characteristic but we have no reason to believe that the policy is likely to disadvantage any of these groups, relative to other persons.

146. **Sex:** We anticipate a positive impact for all pupils including those with this protected characteristic. For staff, trustees and governors we anticipate a neutral impact on equality of opportunity and have not identified that the measures will impact on the other two limbs of the Public Sector Equality Duty (eliminate discrimination and fostering good relationships).

147. Pupils: the table below shows that there is a slightly higher proportion of girls than boys in academies. We anticipate a positive impact on equality of opportunity for all pupils, including with this protected characteristic as a result of the proposed measures, which are intended to increase educational standards for all pupils.

Pupil sex	Academies
% Boys	49.2
% Girls	50.8

Table 7: Proportion of boys and girls in academies

148. Staff: the school workforce is predominantly female, and there is little difference in the proportion of female staff in different school types as illustrated below. We have no reason to believe that the policy is likely to disadvantage staff sharing this protected characteristic, relative to other persons.

School/trust type	Nursery and primary	Secondary	Special or AP	Total
LA maintained	84.7%	63.3%	74.3%	78.9%
MAT	84.3%	63.3%	71.6%	71.5%
SAT	83.9%	62.3%	71.1%	65.7%
Total	84.6%	63.1%	73.3%	74.1%

Table 8: Proportion of female staff by school type

149. Trustees & governors: We have limited data on the characteristics of governors. The following table from the NFER research shows the characteristics of respondents by gender, role and organisation type. Given that Interim Trust Boards (ITBs) and additional trustee appointments are likely to come from a pool of candidates with experience in school governance, the appointees for ITBs and additional trustee posts are likely to also be predominately female. We anticipate a neutral impact on equality of opportunity for trustees or governors with this protected characteristic as a result of the proposed measures.

Gender	Maintained school GB %	SAT trust board %	MAT LGB %	MAT trust board %
Female	61	58	58	52
Male	37	37	39	44
Prefer not to say	3	5	3	4

Table 9: Proportion of male and female trustees & governors by school type

150. **Age:** The measure is intended to improve educational standards for all school age pupils. For staff, trustees and governors we anticipate a neutral impact on equality of opportunity for those of different ages and between those of the same age. We have not identified that the measures will impact on the other two limbs of the PSED (eliminate discrimination and foster good relationships).

151. **Pupils:** the proposed measures will improve educational standards by strengthening the Secretary of State’s powers to intervene in individual academies and providing new statutory powers of intervention at academy trust level in cases of trust mismanagement and governance failures. This will benefit all pupils regardless of age.

152. **Staff:** Multi Academy Trusts (MATs) tend to have a slightly younger teaching workforce than local authority maintained schools and Single Academy Trusts, and it is not anticipated that this will change under the new academy trust intervention measures.

Transfer of land by local authority

Protected characteristic	Type of impact: Land transfer measure
Disability	Neutral
Pregnancy and maternity	Neutral
Marriage or civil partnership	Neutral
Race	Positive
Religion or belief	Positive
Sex	Neutral
Sexual orientation	Neutral
Gender reassignment	Neutral
Age	Positive

Table 10: Impact of academy land transfer measure

Policy Context

153. This measure will impact on schools where land is held by separate charitable school trusts. Such trusts are most commonly, but not exclusively, linked to Church of England or Roman Catholic Dioceses. They also exist for minority faith academies and some non-religious trusts which were set up through organisations such as livery companies to provide school sites. The measure seeks to address some of the differences between maintained and academy schools in current legislation when a local authority provides a new site (other than playing field) for an existing school. The measure proposes to extend to academies an existing obligation for local authorities to transfer land to the charitable trustees of maintained foundation or voluntary schools, when there is a need to move site. This is to ensure parity between the assurance and control the charitable school trust has over the new site versus the old site which they would have surrendered, and so remove a barrier for trustees in supporting their school's conversion.

Protected characteristics that are significantly impacted:

154. **Religion or belief:** We expect a positive impact for pupils, staff, governors and trustees with these characteristics.

155. This is because there is a predominance of church and other faith schools with these types of trust. The consideration is whether such barriers to academisation disadvantage pupils on the grounds of religion or belief. We believe the impact of the measure to be positive, as there may be cases where the impact is that a particular school is persuaded to convert and may benefit from improvements attributable to becoming an academy and joining a strong Multi Academy Trust, or from gaining a new site. Requiring local authorities to transfer the new site's freehold to the trustees best ensures they can continue their aims to serve pupils with the protected characteristics of adherence to a particular faith.

156. **Race:** We anticipate that there is a small chance of positive impact on pupils from ethnic minority backgrounds, given that the individual schools with this kind of a charitable school trust (where the majority are linked to Church of England or Roman Catholic Diocese), through their religious affiliation, cater more heavily for pupils from ethnic minority backgrounds.

157. **Age:** We anticipate that there is a small chance of positive impact on primary aged pupils, given that the Church of England in particular has a predominance of small primary schools.

Faith schools academisation: religious education and collective worship and faith governance

Protected characteristic	Type of impact: Legislation to apply maintained school legislation in a similar way to academy schools designated with a religious character	Type of impact: Duty and power for the Secretary of State to make regulations relating to academy trust governance for trusts which include academy schools designated with a religious character.
Disability	Neutral	Neutral
Pregnancy and maternity	Neutral	Neutral
Marriage or civil partnership	Neutral	Neutral
Race	Neutral	Neutral
Religion or belief	Positive - Neutral	Positive - Neutral
Sex	Neutral	Neutral
Sexual orientation	Neutral	Neutral
Gender reassignment	Neutral	Neutral
Age	Neutral	Neutral

Table 11: Impact of faith schools academisation measures

Policy Context

158. The Government is committed to removing barriers which act as a disincentive to faith groups, including the Churches, in converting their schools to academies.

159. The specific objectives are:

160. **Religious Education and Collective Worship:** Ensure that the freedoms and protections provided in maintained school legislation (particularly sections 69-71

and Schedules 19 and 20 of the School Standards and Framework Act 1998) apply in an equivalent way to academies designated with a religious character by enshrining them in statute.

161. **Faith school governance:** Create a regulation-making duty and power to help ensure that there are comparable, statutory protections when a maintained school converts to academy status and joins a strong trust.

Protected characteristics that are significantly impacted:

162. These measures will predominately impact on trusts that have schools with a religious character. To provide an indicative understanding of the potential equalities impact of the faith protections measures, the current characteristics of pupils, staff, trustees and governors of maintained schools designated with a religious character and academies designated with a religious character have been considered, as far as the data allows. These are set out below.

163. **Religion or belief:** We anticipate a positive impact for the pupils, parents, staff, governors, trustees and religious bodies of schools with a religious character on eliminating discrimination and advancing equality of opportunity. We anticipate a positive impact for governors of maintained schools with a religious character, land/site trustees and religious bodies sharing this protected characteristic and a neutral impact for staff pupils and parents sharing this protected characteristic in respect of fostering good relationships.

164. Approximately one third of state funded schools in England are designated with a religious character, catering for approximately 1.9 million pupils¹⁹. The proportion of pupils in faith schools provides only very rough proxy for religion and belief and only limited assumptions can be made about the religion of pupils attending them. There is currently no data available on the proportion of staff, governors or trustees sharing this protected characteristic, however the current regulations and contractual arrangements setting out an existing role for religious bodies in agreeing aspects of the governance arrangements for schools with a religious character and the appointment of foundation governors support an assumption that a proportion of trustees, governors and staff will share this protected characteristic.

165. We anticipate a positive impact in respect of eliminating discrimination and advancing equality of opportunity for most religious bodies, trustees, governors, staff, parents and pupils sharing this protected characteristic. These measures are designed to take steps to meet the needs of people sharing this protected characteristic by ensuring existing faith protections relating to academies with a religious character are enshrined in statute, similar to the protections provided in law to maintained schools with a religious character.

¹⁹ Data is taken from Get Information About Schools website, 23rd March 2022

166. We anticipate a positive impact for some religious bodies, trustees and governors of academies with religious character that share this protected characteristic in respect of limb 3 of PSED (fostering good relations) as the measures will help to promote understanding of the obligations of religious bodies, governors and trustees of academies with a religious character, helping to maintain and improve already good relationships between individuals in different groups. We anticipate there will be a neutral impact for parents, pupils and staff sharing this protected characteristic in respect of fostering good relationships. As the measures broadly represent a technical change to the presentation of existing obligations, we do not expect that the experience of pupils, staff or parents attending academies with a religious character will change or that new inequalities will be created.

167. We anticipate no impact in respect of organisations representing humanist or secular beliefs. We anticipate that introducing these measures may reopen a debate on the obligations and requirements of schools without a religious character in relation to the religious education (RE) curriculum and requirements for collective worship. However, these measures apply only to academies designated with a religious character and represent a broadly technical change to existing obligations. The responsibilities and obligations on schools without a religious character are unchanged and the rights of parents in respect of choosing a school for their child and withdrawing of their child from RE and collective worship remain unchanged. Therefore, we anticipate that the measures do not create any new inequalities or remove any existing rights.

168. **Race and Ethnicity:** We anticipate a neutral impact for the pupils, parents, staff, governors, trustees and religious bodies of schools with a religious character sharing this protected characteristic.

169. The table below shows that there is a slightly higher proportion of pupils of black or white ethnic origin and a slightly lower proportion of pupils of Asian ethnic origin attending a school with a religious character compared to schools without a religious character.

Category	% Any other ethnic origin	% Asian ethnic origin	% Black ethnic origin	% Chinese ethnic origin	% Mixed ethnic origin	% Unclassified	% White ethnic origin
Schools with a religious character	1.7%	8.1%	7.0%	0.4%	6.2%	1.2%	75.4%
Schools without a religious character	2.1%	12.4%	5.2%	0.5%	6.2%	1.5%	72.2%

Table 12: Proportion of pupils in schools with a religious character by ethnic origin

170. There is greater variability across schools of different religious character. The table below shows that Church of England and Jewish schools have a greater proportion of pupils of White ethnic origin, whereas Catholic schools and other faith schools have a higher proportion of pupils of Black ethnic origin. Muslim schools are likely to have significantly higher proportions of pupils of black or Asian ethnic origin.

Faith	% Any other ethnic origin	% Asian ethnic origin	% Black ethnic origin	% Chinese ethnic origin	% Mixed ethnic origin	% Unclassified	% White ethnic origin
Church of England	1.4%	6.4%	4.6%	0.4%	5.6%	1.3%	80.3%
Hindu	0.4%	93.0%	0.6%	0.1%	3.8%	0.6%	1.5%
Jewish	1.1%	3.0%	1.4%	0.2%	2.5%	4.8%	87.0%
Muslim	5.5%	73.0%	12.5%	0.0%	6.2%	1.6%	1.1%
Other Faith	3.3%	13.1%	8.2%	0.6%	6.8%	1.7%	66.3%
Roman Catholic	2.0%	7.8%	10.8%	0.4%	7.1%	1.0%	70.9%
Sikh	9.8%	80.4%	1.1%	0.0%	5.9%	1.2%	1.6%

Table 13: Proportion of pupils in schools with a religious character by ethnic origin and type of religious character

171. We anticipate a neutral impact for pupils sharing this protected characteristic. The measures represent broadly technical changes reflecting existing obligations and do not alter any other existing rights or obligations. We have no reason to believe that the policy will materially change the delivery of education for pupils or result in any discernible difference to pupils sharing this protected characteristic that attend an academy designated with a religious character, relative to other persons.

172. There is currently no data available on the proportion of parents, staff, governors or trustees or religious bodies sharing this protected characteristic, but we have no reason to believe that the policy is likely to create any new inequalities or disadvantage these groups, relative to other persons.

173. **Age:** We anticipate a neutral impact for the pupils, parents, staff, governors, trustees and religious bodies of schools with a religious character sharing this protected characteristic.

174. The table below shows that approximately 28% of primary aged pupils and 18% of secondary aged pupils attend schools with a religious character²⁰.

	No. of pupils in primary phase	No. of pupils in secondary phase
Schools with a religious character	1, 285,430	617,179
Schools without a religious character	3,288,203	2,805,123

Table 14: Primary and secondary pupils in schools with and without a religious character

175. We anticipate a neutral impact for pupils in both primary and secondary phases. The measures represent broadly technical changes reflecting existing obligations and do not alter any other existing rights or obligations. We have no reason to believe that the policy will materially change the delivery of education for pupils or result in any discernible difference to pupils in either age phase, relative to other persons.

176. There is insufficient data available on the proportion of parents, staff, governors, trustees or religious bodies in relation to this protected characteristic, but we have no reason to believe that the policy is likely to create any new inequalities or disadvantage any of these groups relative to other persons, regardless of age.

²⁰ Data taken from Get Information About Schools, 10th March 2022.

177. **Disability:** We anticipate a neutral impact for the pupils, parents, staff, governors, trustees and religious bodies of schools with a religious character sharing this protected characteristic.

178. The proportion of pupils with special educational needs and disabilities (SEND) provides a rough proxy for assessing the potential impacts of this policy on pupils sharing this protected characteristic, meaning only limited assumptions can be made. The table below shows the proportion of children in schools receiving SEND support or in receipt of an Education, Health and Care Plan (EHCP).

Type	Education, Health and Care Plan	Special educational need (SEN) support	No special educational need
Schools with a religious character	1.6%	11.6%	86.7%
Schools without a religious character	1.8%	12.2%	86.0%

Table 15: SEND pupils in schools with and without a religious character

179. Whilst the headline data suggests a slightly lower proportion of pupils with SEND attend schools designated with a religious character, underlying data suggests greater variability between schools of different religious character. The table below shows that schools of Hindu, Jewish or Sikh religious character have smaller proportions of pupils requiring SEN support whilst Jewish schools have a higher proportion of pupils in receipt of an EHCP.

Faith	Education, Health and Care Plan	Special educational need (SEN) support	No special educational need
Church of England	1.7%	12.1%	86.2%
Hindu	1.2%	3.7%	95.1%
Jewish	2.1%	9.6%	88.3%
Muslim	1.2%	10.4%	88.4%
Roman Catholic	1.5%	11.2%	87.3%
Sikh	0.8%	7.4%	91.9%

Table 16: SEND pupils in schools with a religious character by type

180. We anticipate that these measures will have a neutral impact on pupils sharing this protected characteristic. The measures represent broadly technical changes reflecting existing obligations and do not alter any other existing rights or obligations. We have no reason to believe that the policy will materially change the delivery of education for pupils or result in any discernible difference to pupils sharing this protected characteristic that attend an academy designated with a religious character, relative to other persons.

181. There is currently no data available on the proportion of parents, staff, governors or trustees or religious authorities sharing this protected characteristic, but we have no reason to believe that the policy is likely to create any new inequalities or disadvantage these groups, relative to other persons.

182. **Pregnancy and maternity, Marriage or civil partnership, Sex, Sexual orientation, and Gender reassignment:** We anticipate a neutral impact for all pupils, parents, staff, trustees and governors including those with these protected characteristics.

183. There is limited data available in relation to the proportions of pupils, staff, trustees and governors sharing each of these protected characteristics. As the measures represent a broadly technical change to the underpinning basis for existing obligations, we have no reason to believe that the policy will create any new inequalities or disadvantage any groups sharing these protected characteristics, relative to any other person.

Grammar schools

Protected characteristic	Type of impact
Disability	Neutral
Pregnancy and maternity	Neutral
Marriage or civil partnership	Neutral
Race	Neutral
Religion or belief	Neutral
Sex	Neutral
Sexual orientation	Neutral
Gender reassignment	Neutral

Age	Neutral
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Table 17: Impact of grammar schools measure

Policy Context

184. This measure will take forward commitments in the Schools White Paper to continue to protect grammar schools' selective status under the future system by:
- a. providing the Secretary of State with the power to designate, in law, wholly selective academy schools as grammar schools;
 - b. applying the same parental ballot provisions to them as to maintained schools;
 - c. removing the rights of trusts (for academies) and governing bodies (for maintained schools) to propose the removal of selection.
185. These changes will put the 143 wholly selective academies' selective status onto a legal footing rather than the current contractual basis. This will ensure that grammar schools are secure in MATs whilst parents retain the right to ballot for the removal of selection.
186. The Bill will not permit new grammar schools to open nor existing non-selective schools to introduce new selection by ability for children aged under 16.

Protected characteristics that are significantly impacted:

187. We would expect the measures to be broadly neutral in their effect as we are not opening new grammar schools, closing them or changing the basis of selection through the Schools Bill measures
188. **Age:** Most children are assessed for entry to grammar schools at the start of year 6 (e.g., when they are aged 10). However, very small numbers of children aged 10-15 will also be assessed for in-year entry.
189. Selection, in itself, does not place any barriers in the place of applicants because of their age. However, some parents state that the selective process is stressful for their children, and this disproportionately affects children aged 9-10. It is, however, a matter of personal choice on the part of parents whether to enter their children into a selective test. The measures in the Bill will make no change to this.
Impact – **neutral**.
190. **Disability:** January 2021 data shows that, nationally, 3.7% of children have an Education, Health and Care Plan (EHCP) and 12.2% receive some form of special educational needs (SEN) support. Not all children with an EHCP or who receive SEN support will be disabled, but it is a reasonable proxy.

191. Admission authorities are required to comply with the Equality Act 2010. The School Admissions Code²¹ already makes it clear that those organising selection tests must ensure that ‘tests are accessible to children with special educational needs and disabilities, having regard to the reasonable adjustments for disabled pupils required under equalities legislation’.

192. Most SEN sub-groups (based on primary need) are under-represented in grammar schools, the most under-represented being those with learning disabilities; social, emotional and mental health needs; and speech, language and communication needs. However, looking only at high ability pupils, SEN pupils are proportionately represented²².

193. It might be argued that the removal of the rights of academy trusts and maintained school governing bodies to bring forward proposals to remove selection will make it harder for selection to be removed. As a result, it could be argued that this will entrench the general under-representation of pupils with SEN in grammar schools – notwithstanding the fact that high ability pupils with SEN are not under-represented. However, no governing body or trust has ever brought forward proposals to remove selection from a grammar school under the provisions within the School Standards and Framework Act 1998 (‘SSFA’) or academy funding agreements and no grammar school has become non-selective since 1999. As a result, this impact is not considered to be material.

194. The measures in the Bill will neither increase nor decrease the number of selective schools. Impact – **neutral**.

195. **Sex and Sexual Orientation:** These measures do not have any impact on the ability of parents to obtain a school place for their children because of the child or parent’s sex or sexual orientation.

196. If a body organising a selection test were to adopt a testing regime that discriminated against children on the basis of sexual orientation, this would be in direct breach of the School Admissions Code and the Equality Act 2010. The measures in the Bill will make no change to this. Impact – **neutral**.

197. **Gender reassignment:** As with sex, these measures do not have any impact on children or parents undergoing gender reassignment as the changes do not contain any gender-specific requirements.

198. If a body organising a selection test were to adopt a testing regime that discriminates against children or parents undergoing gender reassignment, this would be in direct breach of the School Admissions Code and the Equality Act 2010. The measures in the Bill will make no change to this. Impact – **neutral**.

199. **Marriage and civil partnership:** We do not consider that the measures will discriminate or have any impact on people based on whether or not they are married or in a civil partnership.

²¹ <https://www.gov.uk/government/publications/school-admissions-code--2>

²² January 2016 (spring) census and Key Stage 2 performance data.

200. The School Admissions Code expressly rules out admission authorities taking into account personal information (such as marital status) in the admissions process. The measures in the Bill will make no change to this. Impact – **neutral**.

201. **Pregnancy and maternity:** It is very unlikely that children aged 9-10 (the vast majority of selection testing relates to these children) will be pregnant. It is slightly more likely – but still unlikely - that older children being tested for admission for an in-year place in years 10 or 11 may be pregnant.

202. It would be a breach of the Equality Act 2010 and the School Admissions Code for a school to refuse to allow those who are pregnant, or those who have already given birth to sit a selective test or refuse to make alternative arrangements for them to sit the test if they were unable to do so on the scheduled day. The measures in the Bill will make no change to this. Impact – **neutral**.

203. **Race:** 33.9% of children in primary schools are from an ethnic minority. The figure stands at 32.3% in secondary schools²³.

204. In 2016 an Education Datalab demographic analysis²⁴ found a greater success rate amongst ethnic minorities in obtaining grammar school places. It stated that:

‘if we look at high achieving eleven-year-olds in the four fully selective local authorities of Kent, Medway, Buckinghamshire and Lincolnshire, just 29 per cent of the white British pupils who achieved a fine grade score of 5.0 on Key Stage 2 (KS2) tests goes onto a grammar school.

For Asian, black and other ethnic minority groups, these figures are 56 per cent, 61 per cent and 44 per cent, respectively.’

205. It isn’t clear from the analysis what is driving this apparent disadvantage for white British pupils. It concludes that although ‘little research has been carried out to explain why many ethnic minority groups are so successful at passing the 11-plus attitudes to education and cultural differences undoubtedly play a part’.

206. As the analysis itself states, it isn’t clear whether this apparent disadvantage for white British pupils is the result of them having a wider choice of non-selective schools, whether the much larger sample group which is white British has skewed the result or because of cultural differences. As the analysis itself states, little research has been undertaken into the causes of this apparent disparity. The removal of the rights of academy trusts and maintained school governing bodies to bring forward proposals to remove selection will, arguably, make it harder for selection to be removed. It could be argued that this will entrench the disadvantage white British children have in obtaining a grammar school place in comparison with their BAME peers.

²³ <https://explore-education-statistics.service.gov.uk/find-statistics/school-pupils-and-their-characteristics/2019-20>

²⁴ <https://ffteducationdatalab.org.uk/2016/11/ethnic-minority-groups-are-great-at-passing-the-11-plus/>

207. However, the measure will neither increase nor decrease the number of selective schools and, when considering that no school has removed selection since 1999, this impact is not considered to be material. Impact – **neutral**.

208. **Religion and belief:** We do not collect data on the religion of children in schools. However, 1.9m, or 24%, of children attend state-funded faith schools.

209. 21 of the 163 grammar schools have a religious character: 3 are Church of England, 7 are Catholic and 11 are Christian. These schools may all lawfully, discriminate in admissions in favour of faith applicants (as permitted by schedule 11, paragraph 5 to the Equality Act 2010). Some of these schools do prioritise according to faith if oversubscribed, while others do not.

210. Even if all these schools discriminated on the basis of religion it would be lawful discrimination. Between 145 and 154 grammar schools take no account of an applicant’s religion within their admission arrangements. The measures in the Bill will make no change to this. Impact – **neutral**.

Local authority academisation power

Protected characteristic	Type of impact: Pupils	Type of impact: Staff	Type of impact: Governors
Disability	Neutral	Neutral	Neutral
Pregnancy and maternity	Neutral	Neutral	Neutral
Marriage or civil partnership	Neutral	Neutral	Neutral
Race	Neutral	Neutral	Neutral
Religion or belief	Neutral	Neutral	
Sex	Neutral	Positive	Neutral
Sexual orientation	Neutral	Neutral	Neutral
Gender reassignment	Neutral	Neutral	Neutral
Age	Positive	Neutral	Neutral

Table 18: Impact of local authority academisation measure

Policy Context

211. This measure gives local authorities (LAs) a power to request that their remaining maintained schools become academies. LAs would be able to form their own academy trust into which, with the approval of the Regional Director (formerly Regional Schools Commissioner), maintained schools would be transferred.

Protected characteristics that are significantly impacted:

212. Overall, we would expect the measures to deliver improvements to equality of opportunity arising from the benefits to schools of being in a strong trust. We would also expect the overall effect on pupils to be positive because the measure is intended to improve educational outcomes, thereby affording young people more and better opportunities post-16/18.

213. Whilst it is not a protected characteristic under the Equality Act 2010, we have considered the impact on economic disadvantage in line with the Government's wider aim to 'level up' left-behind areas of the country, using receipt of Free School Meals (FSM) as a proxy.²⁵ Overall, the proportions of pupils who receive FSM attending maintained schools and academies are roughly equal. We know, however, that a disproportionate number of pupils who receive FSM attend underperforming schools; and in 2019/20 the average Attainment 8 score for a child in receipt of FSM was 38.6, compared with 52.3 for non-eligible pupils.²⁶ Given the track record of sponsored academies, we would expect the measures to benefit such pupils by increasing standards in schools that have proportionally higher rates of students receiving FSM, closing the disadvantage gap.

214. We have identified no impacts of the measure on the three limbs of the equalities duty.

215. **Age:** It is likely that younger pupils may benefit more from this measure than older ones as they will spend more of their compulsory education in a school that is benefitting from being part of a strong trust. For staff, there is evidence that teachers and middle leaders tend to achieve promotions younger in large academy trusts than elsewhere²⁷. Therefore, it is possible this measure will have a positive impact on younger staff.

²⁵ [Apply for free school meals - GOV.UK \(www.gov.uk\)](https://www.gov.uk)

²⁶ [GCSE results \(Attainment 8\) - GOV.UK Ethnicity facts and figures \(ethnicity-facts-figures.service.gov.uk\)](https://ethnicity-facts-figures.service.gov.uk)

²⁷ [People power: Six ways to develop and retain educators in multi-academy trusts | Ambition Institute](#)

216. **Disability:** On average, academies have lower proportions of pupils with an Education and Health Care plan (used as a proxy for identifying pupils with disabilities) than maintained schools. This mainly reflects the fact that 57% of special schools are LA maintained, representing nearly double the number of pupils in special academies. However, it should be noted that whilst academies and LA-maintained schools are subject to the same statutory duty to admit a pupil where they are named on an Education and Health Care plan, we are aware that it is much easier for LAs to direct maintained schools to admit. However, we expect that in converting their remaining maintained schools, an LA will have additional resource available previously focused on maintained schools which can be re-directed to working to ensuring school places for pupils with EHC plans. We therefore believe the overall impact of this measure to be **neutral**.

217. **Sex:** The measure will have a greater impact on women because most teachers, regardless of the type or phase of school, are women. There is no evidence to suggest that there are any negative impacts for women of working in academies compared to maintained school. We therefore expect the measure will have a **neutral** impact.

218. **Religion or belief:** Although we can make only limited assumptions about the religion of pupils attending faith schools and have hold limited data about the religion of pupils in non-faith schools, we do not foresee any negative impacts on equality of opportunity for pupils with this protected characteristics as a result of the measure. The aim of the measure is to improve school outcomes for all pupils, and we expect to see a **positive** improvement in educational opportunity for all pupils, including those of any religion or belief.

219. Overall, we do not foresee any negative impacts on equality of opportunity for pupils, staff or governors with protected characteristics as a result of the measures.

220. The impact on pupils is likely to be positive as improved outcomes in school are likely to lead to improved outcomes in further and higher education and, later, employment.

221. As the aim of the measure is to enable all school staff to benefit from being employed by a strong multi academy trust, particularly in relation to opportunities for professional development and progression, the policy is likely to have a positive impact on equality of opportunity between those with particular protected characteristics and those without.

222. Governors are likely to be the most affected by any changes because, where a school converts to become an academy and joins an academy trust, this will inevitably lead to changes in the governance structure. In particular, the number of roles at the highest tier of governance is likely to be reduced. It is likely that most existing maintained schools governors and single academy trust trustees will not join the multi academy trust board and may instead serve as members of Local Governing Boards, with different responsibilities and often fewer powers.

Conversely, however, becoming part of a larger trust could give some governors and

trustees – those with more experience and with particular skills - the opportunity to play a more extensive role.

223. We do not foresee any negative impacts on equality of opportunity for governors with protected characteristics as a result of the measures. As explained above, the measures may impact on the types of roles that governors play and, therefore, have the potential to impact more on governors generally than on pupils and staff. Overall, our assessment is that this policy is likely to have a neutral impact on the equality of opportunity between those with and without characteristics and a neutral impact on governors with protected characteristics.

National Funding Formula reforms

Protected characteristic	Complete National Funding Formula reforms
Disability	Neutral
Pregnancy and maternity	Neutral
Marriage or civil partnership	Neutral
Race	Positive
Religion or belief	Neutral
Sex	Neutral
Sexual orientation	Neutral
Gender reassignment	Neutral
Age	Neutral

Table 19: Impact of National Funding Formula reforms

Policy Context

224. This measure reforms the National Funding Formula, which was first introduced in 2018, so that it applies directly to all schools, rather than local authorities deciding if they would like to follow it.

225. Our expectation is that the direct National Funding Formula (NFF) will create a fairer and more consistent distribution of funding that is more closely aligned to need, rather than where a school happens to be located, and is essential to support opportunity for all children. This funding system does not seek to target specific groups of pupils simply because they are protected by the Equality Act, but instead

targets funding to those groups which the evidence demonstrates face barriers to their educational achievement, such as disadvantage and disability.

Protected characteristics that are significantly impacted:

226. **Disability:** The NFF currently targets proportionally more funding towards additional needs funding factors than, on average, local funding formulae do – moving towards a direct NFF should, therefore, be beneficial to schools with larger proportions of pupils with additional needs – including Special Educational Needs (SEN) and disability. Across all local authorities, 6.4% of schools block funding is being allocated through the low prior attainment factor, compared to 6.9% in the 2021-22 NFF²⁸.

227. The move to a direct NFF will impact high needs funding as it will remove local authorities' current ability to transfer funding from the schools block to relieve pressures in the high needs block. However, we will consult on a new mechanism to replace the current 'block transfer' process so that this transfer can continue in some form under a direct NFF.

228. We will also review the additional needs factors in the NFF (which, in part, act as proxies to target additional funding to pupils with SEN or disabilities) to ensure these continue to reflect the relative prevalence of additional needs, and therefore costs. We plan that this review will follow the conclusion of the SEND Review Green Paper consultation, in order to take account of any recommendations from the review on the role of mainstream schools in SEND provision.

229. **Race:** Refugees and asylum seekers: The move to a direct NFF should direct more funding towards English as an Additional Language (EAL) pupils who have entered state education in England during the last three years, than current local authority (LA) formulae, benefiting pupils who are refugees or asylum seekers. Across all local authorities' local formulae, 1.0% of funding is allocated through this factor, compared to 1.1% in the 2021-22 NFF.²⁹

230. Gypsy, Roma and Traveller communities: Similarly, this should direct more funding towards the mobility factor than current local authority formulae, benefiting pupils from Gypsy, Roma and Traveller communities. The mobility factor supports schools in which a significant proportion of pupils join the school part way through the year, across all local authorities' local formulae, 0.05% of schools block funding is being allocated through this factor, compared to 0.1% in the 2021-22 NFF.³⁰

²⁸ [Schools block funding formulae 2021 to 2022 - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/97822/schools_block_funding_formulae_2021_to_2022.pdf)

²⁹ [Schools block funding formulae 2021 to 2022 - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/97822/schools_block_funding_formulae_2021_to_2022.pdf)

³⁰ [Schools block funding formulae 2021 to 2022 - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/97822/schools_block_funding_formulae_2021_to_2022.pdf)

School attendance

Protected characteristic	Type of impact: Measure 1 only	Type of impact: Measure 2 only	Type of impact: Measure 3 only	Type of impact: Measure 4 only
Disability	Positive	Positive	Positive	Positive
Pregnancy and maternity	Positive	Positive	n/a	n/a
Marriage or civil partnership	n/a	n/a	n/a	n/a
Race	Positive	Positive	Positive	Positive - Neutral
Religion or belief	Positive	Positive	Positive	Positive - Neutral
Sex	Positive	Positive	Neutral	Positive
Sexual orientation	Positive	Positive	Positive	Positive
Gender reassignment	Positive	Positive	Positive	Positive
Age	Positive	Positive	Positive	Positive

Table 20: Impact of school attendance measure

Policy Context

231. We recognise the impact that the pandemic is continuing to have on children's education, and although recent trends in attendance levels have been largely driven by COVID-19, there are numerous entrenched, long-standing patterns of absence which existed prior to the pandemic. The government is therefore determined to address the wider underlying causes of children not being in school because it is the best place for their development and wellbeing. The four attendance measures are:

- a. Requiring schools to have an attendance policy, and have regard to statutory guidance on the expectations of schools, academy trusts and governing bodies of maintained schools on attendance management and improvement.

- b. Introducing guidance on the expectations of local authority attendance services.
- c. A clearer more consistent national framework for the use of attendance legal intervention, including a new regulatory framework for issuing fixed penalty notices for absence.
- d. Bringing the rules for granting leaves of absence in academies in line with other state funded schools.

232. These measures are intended to deliver greater consistency of support for families across England and focus better, more targeted multi-agency support on pupils who need it most. Further, attendance support should always be offered first and only where support does not work or is not engaged with, should legal intervention be used.

Protected characteristics that are significantly impacted:

233. General considerations applying to all protected characteristics:

- a. These measures are intended to bring greater consistency of support and focus it on pupils who require it most. This is expected to help further advance equality of opportunity, help reduce any discrimination in attendance processes that pupils and parents of pupils with protected characteristics may experience, and help remove tensions and foster good relations between parents when there are perceptions, true or perceived, that certain groups may be more or less likely to: receive effective attendance support (measures 1 and 2), face attendance legal intervention (measure 3), or be granted a leave of absence (measure 4).
- b. Due to the small cohorts of pupils with certain protected characteristics in individual schools (e.g. pupils with the gender reassignment characteristic, pregnancy/maternity, certain races, religions, disabilities, or sexual orientation), encouraging schools, academy trusts and local authorities to make better use of attendance data and share best practice (measures 1 and 2) means that they are more likely to be able to spot patterns in absence and share effective practice to support the attendance of such cohorts in order to make more targeted interventions.
- c. Many respondents to our public consultation highlighted the additional barriers that pupils of all protected characteristics can face from mental ill health and emotional based school avoidance (which may or may not present or constitute a long term medical condition or disability). These proposals will help reduce any discrimination in attendance processes and advance equality of opportunity for these pupils by moving the attendance system towards a support first approach and requiring schools, trusts and local authorities to reduce or remove any barriers they may face.

- d. Moving away from blanket policies of issuing or not issuing penalty notices in particular kinds of cases which some current LA codes of conduct stipulate, to a national framework instead (measure 3), may have a small impact on parents of pupils with certain protected characteristics that historically have lower levels of attendance³¹ in LAs which historically issue very few or none³². That said, the negative consequences of missing school unnecessarily are far greater.

234. **Disability:** As pupils with certain disabilities tend to have lower levels of attendance³³, we expect our measures, which improve attendance support, to increase access to education. These measures will not set numerical attendance targets and will make clear that school attendance policies and processes, including on medical appointments and rewards if used, should account for individual circumstances and not discriminate against or between pupils with certain protected characteristics, such as those with a disability (including the overlap with pupils of special educational needs and/or long term medical conditions including mental ill health).

235. Moreover, these proposals will improve the access of pupils with disabilities and long-term medical conditions to reasonable adjustments and individual health care plans by more quickly and precisely identifying any needs or barriers to attendance and encouraging schools and local authorities to work closely with pupils and parents to put the right types of support in place.

236. This measure will require LAs to ensure that support is always offered first and will move away from blanket policies of issuing Fixed Penalty Notices, instead allowing individual case by case decisions which are bound by equalities considerations and should therefore reduce any discrimination in attendance processes.

237. **Pregnancy and maternity:** As outlined under “General considerations applying to all protected characteristics”, improved support, use of data and sharing of effective practice from these measures may benefit this group as a small cohort. Further, guidance will continue to make clear that pupils who are pregnant should be granted a leave of absence from school based on the individual circumstances to balance the needs of pregnancy (both before, during and after) and getting back to

³¹ These include, although are not limited to: pupils with mental health difficulties, long term medical conditions, physical disabilities, mixed White and Black Caribbean pupils ([DfE \(2020\) Academic Year 2018/19: Pupil absence in schools in England](#)), and pupils with intersectional impacts, for example travellers of Irish Heritage who are also classified as having special educational needs or disabilities (DfE (July 2019) [Special educational needs in England: January 2019](#)). Special educational needs are most prevalent in travellers of Irish heritage and Gypsy/Roma pupils with 30% and 26% respectively.

³² Two local authorities have not issued any fixed penalty notices in the last 6 years in which data was collected ([DfE \(2021\) Academic Year 2020/21: Parental Responsibility Measures Data](#))

³³ For example, pupils with Social, Emotional and Mental Health needs and pupils with a physical disability had overall absence rates of 9.5% and 9.2% respectively in 2018/19, compared to 4.7% for all pupils ([DfE \(2020\) Academic Year 2018/19: Pupil absence in schools in England](#)).

school as quickly as possible to reduce as far as possible any lost learning (and the wider impact on attainment, wellbeing and life chances).

238. **Marriage or civil partnership:** No impact.

239. **Race:** Certain ethnicities historically have lower levels of attendance³⁴ and so providing increased support to those who need it most should improve attendance for such groups and advance equality of opportunity through greater access to education.

240. From informal consultation, we are aware that some members of the Gypsy, Roma and Traveller community feel that certain schools authorise their absence in circumstances where other schools do not; if all schools are restricted to only granting leaves of absence in exceptional circumstances (measure 3) then this may increase the level of attendance for such groups. Further, the Women and Equalities Committee (2019)³⁵ found that some schools treat these pupils differently due to the assumption that “they will leave school early anyway and have no use for school-taught skills”, and respondents to our public consultation stressed the need for schools to consider and be sensitive to the cultural attitudes and build this into their attendance approach. Clearer expectations and greater consistency in attendance support and legal intervention (measures 1, 2, 3) should help to address this.

241. As some races and ethnicities (noting the important intersectionality with religion) are more likely than others to have pupils board overseas, family connections overseas and/or wish to make visits overseas for important religious occasions, there is potential for rules preventing leaves of absence in term time in academies (measure 4) to be perceived as unfair to pupils and parents from these ethnicities. Pupils are, however, only required to be in school for 190 out of 365 days and there remains a significant amount of time for trips outside of term time which would prevent any lost learning and the negative impacts that creates for the child. Moreover, where there are exceptional circumstances all head teachers will continue to make individual case by case decisions on leave in term time (e.g. a family emergency abroad) and should do so with cultural sensitivity. Moreover, schools and areas with high proportions of pupils of particular religions may wish to mitigate this further by considering restructuring their school year around important religious days. Measure 1 will improve understanding of this issue for pupils and parents by being clear on a) the importance of being in school and b) the process for requesting a leave of absence.

³⁴ Travellers of Irish heritage and Gypsy / Roma pupils had the highest overall absence rates at 18.0% and 12.6% respectively, and Mixed White and Black Caribbean pupils were next highest at 6.1%, compared to Chinese and Black African ethnicity pupils who had the lowest overall absence rates at 2.3% and 2.9%, respectively in 2018/19 ([DfE \(2020\) Academic Year 2018/19: Pupil absence in schools in England](#))

³⁵ [Women and Equalities Committee \(2019\) Tackling inequalities faced by Gypsy, Roma and Traveller communities found that](#) “some schools perpetuate stereotypes, assuming that there is little point in educating Gypsy and Traveller children, as they will leave school early anyway and have no use for school-taught skills”, and found “anecdotal evidence that schools were treating Gypsy and Traveller girls and boys differently, on the understanding that girls would grow up to be homemakers while boys would be working in elementary occupations”.

242. **Religion or belief:** Existing law provides a statutory exemption for days set aside for religious observance by the parents of a pupil – this means no parent is committing an offence in keeping their child off school for a major religious festival or observance. Regulations also require schools to authorise such absence, but from informal consultation and correspondence, we are aware that there are occasionally discrepancies in the granting of leaves of absence for religious observance and how it is recorded. We will seek to address these as part of measures (1, 2 & 4 and the planned modernisation of the Pupil Registration Regulations) and we therefore believe these measures will go some way to helping improve consistency for pupils and families.

243. **Sex:** As boys had marginally higher overall absence rates of 4.8% in 2018/19, compared to girls with 4.6%³⁶, improving attendance support may benefit more boys (all measures).

244. We are aware that convictions related to absence are disproportionately issued to women³⁷ and respondents to our public consultation raised the wider issue of mothers often being the primary carer and/or primary contact for schools and therefore any parental efforts on attendance often disproportionately impact on women. This is likely particularly the case for single parent families. The law guards against this in terms of prosecution and legal action by making clear the definition of parent is wider than this (in section 576 Education Act 1996), but we will explore other opportunities to test the extent of this and consider how the department can help raise awareness of this issue with schools and local authorities.

245. If measure 3 results in an increase in the issuing of fixed penalty notices in certain local authorities which do not currently issue many, then this may disproportionately impact women. However, whilst measure 3 will not specifically look to address this issue, we would expect that any long-term reduction in legal intervention due to the promotion of earlier, supportive intervention should subsequently benefit women.

246. **Sexual orientation:** Schools do not collect attendance data that shows attendance rates for pupils by sexual orientation. That said, research has shown the LGBT pupils, or pupils questioning their sexuality, are more likely to be bullied and/or suffer from mental ill health³⁸, meaning it is likely that they may face greater barriers to attendance. Measure 1 will likely have a disproportionately positive impact for advancing the equality of opportunity for these pupils by helping schools to identify patterns of absence and hold sensitive conversations to understand the causes and provide support. Where a pattern of absence prompts a conversation from school staff for a pupil uncomfortable in, or questioning, their sexuality it could have an impact on the pupil in the short term (e.g. prompting a difficult conversation at home).

³⁶ [DfE \(2020\) Academic Year 2018/19: Pupil absence in schools in England](#)

³⁷ [MoJ \(2021\) Criminal justice system statistics quarterly: December 2020](#). Outcomes by offence data tool, filtered for female (sex) and 112A Education Acts – Truancy (Offence).

³⁸ National LGBT: Survey report (Government Equalities Office - July 2018)

As respondents of the consultation who mentioned sexual orientation highlighted, this should be mitigated by sensitivity in approach and providing any additional support necessary to the extra barriers pupils with this protected characteristic face.

247. **Gender reassignment:** As with sexual orientation, the government does not collect specific attendance data for transgender pupils which means we cannot give a clear indication of their attendance versus peers who have other gender identities. Research from the UK and US has however shown that transgender pupils are less likely to feel safe in school because of their sexual orientation or how they express their gender than their peers of other gender identities³⁹, meaning they may face greater barriers to attendance. Therefore, as outlined under “General considerations applying to all protected characteristics”, improved support, use of data and sharing of effective practice from these measures may benefit this group as a small cohort.

248. **Age:** Considering absence is higher amongst secondary school pupils⁴⁰, improvements in attendance support may benefit more secondary school pupils (all measures). Further, secondary school pupils may be more likely to have access to attendance support, both because secondary schools tend to be larger and therefore may be more likely to have staff with a dedicated attendance function, and because a higher proportion of secondary schools are academy trusts and therefore they may benefit from pooled attendance staff and resources which some multi-academy trusts offer (measure 1).

249. **Intersectional impacts:** Fixed penalties and other financial sentences may continue to have a disproportionate economic impact on families from lower socio-economic groups, including intersectional groups, such as those in certain ethnic minority communities with historically higher levels of absence and living in more deprived neighbourhoods⁴¹. That said, our measures aim to ensure support is always offered first and therefore reduce the likelihood of sanctions being needed. Further, even when one is needed where support does not work or is not engaged with, the benefits of being in school continue to be greater than the negative consequences of any sanction. Moreover, requiring local authorities to move away from blanket policies of issuing fixed penalty notices will allow individual case by case decisions which are also bound by equalities considerations and families’ circumstances.

250. Where leaves of absence may currently be without restriction in academies, the measure (4) preventing this might disproportionately impact families from a lower socio-economic background, including intersectional groups such as those with lower incomes in certain ethnic minority communities, as they may be less able to

³⁹ National LGBT: Survey report (Government Equalities Office - July 2018) and Greytak, Kosciw and Diaz, *Harsh Realities: The Experiences of Transgender Youth in Our Nation’s Schools*, (2009)

⁴⁰ [DfE \(2020\) Academic Year 2018/19: Pupil absence in schools in England](#)

⁴¹ In 2019 people from all ethnic minority groups except Indian, Chinese, White Irish and White Other groups were found to be more likely than White British people to live in the most overall deprived 10% of neighbourhoods in England. [Office for National Statistics \(June 2020\) People living in deprived neighbourhoods](#).

afford to visit family or make journeys during school holidays. The department is, however, clear that all children of compulsory school age are entitled to a full-time education and the negative consequences of being out of school are more detrimental.

3. Safeguarding measures

a. Safeguarding policy impacts: summary

251. The measures regulating independent educational institutions are all judged as having low impact on businesses. The vast majority of independent educational institutions will not feel an impact. The new provisions will mainly impact on the small minority of settings which operate unlawfully without registration, are registered but do not meet applicable standards or which will be brought into the department's regulatory regime for the first time. Some measures will generate zero or negligible impact on businesses.

252. Costs incurred by businesses due to the need for these settings to **register** as independent educational institutions for the first time will be variable. If these settings choose to continue offering full-time provision, they are likely to incur direct "start-up" costs in order to meet relevant quality and safety standards to register as an independent educational institution. Alternatively, these settings could amend their provision and so avoid the need to register and not incur any costs. We think that the majority of settings are likely to choose this latter option. Therefore, we predict that the total cost is likely to be towards the low end of the range from £0 to £1.7m. The overall number of settings who will pay these costs is very small given the size of the population they serve.

253. The biggest costs to businesses from these new provisions will be incurred by settings impacted by changes to enforcement powers. There are around 2,400 independent educational institutions, and we estimate that four of these per year may face enforcement action under the new provisions. These institutions may lose out on student fees while their registration is suspended, potentially on average for approximately one term or until they can make the required changes. We estimate that this may cost £1m for each affected institution.

254. Changing how appeals against some de-registration decisions may be decided is predicted to save approximately 10 settings per year costs of Ofsted inspections. Increasing the powers available to impose a relevant restriction following an unauthorised material change may give rise to appeal costs for two settings per year. We estimate the net additional cost to the sector as a whole to be £20,000 per year for this measure.

255. Increasing the number of types of material change which require the Secretary of State's approval should have a negligible administrative impact on businesses. The types of material change will be broadly similar to those types which apply under current legislation, and the process for applying for a material change

will remain the same. The measure giving new powers to investigate has no direct costs to businesses.

256. The impact of the children not in school registration on businesses will be negligible as: not all home educators will use out-of-school education settings as part of their arrangements to secure a suitable education for their child; and fewer still are likely to be above the threshold, to be set out in regulations, which will determine when they fall within scope of the duty to supply information to the local authority on request. The threshold will specifically be targeted at those providers who are likely to provide a substantial proportion of a child's home education provision. In addition, when information is requested, this should be information that is already in possession of the provider – for good safeguarding reasons, the settings should already hold information on which children are in the setting. Whilst all out-of-school education settings are likely to incur a familiarisation time cost, only those who provide a substantial proportion of a child's education will incur reporting costs, or data collection time costs if they do not already hold this information. Due to the one-off familiarisation cost, the impact of business is estimated to be approximately £250,000 in year one, and then approximately £20,000 in subsequent years. There would only be extensive impact on an individual setting in scope if it did not comply with the duty and therefore be subject to a civil penalty which would require further resource.

257. The impact on businesses of bringing more settings (further education colleges, independent training providers, special post-16 institutions, online education providers and some independent educational institutions) within the teacher misconduct regime will be: the one-off cost of £222,184 for these settings to read and understand the teacher misconduct legislation and guidance; the small ongoing cost of £4 per prospective employee to undertake a prohibited teacher check with the Teaching Regulation Agency (because of the duty to not employ prohibited teachers); and the small unknown ongoing cost to consider making a referral to the Teaching Regulation Agency where they dismiss a teacher (or would have dismissed if the teacher hadn't resigned) for serious misconduct. The majority of these settings (Further Education Colleges, independent training providers and special post-16 institutions) are already required via their funding agreement to undertake the prohibited teacher check, and so this will be a new cost only for the small number of online education providers and independent educational institutions that will be newly brought into the regime. We do not believe that these are particularly onerous tasks as we expect that these requirements will be additional steps that settings will include within the pre-employment checks and disciplinary action they would already have conducted.

Children Not in School registration & School Attendance Order

Cost of Preferred (or more likely) Option (£m)

Total Net Present Value	£293k - 403k (10-year time horizon)
Business Net Present Value	£293k - 403k (10-year time horizon)
Equivalent Annual Net Direct Cost to Business	£34k - 47k

Table 21: Cost of preferred (or more likely) option (£m)

Policy overview

258. The department is establishing a local authority administered registration system for children not in school i.e. those that are educated otherwise than at a state or independent school (e.g. elective home education (EHE)) or in unregistered settings, or those considered to be children missing education). The introduction of the registration system will create the following duties:

- a. duty on local authorities to maintain a register of Children Not in School;
- b. duty on parents to provide information to local authorities for inclusion on their register;
- c. duty on providers of out-of-school education to provide information to the local authority in cases where they are providing education to an eligible child above a prescribed threshold (which will likely represent a substantial proportion of a child's education), or where the local authority reasonably believes them to be; or
- d. duty on local authorities to provide support to home-educating families where it is requested.

259. Currently no consistent system of local authority registration exists for electively home educated children or those in unregistered settings or those considered to be children missing education (CME). Some local authorities have a form of voluntary registration but parents are not required to provide this information. This means that government (national and local) has incomplete or poor data on numbers of children not in school or receiving home education. The only centralised collection of such information is a voluntary, annual survey of local authorities conducted by the Association of Directors of Children's Services (ADCS). The registers will enable local authorities and government to undertake existing responsibilities to ensure that all children are receiving a suitable education and are not at safeguarding risk, better understand numbers and trends, target support and

assistance where it is needed most, and inform the development of better policy in this area. There is a need to take this action now in response to growing concerns from local authorities about the increasing number of CME and EHE children, particularly as a result of the pandemic and a rise in parents opting to home-educate due to Covid-related health concerns. There are also growing concerns that some families are removing their children from school for reasons other than in the best educational interests of the child, and that because local authorities don't know where all these children are they are unable to fulfil their existing duties effectively, both to safeguard all children in their local area and ensure children are receiving an suitable education.

260. The duty on providers of out-of-school education (number 3, listed above) will require providers to confirm, on request from the LA, whether they are providing education to a child eligible for registration, as well as to provide certain information they have to the local authority in relation to the child (such as their name, address, date of birth and contact details for their parents) where they meet a certain threshold representing a quantity or proportion of a child's time or education, or where a local authority reasonably believes them to be. This is a key component to identifying children, particularly those who may be attending illegal schools. The inclusion of this duty will enhance the accuracy of the registers, by helping with the identification of children eligible for registration. It will also support local authorities in their assessments to determine if a child is receiving a suitable education, by confirming whether a child is in actuality attending an out-of-school education setting as part of their parents' arrangements home educating arrangements; as well as support local authorities to recognise and respond to instances where children may be receiving their education in illegal schools.

261. Only certain types of out-of-school settings are likely to be within scope of this duty, based on a prescribed threshold to be set out in regulations. This threshold will be targeted at those providing a substantial proportion of a child's education without any parent of the child being present, and provision will be made for those settings unintended to be caught, such as museums or informal groups of home educating parents, to be removed from scope. If a setting fails to provide information requested, or provides false information, they could be issued with a civil financial penalty.

262. We have determined that a low impact assessment should be conducted in relation to this policy measure. This is due to the low financial value of the costs we estimate may fall upon businesses that are within scope of the third duty listed above.

263. Since there will likely be a more significant impact and new burden placed on local authorities to keep and maintain a register of children not in school, funding will be provided to local authorities for the creation and maintenance of their CNIS registers totalling 11.4m in 23-24 and £7.6m in 24-25 onwards. This funding does not factor in the (fourth) duty for local authorities to provide support to home educators.

The intention is to consult on the support duty as part of the consultation on the statutory guidance that will follow. This will help identify costs and feed into a future new burdens assessment.

Viable policy options (including alternatives to legislation)

264. We have considered the following policy options:

- a. **The legislative option laid out above.** This is our preferred option as it would capture the widest range of children and settings in order to meet our objective of securing the best possible data on children not in school and help local authorities identify children missing education and in most need of assistance, in order for local authorities to better undertake their existing responsibilities.
- b. **The legislative option above, but with the exception of either one or both of the following:**
 - i. **The requirement for local authorities to share information with the Secretary of State removed.** The absence of this duty, however, would significantly limit the department's ability to use data from the registers to inform future policy creation, as it would reduce the extent to which the department could analyse or identify trends to feed into wider policy decisions. In addition, a centralised data collection would aid with the potential identification of children missing education, which would be an opportunity missed, if the department were unable to collect the data from local authorities.
 - ii. **The removal of the duty on providers of out-of-school education to supply information to local authorities on request.** Although not essential to the operation of the registers, the inclusion of the duty would help enhance their accuracy, as it will allow local authorities to be able to gain confirmation from settings that a child is attending, if parents had said it was the case. In addition, the duty will support local authorities to safeguard children, and ensure they are not missing education or attending illegal schools. Without the duty on providers, there could be scenarios of local authorities being aware of EHE children attending a particular setting, but unable to confirm this or receive information to help them identify possible children missing from their register. The exclusion of this duty would therefore significantly limit the effectiveness of the registers, and would mean there is more likelihood of children being missed.

- c. **Update and strengthen existing non-statutory guidance (2019 Elective Home Education: Guidance for Local Authorities/Parents)**, through the inclusion of one or more of the following:
- i. **Recommend and strongly emphasise the advantages of keeping a formal register of children not in school to local authorities.** However, without a duty on parents or on out-of-school education settings to supply information to local authorities, the accuracy and comprehensiveness of any registers would be significantly reduced. In addition, non-statutory guidance does not hold the same legal weight as legal duties to maintain a register or have regard to statutory guidance. It would therefore be less likely to ensure consistency of approach across local authorities, with the regards to the collection of data and maintenance of registers.
 - ii. **Advise local authorities where they could or should provide support to families.** However, as existing guidance is non-statutory, it would be less effective in changing local authorities' behaviour. As the offer of support would continue to be discretionary, it could limit the positive impact for electively home educating families and, in particular, those that would welcome additional support to ensuring they are promoting a suitable education for their child. Having a duty to provide support will mean that minimum requirements can be set by the department, so that there is more, and improved support, showing the value attributed to home education. This would not be offered to such a degree if it were discretionary.
 - iii. **Establish a voluntary data collection from local authorities to the department.** While this would provide a stronger data picture than presently available, it would not contain a mechanism to ensure the provision of high-quality data, to inform DfE's policy understanding and objectives. Government would be unable to prescribe the categories of information provided and could only accept whatever local authorities chose to provide, which may vary from area to area across the country. This voluntary system would also not be backed by the mandatory participation of families or settings providers, leaving an incomplete picture. This option would also not address the issue local authorities have raised about being unable to obtain a full picture of children not in school in their area, nor would the department be able to ensure greater consistency of data collection across local authorities.

265. The key issue with options 2 and 3 is that neither would address the safeguarding concerns that are cited by local authorities in relation to children not in school and who are not known to be home-educated. Safeguarding partners (e.g.

local authorities, ADCS, LGA, Ofsted) have called for the introduction of a registration scheme for children not in school to ensure both that children are safe and not receiving an unsuitable education. The best way to achieve this goal is for the duty to maintain a register to be a statutory duty and for there to be duty upon parents and certain providers of out-of-school education to supply the requested information to it.

Impact on key groups

266. Local authorities will be affected as they will require some level of additional infrastructure or resource to create and maintain their registers and devise feasible ways in which they can provide support where it is requested. However, most local authorities already have a form of voluntary registration in operation. A New Burdens Assessment has been completed to ascertain the level of cost burden that these duties may create and how funding could be made to help implement and maintain the statutory registers. As referenced in the 'Policy overview' section, a further New Burdens Assessment will be undertaken for the local authority support element of the measures.

267. Parents will be affected as they will now have to inform the local authority of their intention to home educate, where currently no such obligation exists. We believe that this small burden is justified to ensure children are receiving a safe and suitable education. It would bring EHE into line with school provision where pupils are registered with the school, ensuring all children are registered in one form or the other. Providers of out-of-school education, where they meet a prescribed threshold representing a proportion or quantity of a child's time or education (or where a local authority reasonably believes them to be) would also be subject to a duty to share relevant information with a local authority, when requested. We would not expect this to result in any additional burden in terms of data collection, as settings should already be collecting this information, in line with basic safeguarding standards, outlined in the department's guidance ['Keeping children safe in out-of-school settings: code of practice'](#). However, as these settings are unregulated, we do not currently have a solid evidence base to determine that our measures would have a minimal impact on them. That said, we are able to extrapolate from our evidence of similar, regulated settings, where we assess there will be a minimal impact from these measures.

Direct Costs to Business or charity

268. We do not have detailed data on settings that may be in scope. The department has previously estimated that there could be around 100,000+ out-of-school settings (OOSS), based on figures available to us in relation to the sports,

youth, education and faith sector. Many of these settings will not be in scope of our proposals (for instance the 75,000+ sports clubs, Sunday schools, etc.) on account of not providing a substantial amount of education to children not in school. We have calculated that over 1.25 million children are likely to receive a form of tuition (whether that be a centre or with a tutor). However, there are extensive limitations to this data, which require caution, in part because there is no requirement for any of these types of settings to formally register (e.g. with Ofsted or the Local Authority), and because there is a potential for double counting.

269. In addition to those services provided at a particular non-school setting, some children will also be receiving their education from a provider at that child's own home in the form of private tuition. It is proposed that these tutors should also be subject to the duty to provide information to local authorities where it is requested. We estimate that this cohort could add up to between 70,000 and 100,000 further education providers to the 100,000 settings referred to in the previous paragraph, giving an estimated total of 175,000-200,000 providers who would be subject to the duty to provide information for the CNIS register.

270. The Association of Directors of Children's Services (ADCS) estimate of children who are home educated is 81,196 (as of 7 October 2021), but again the data on this is unreliable due to parents not being required to register their children when home educating nor a consistent approach across local authorities. Not all of these children will be attending out-of-school education settings for a substantial proportion of their education, as their education may take place entirely at home or they may not attend these settings regularly.

271. It is not envisaged that businesses/charities will bear any additional costs in order to comply with their duty to supply information to local authorities where they meet a prescribed threshold (or the local authority reasonably believes they do). The information would not be supplied proactively, and instead would only be shared on request of the local authority. The information that will be requested is information that these businesses/charities should possess about children in their care anyway (name, address, parent details, etc.) as per '[Keeping children safe in out-of-school settings: code of practice](#)' (albeit this is not legally mandated on account of out-of-school education settings being unregulated) and so any increased impact should be minimal. Providers would only be required to provide any relevant information they hold to the local authority.

272. We assume there are potentially three types of costs to providers of out-of-school education associated with the new legislation:

- a. **Familiarisation time:** All providers of out-of-school education will need to familiarise themselves with the new legislation, to check whether any actions apply to them or not.
- b. **Reporting time:** Providers of out-of-school education who meet the prescribed threshold must supply relevant information to the LA on request.

- c. **Data collection time:** If providers of out-of-school education are not already collecting the data required for inclusion on the register, then settings may spend time collecting this data.

273. Whilst all providers of out-of-school education will likely incur a familiarisation time cost, only those who meet the prescribed threshold to be set out in regulations (which will likely be targeted at those providing a substantial proportion of a child's education with no parent present) will incur reporting time, or possible data collection time, costs. We are uncertain how many providers of out-of-school education already collect the required data (although expect most will already), therefore we have considered the overall cost of the legislation both with, and without, a new data collection time burden for these settings.

274. In order to quantify these costs across the system, we assume the following time demands on a provider of out-of-school education from the new legislation:

- a. 15 minutes familiarisation time per setting; this is a one-off cost in the first year
- b. 5 minutes reporting time per student; this is an annual cost
- c. 10 minutes data collection time per student; this is an annual cost

275. We assume that these tasks draw on administrative staff time, who are paid at minimum wage.

276. Estimated annual costs are shown in the table below, presented in 2022 prices. The largest cost is incurred in the first year, due to the cost of familiarisation with the legislation across all settings; this cost remains small, however, particularly on a per setting basis (£2.57 per setting). In all following years, the cost of the legislation to out-of-school education settings is very small.

	Year 1	Year 2 onwards
Incl. data collection	£256,784	£19,284
Not incl. data collection	£243,928	£6,428

Table 22: Estimated costs

277. Reassuringly, whether data collection costs are included or not, there is only a minimal impact on total costs; as such, our uncertainty over how many settings might need to collect new data should not be of concern.

278. If we appraise this regulation change over 10 years, the present value of the costs to business is between £293,000 and £403,000.

Wider Impacts and Transfers

279. As outlined above, any impact on businesses will be negligible as (1) not all home educators will use out-of-school education providers as part of their arrangements to secure a suitable education for their child; (2) fewer still are likely to be above the threshold, to be set out in regulations, which will determine when settings fall within scope of the duty to supply information to the local authority on request – as the threshold will specifically be targeted at those providers who are likely to provide a substantial proportion of a child’s home education provision, without the presence of a parent; and (3) when information is requested, this should be information that is already in possession of the provider. In addition, the legislation will only require them to supply any information they already have in relation to a child to the local authority. There would only be extensive impact should a setting in scope not comply with the duty and therefore be subject to a civil penalty which would require further resource.

Impacts on Small Businesses

280. Small businesses (i.e. certain out-of-school education providers above the prescribed threshold) would have minimal or no burden placed on them beyond the provision of relevant information about certain children attending their setting. This is information that they should possess for safeguarding purposes. This should therefore only involve bare minimum costs of correspondence with the local authority (i.e. the time it would take to source information and send an email or letter), if any additional cost to current operations at all.

Implementation and evaluation

281. Officials have conducted a Public Sector Equality Assessment in relation to these proposals. It determined that no individuals or groups will be discriminated against nor disproportionately affected by the measures on the basis of their protected characteristics when they are implemented.

282. Local authorities’ adherence to their duties will be assessed by Ofsted in line with existing inspection and evaluation procedures.

283. Parents who fail to provide information required, or provide false information, will leave the local authority able to make an assessment under relevant provisions of the Education Act 1996 that a child is not receiving a suitable education and commence the procedures for issuing a School Attendance Order for that child. Where an Order is made and not complied with, the recipient may be prosecuted in line with existing law.

284. Providers of out-of-school education providing education above a prescribed threshold, who fail to provide required information may be issued with a financial penalty notice. This amount will be prescribed in regulations, and would only be

enforced if requests, notices, and warnings for information was not adhered to. As part of the department’s data collection, we will ask local authorities to provide data on the number of requests they have made to providers and/or amounts issued with penalties for non-compliance, so we can evaluate the potential impact.

Independent Educational Institutions (IEI): Registration requirements

Cost of Preferred (or more likely) Option (£m)

Total Net Present Value	[£0, £1,683,285]
Business Net Present Value	[£0, £1,683,285]
Equivalent Annual Net Direct Cost to Business	[£0, £195,556]

Table 23: Cost of preferred (or more likely) option (£m)

Policy overview

285. It is a criminal offence under section 96 of the Education and Skills Act (“the 2008 Act”) to conduct an independent educational institution if that institution is not registered with the Secretary of State. There are some very ‘school-like’ settings which provide education on a full-time basis which can currently operate without the need for registration because the teaching they offer is so narrow that they are not considered to be an educational institution. They are not subject to the system of regulation under Chapter 1 of Part 4 of the 2008 Act; they are not subject to inspection, nor is it a criminal offence to conduct such a setting. This creates a safeguarding risk because the children attending these institutions are not attending registered settings which are subject to standards related to welfare and regular inspection against such standards; these settings provide no assurance as to the quality of education provided or suitability of staff employed or the quality of the leadership and management.

286. We intend to reduce these risks by amending the definition of an independent educational institution, so that any setting which provides full-time education to five or more children (or one with special educational needs, or who is ‘looked after’) will be required to register with the Secretary of State (or change their provision to reduce, for instance, the amount of education offered), or be committing an offence if they do not. Once registered these settings will be subject to regular inspection

against relevant standards relating to, for example, the quality of education offered, or the suitability of staff employed.

287. The intention is that almost all settings which are attended full-time by children of compulsory school age are caught by our regulatory regime. This will help us ensure that all children receive a safe and effective education.

Viable policy options (including alternatives to legislation)

288. These proposals are based on our experience of operating under the current regulatory regime in Chapter 1 of Part 4 of the 2008 Act and interacting with full-time, 'school-like' settings which currently do not need to register.

289. The only other option is to do nothing and maintain the existing regime. This would mean that some settings which provide education to children of compulsory school age could continue to operate without a suitable system of regulatory oversight. This means that there is inadequate assurance as to the quality of education provided by the settings, the suitability of the staff employed or the quality of leadership and management. These settings would continue to pose a safeguarding risk and may diminish the life chances of the children attending.

Impact on key groups

290. The settings which will become regulated will in very many cases be institutions which currently provide a very narrow, predominantly religious education to conservative faith communities, especially some Charedi Jewish communities concentrated in Manchester, Gateshead and (particularly) North London/Essex.

291. The impact of this measure will significantly impact on these communities, those within the communities who operate and conduct these settings, and the children within them who attend these religious-education settings. The number of these settings is unknown since, by definition, they operate without our oversight. However, as a guide, in 2015 the Interlink Foundation, an Orthodox Jewish charity, using numbers from the 2011 census estimated the number of strictly Orthodox Jews to be between 30,900 and 43,500 depending on definition. Given the relatively high birth-rate of this community, we have a working estimate that the current Orthodox Jewish population of England is around 50,000.

292. Set against this, not all of these individuals will make use of institutions that fall outside the regulatory system to educate their children. There are some independent educational institutions of a Charedi Jewish religious character already registered with the Secretary of State and some children of a Charedi background may attend non-religious schools. We have no reliable estimate of the number of people (adults and children) impacted by this change. However, the total number

should be small, and definitely fewer than 50,000, and the number of settings impacted should be commensurate with the provision of education to this population.

293. There are two possible positive outcomes from these changes. Those running the affected institutions can either (a) register, meeting all relevant standards with regards to, among other things, safeguarding and education, or (b) reduce the hours that they operate, or otherwise change their educational provision so that they need not register. Scenario (a) would be a positive outcome for the children attending these settings since for example, the quality of the education they receive is likely to be better and greater assurance can be given as to their welfare, for instance, regarding the safety of the buildings in which they learn. Scenario (b) may also be a positive outcome if it means that the children attend a registered institution during normal school hours and attend these settings for ‘supplementary’ education only.

Direct Costs to Business or charity

294. The proprietors of the settings impacted by this proposal are usually owner-proprietors or registered charities. Any costs created by this proposal will be paid by these individuals/groups. Some potential identified costs occur if the settings seek registration in response to these changes. There is a fee payable to Ofsted (currently £2,500) for the necessary pre-registration inspection, plus ancillary costs if before registration the setting needs to purchase new textbooks, train staff and repair/improve buildings etc. These ancillary costs cannot be reliably estimated since they are case-dependent but to note that the settings which we know about and which do not currently need to register, often have premises which are in a poor state of repair.

295. Such costs are already paid by registered independent schools. The overall number of settings who we anticipate will pay these costs is very small given the size of the population they serve, and not paying these costs by not operating “full-time”, obviating the need to register, is a viable option.

Wider Impacts and Transfers

296. Any wider impacts are likely to be most experienced by independent schools and maintained schools in the Manchester, Gateshead, and Hackney areas if the impacted settings in these areas respond to this measure by ceasing to provide “full-time” education and so are not required to register. In this scenario, the children who previously attended the institution may need to attend elsewhere for their education. This may create pressure for places at schools nearby, especially registered independent schools which educate in line with Charedi Jewish teaching.

297. However, this scenario (children attending registered settings and only using Yeshivas for supplementary education) appears unlikely given the nature of the

Charedi Jewish communities. A more likely outcome is that the children who currently attend Yeshivas will be classified as electively home educated, attending the Yeshivas on evenings and weekends.

298. Regardless, the numbers involved in such a scenario are expected to be small albeit concentrated in specific geographic areas.

Impacts on Small Businesses

299. We assume the impact on small business will be the costs to unregistered settings of responding to this policy change; no other businesses are affected by this policy. These settings can either choose to adjust their hours of operation so that they do not need to register or choose to formally register.

300. In terms of the number of settings affected, we assume this is in practice could be close to the total number of settings in the ultraorthodox Jewish community. Given the lack of information available, we have had to make some rough assumptions to estimate this total. We took the upper size limit of the community – 25,000 individuals (for source, see “Impact on key groups” box) – to avoid underestimating costs. We then use evidence on the child: adult: elderly ratio in ultra-orthodox Jewish communities to calculate that c. 49% of these individuals are children. Based on an illustrative example of the size of a setting – c.450 students in Yeshiva Luzern – we approximate that these costs apply to 27 settings.

301. We consider the costs of all affected institutions adjusting their hours and all affected institutions formally registering, because these reflect the lower and upper bound of the impact on small businesses.

a. Adjusted hours: If we assume all settings just adjust their hours of operation to outside standard school time, then there are no costs (the education that happens does not change, only the timing of it in the day). However, note that there may be increased costs to the public sector if children decide to go to mainstream schools alongside other settings. This may be somewhat counterbalanced by the added educational benefit of children receiving a better quality of education. The present value of the impact on small businesses is £0.

b. Formal registration: If settings choose to register, they will need to prove their ability to meet the applicable standards, for example, relating to the curriculum and building standards. As such, if these standards are equivalent to those in the current independent school standards, there will be significant costs in terms of teacher time, building adjustments. There will also be inspection fees. We have estimated these “start-up” costs for settings to register as just over £60,000. Given our estimated number of settings, we estimate the total cost to small business could be around £1.7m.

302. Overall, we find the cost to small businesses will be somewhere in the range of [£0, £1.7m]. However, given the high cost of registering we expect many settings

to merely change operating hours; as such, we assume the total cost will be realised towards the low end of this range.

Implementation and evaluation

303. We have a pre-existing relationship with various groups representing some Jewish faiths. The success of this policy will be judged through engagement with these groups as well as by monitoring the number of institutions who seek registration in response and the number of settings who are identified as operating unlawfully without registration.

IEI: Material Change and De-registration appeals

Cost of Preferred (or more likely) Option (£m)

Total Net Present Value	£172,160
Business Net Present Value	£172,160
Equivalent Annual Net Direct Cost to Business	£20,000

Table 34: Cost of preferred (or more likely) option (£m)

Policy overview

304. All independent educational institutions must register with the Secretary of State for Education. Institutions which are registered must meet the Independent School Standards, and where applicable the Early Years Foundation Stage (the Standards). Institutions which fail to meet the Standards can face enforcement action up to and including removal from the register, or “de-registration”, under section 116 of the Education and Skills Act 2008 (“the 2008 Act”). In addition, institutions which wish to vary the details of their registration in specified ways (for example, to increase their capacity) must apply to the Education Secretary for approval to make a ‘material change’.

305. We wish to change the basis upon which certain appeals against de-registration decisions made by the Education Secretary may be decided. The effect is that if the Education Secretary makes a de-registration decision under section 116

of the 2008 Act and that proprietor appeals the decision and certain conditions are met, that appeal will be considered on the basis of judicial review principles (i.e. the First-tier Tribunal will review the Education Secretary's decision at the time it was made and decide whether to uphold it). If those conditions are not met, the proprietor may still exercise the existing right to appeal under section 124 of the 2008 Act and their appeal will be decided on the basis of a full-merits review (i.e. the First-tier Tribunal will review the evidence at the time of the hearing and decide whether to uphold the decision, deciding for itself whether de-registration is appropriate).

306. We also wish to change the material change regime in the 2008 Act so that more types of changes, under that Act, require the Secretary of State's approval and increase the powers available to the Education Secretary to impose a relevant restriction upon a proprietor of an institution where there has been an unauthorised material change.

Viable policy options (including alternatives to legislation)

307. Proposals are based on experience of operating under the current regulatory regime. The only identified alternative option would be to do nothing.

308. Doing nothing would allow identified faults in the current system to continue. It is in the public interest that appeals against de-registration decisions of long term, persistently failing institutions are resolved expeditiously, as whilst an appeal is pending a school (which is potentially subjecting pupils to substandard safeguarding and education) remains open. A judicial review may be resolved more swiftly than a full-merits appeal, as it only involves a review of the Education Secretary's decision at the time it was made, as opposed to a full-merits review, which ordinarily requires the commission of another inspection to allow the First-tier Tribunal to consider contemporaneous evidence at the hearing. In addition, the only current enforcement power available for an unauthorised material change is de-registration, which is often disproportionate. The power to impose a relevant restriction would give the Education Secretary a more proportionate option for enforcement, where necessary.

Impact on key groups

309. Key groups identified are the proprietors of those institutions which face de-registration, and the children (and their parents) attending these settings. The intended impact will be that de-registration decisions against long term, persistently failing institutions which do not meet the Standards (and could be unsafe) will take effect more quickly meaning that the children attending will go elsewhere, hopefully to a safer site with better education.

310. There are very few institutions which face de-registration so the numbers impacted are small.

311. The same will apply for relevant restrictions which may be imposed upon proprietors where there has been an unauthorised material change. The intended impact is that proprietors will ensure the operation of the institution falls into line with that for which it is registered.

Direct Costs to Business or charity

312. Most independent educational institutions are operated by charities or businesses, so any move to make it easier to take effective enforcement action against these institutions or impose greater regulatory requirements on them (by requiring the Education Secretary's approval to more changes) will lead to a nominal administrative cost on these charities/businesses. In the case of increasing the number of types of change which require the Education Secretary's approval, we expect the administrative cost to be negligible as notification of a material change can simply be in the form of a brief email, such as "can we increase [our capacity] from [50] to [100]". Applications for material change approval often necessitate an OFSTED inspection. However, institutions are not currently required to pay for OFSTED material change inspections. We expect legislation to be amended in the future (approx. 18 months) so that institutions are required to pay a fee for these inspections, but we have not included these costs in this LIA as they are not relevant at this time.

313. There may be an increase in the costs to institutions incurred as a result of appeals made by them in relation to decisions by the Secretary of State connected to material changes. Institutions may appeal against refusals to approve a material change and in the case of unapproved material changes, a new power is to be provided to the Secretary of State to impose a restriction on the institution's operation. We estimate that two institutions per year may incur these costs, which we estimate to be £25,000 (based on DfE's budgeting for such appeals).

314. In contrast to this, the system by which certain appeals against de-registration are heard will be streamlined, resulting in savings to institutions by removing the need for further inspections. We estimate this to result in £3,000 savings per institution up to approximately ten institutions. The net additional cost to the sector per year therefore is £20,000.

Implementation and evaluation

315. Policy intention is to improve existing regulatory regime. Success of this policy will be judged through individual cases which are subject to this proposed new regime. Key metrics will be time taken for institutions to meet the Standards (or time spent not meeting the Standards) and/or for certain institutions that meet the above

conditions to be de-registered following a decision under section 116 of the 2008 Act while under enforcement action.

IEI: Enforcement

Cost of Preferred (or more likely) Option (£m)

Total Net Present Value	£34.4m
Business Net Present Value	£34.4m
Equivalent Annual Net Direct Cost to Business	£4m

Table 25: Cost of preferred (or more likely) option (£m)

Policy overview

316. All registered independent schools are inspected against the Independent School Standards (and where applicable the Early Years Foundation Stage). Schools that fail to meet these standards can face regulatory action, up to and including de-registration (which in effect means they need to close). We wish to increase the department's regulatory options with regards to any independent schools or other independent educational institutions which fail to meet the standards.

317. There are presently situations where regulatory action cannot be effectively taken, where there is a risk of harm to students at an institution, because our existing options would not be an appropriate response or would be disproportionate. This means that institutions, which do not meet the standards but which because of this pose a risk to students, can remain open for lack of viable alternatives.

318. We are therefore proposing that the Secretary of State is given an additional enforcement power with regards to independent educational institutions which do not meet the standards. This would be a power to temporarily suspend registration where the Secretary of State considers that students are at risk of harm.

Viable policy options (including alternatives to legislation)

319. The only alternative option would be to do nothing and make no changes. We have identified the changes as necessary based on our experiences operating the existing regime since 2016 and attempting to take regulatory or enforcement action against independent schools. From this experience, we have identified the need for greater flexibility in the department's potential response to institutions which do not meet the standards. To make no change would perpetuate current problems where action cannot be taken against potentially unsafe schools for lack of viable options for enforcement.

Impact on key groups

320. The only group(s) impacted by these measures will be those running those institutions which are failing to meet the standards, and the children (or parents of children) attending these institutions. The impact will be positive overall in that the intention is that institutions can and will more readily and consistently meet the standards.

321. The number of children impacted by these measures is expected to be small. As of February 2022, there were eight schools catering for approx. 2,800 pupils under ongoing enforcement action.

Direct Costs to Business or charity

322. In cases where institutions have their registration suspended due to not meeting the standards, they will be impacted by not receiving student fees during this time, until they have made the required changes and demonstrated they will be able to meet the standards and are then able to reopen. We have estimated that, on average, institutions would have their registration suspended for a maximum of one term, the number of pupils per institution to be 300, and the fee per pupil to be £10,000 a year (upper bound). On average this results in a cost of £1m per institution impacted. We estimate that 4 (of 2,410) institutions will be impacted per year, resulting in a total cost to the sector per year of £4m. Across a ten-year period, the total discounted cost to the sector is estimated to be £34.4m.

323. The new enforcement provisions may have a deterrent effect on some institutions, encouraging them to make changes and improvements to comply with the required standards before enforcement action is taken. There may be some indirect costs for these changes and improvements, but we are unable to estimate these both in terms of their timeframes and costs involved, as this will depend on what standards need to be improved and how. Examples might be making repairs to

a building, employing teachers or additional staff training. Any such costs will be paid by the proprietor of these institutions, which tend to be businesses or charities.

Wider Impacts and Transfers

324. Wider impacts will be felt if more children attend institutions which consistently meet the standards and as a result receive a better, safer education. However, the overall number of such children is small so the wider impact is expected to be small.

Implementation and evaluation

325. The policy intention is to improve existing regulatory regime. The success of this policy will be judged through individual cases which are subject to this proposed new regime. Key metrics will be time taken for institutions to meet the standards (or time spent not meeting the standards) and/or close while under enforcement action.

IEI: Power to Investigate and Data sharing

Cost of Preferred (or more likely) Option (£m)

Total Net Present Value	N/A
Business Net Present Value	N/A
Equivalent Annual Net Direct Cost to Business	N/A

Table 46: Cost of preferred (or more likely) option (£m)

Policy overview

326. It is a criminal offence under section 96 of the Education and Skills Act 2008 (“the 2008 Act”) to conduct an unregistered independent educational institution (“an independent school”). Section 97 of the 2008 Act permits Her Majesty’s Chief Inspector of Education, Children’s Services and Skills (“Ofsted”) to conduct no notice inspections of suspected unregistered independent schools, and grants powers to Ofsted inspectors which they can use during these inspections (broadly, to ‘enter and inspect’ the premises and take copies of documents found).

327. It is also a criminal offence under sections 118, 121 and 127 of the 2008 Act for a proprietor of a registered independent educational institution to breach a “relevant restriction” (a requirement imposed on a proprietor under section 116 as a form of enforcement action).

328. The purpose of the measure is to facilitate improved inspection of settings which are believed to be operating unlawfully.

[Viable policy options \(including alternatives to legislation\)](#)

329. We wish to increase the powers available to investigate, prosecute and sentence criminal offences under Chapter 1, Part 4 of the 2008 Act. Our intention is to allow more ‘intrusive’ activity which can better gather evidence to determine whether an educational setting is operating unlawfully as an unregistered school or is otherwise committing a criminal offence in Part 4 of the 2008 Act. Other minor changes will make it easier to prosecute those suspected of committing this offence. Increasing the powers will mean that during investigations of this type it will be permitted to search for and seize (take away) evidence, make recordings. An obligation will be placed on those present during an inspection to provide specified documentation, information, facilities and assistance.

330. In addition, we plan to increase the maximum penalty of obstructing Ofsted inspectors during an investigation into a suspected offence under Chapter 1, of Part 4 of the 2008 Act and increase the limitation period for bringing a prosecution for an offence under Chapter 1 from six to twelve months.

331. The current proposal is based on experiences of operating the current inspection regime (as contained in the 2008 Act) since 2016. The other option is to continue to operate under the existing powers, do nothing and maintain the existing regime. This would perpetuate current problems where unlawful (and unsafe) settings can easily avoid detection by refusing to make evidence available to inspectors who are unable to search for it themselves. The precise additional powers proposed are in line with those already available to other non-police Government inspectorates (such as the Health and Safety Executive and the Environment Agency). We therefore consider that this policy introduces a proportionate suite of powers to identify, investigate and prosecute criminal activity.

[Impact on key groups](#)

332. The main impacted groups will be those running unlawful sites who will no longer be able to avoid detection by hiding, or impeding the discovery of, evidence and the children attending these schools. There is no one group or community which operates unregistered schools or schools which operate in breach of a relevant restriction.

333. The main benefit of this change will be experienced by those children who currently attend an unregistered school or a registered school operating unlawfully. By making it easier to target and prosecute those running unregistered settings, we aim to encourage all children to attend a registered setting which is subject to regular inspection and thus provides assurance that the setting is providing education in line with the contents of the relevant standards, for example with regards to the quality of education provided, the welfare of children attending, and the suitability of staff employed.

334. We have no figures on the number of unregistered schools currently in England since by definition these schools operate 'off-grid'. We (DfE and Ofsted) have identified 114 settings operating unlawfully since 2016, but the majority of these comply with our registration requirements upon detection.⁴² We therefore anticipate that the number of inspections which identify a school operating unlawfully and where the proprietor seeks to hide evidence of this – necessitating an intrusive inspection to gather evidence to support a subsequent prosecution - to be small.

335. Since we began operating our regime there have been a handful (8-12) inspections where these additional powers would have been used if they were available at the time. This figure is a combination of settings which have been inspected but no conclusive evidence could be found ⁴³, settings which have not yet been inspected because, for instance, entry to the premises has been refused and settings where no inspection has been attempted in anticipation that inspectors entry would be refused.

336. We do not know how many new settings will open and operate unlawfully and, upon inspection, act in such a way as to necessitate an intrusive inspection. However, based on the evidence gathered since 2016 there is no reason to believe that there will be large numbers of such settings.

Direct Costs to Business or charity

337. No direct costs identified. To date, individuals, small businesses, including those registered as charities have been prosecuted for breaching s96 of the 2008 Act. It follows that the impacts of this policy will be felt by individuals, businesses or charities acting unlawfully, rather than the sector(s) as a whole.

⁴² All figures taken from Ofsted, Unregistered schools management information - 1 January 2016 to 31 August 2021: link [here](#)

⁴³ Four settings where "No further action taken", from tab 3 of the above

Wider Impacts and Transfers

338. The overall policy intention is to reduce the number of criminal offences committed under Chapter 1 of Part 4 of the 2008 Act, and the number of compulsory school age children affected by such offences. This will be achieved by either encouraging settings to register with the Secretary of State, by closing unregistered schools so that the children attending learn elsewhere and/or by more effectively investigating and prosecuting breaches of relevant restrictions. There may be some wider pressures on school places at registered schools if the children currently attending unregistered sites start to attend these; however, the numbers involved are very low. In 2019, Ofsted estimated that there were 6,000 children currently attending an unregistered school. Since then, we have identified more unlawful and potentially unlawful settings, which leads us to think that the figure of 6,000 is an underestimate. Separately, according to DfE's records around 3,000 children attended a registered school under active enforcement action (who therefore could feasibly breach a restriction placed on them) (figures accurate Jan 2022).

Impacts on Small Businesses

339. Persons conducting unregistered independent educational institutions and proprietors breaching relevant restrictions may include small businesses.

340. We assume there are currently approximately 12 settings which may be operating unlawfully but evading a full inspection (there are four settings known to us but which we have been unable to inspect thoroughly due to limitations in our current regime). We estimate that there are a similar number of settings which we know of but have not inspected in anticipation that our current powers will prevent effective investigation, and a similar number of settings not yet known to us but where intrusive inspection powers would be necessary in order to gather evidence. We also assume that in the future, new unlawfully operating settings may continue to emerge in spite of the legislation. No other businesses will be impacted by this regulation. No new regulatory burdens are being imposed as these measures improve an existing regime.

Implementation and evaluation

341. Department for Education officials meet regularly with colleagues from Ofsted to review all inspections conducted under section 97 of the 2008 Act and inspections of registered schools suspected of operating unlawfully. These meetings review each inspection carried out into suspected unregistered schools and provide an opportunity to assess the effectiveness of the regulatory regime for independent schools and will monitor the impact of these changes.

Teacher misconduct

Cost of Preferred (or more likely) Option (£m)

Total Net Present Value	N/A
Business Net Present Value	N/A
Equivalent Annual Net Direct Cost to Business	£0.2m (£222,184)

Table 57: Cost of preferred (or more likely) option (£m)

Policy overview

342. The current teacher misconduct legislation gives power to the Secretary of State for Education to consider and decide on cases of serious teacher misconduct and to determine whether prohibition from teaching is appropriate. A prohibition order prevents individuals from carrying out teaching work in a range of specified educational establishments. The Teaching Regulation Agency operates the teacher misconduct regime and exercises this power on behalf of the Secretary of State.

343. Legislation sets out the framework within which the regime must operate, and this includes defining those to whom the regime applies. Currently in order to be within scope of the teacher misconduct regime an individual must be employed or engaged to undertake teaching work (as defined in regulation 3(1) of the Teachers' Disciplinary (England) Regulations 2012) within a specified setting (specified settings are currently a school, sixth form college, 16-19 Academy, relevant youth accommodation or children's home). It also sets out that the Secretary of State may investigate a case where an allegation is referred to him.

344. A Judgement in the High Court narrowed the interpretation of the teacher misconduct legislation to only permit referrals to be considered by the Teaching Regulation Agency if the teacher was in employment when the misconduct was committed or when the referral is made.

345. If an individual commits misconduct whilst they are employed at a setting not currently defined in legislation, that misconduct also cannot be investigated by the Teaching Regulation Agency.

346. Additionally, the Secretary of State is not able to investigate cases of misconduct where that misconduct is referred by a DfE official – all referrals must come from outside of the department. This presents difficulties in some instances where DfE officials are aware of misconduct, but no referral is made by a third party – often because the third party assumes that someone else will make the referral, or

because the matter is so high profile that they believe the Secretary of State will be aware and already investigating.

347. All of the above limitations currently placed on the teacher misconduct regime by the legislation mean that there are currently potential cases of serious misconduct that the Teaching Regulation Agency is not able to investigate, and which we believe should be within scope of the Teaching Regulation Agency in order to afford the same level of protection and safeguarding to pupils wherever they receive their education.

348. The overarching objective of the teacher misconduct regime is to protect and safeguard pupils, maintain public confidence in the teaching profession, and uphold proper standards of conduct, whilst ensuring the regime is operated fairly and with maximum efficiency. Educational establishments that are subject to the teacher misconduct regulatory regime are required to not employ prohibited teachers (which requires a specific check to be made with the Teaching Regulation Agency to establish whether or not an individual is prohibited) and are also required to consider making a referral to the Teaching Regulation Agency when they dismiss a teacher for serious misconduct.

349. An internal review of the teacher misconduct regime was undertaken in 2017, which included independent scrutiny and review, to ensure existing policy arrangements were effective in meeting the objectives of the regime and properly took account of the various options for young people to receive education (in particular, those in the 14-19 age group who are increasingly choosing to study in further education settings).

350. The review identified a range of opportunities to make procedural improvements without the need for legislative change, and where possible these have already been implemented. For example, all funding agreements issued by Education and Skills Funding Agency (including to Further Education colleges, Special Post-16 Institutions and Independent Training Providers) now contain a clause which prevents them from employing a prohibited teacher to undertake teaching work with students under the age of 19.

351. However, other more significant changes can only be implemented through legislative change.

352. The increase in the range of institutions providing education to students under the age of 19, in particular the increase in online education over the last two years of the pandemic, has also highlighted that these sectors currently fall outside of the teacher misconduct regime.

353. Changes to legislation are necessary to extend the scope of the teacher misconduct regime, by ensuring that the Teaching Regulation Agency is able to consider the misconduct of teachers regardless of how long ago the teacher last taught, regardless of the type of provider, and regardless of how the misconduct comes to light and is referred to the Teaching Regulation Agency.

354. This will ensure that we provide the highest level of protection and safeguarding to all pupils throughout their time in education and regardless of where they access that education.

Viabale policy options (including alternatives to legislation)

355. We have considered the following policy options:

a. **Option 1:** Do nothing.

i. To make no changes would mean that the cohort of children and young people who are receiving education at a Further Education college, Special Post-16 Institutions, Independent Training Providers, online education provider or some independent educational institutions do not have the same protection and safeguarding as those who study in a school or other setting that is already covered by the teacher misconduct regime. Those who receive education at the settings we propose including within the regime are often some of the most vulnerable young people or are students pursuing vocational or technical education not available in a school or sixth form college. It is important that these students are given an equal opportunity to be taught by a suitable teacher. A key consideration in determining whether prohibition is appropriate is whether it is in the public interest to do so, and such public interest considerations would include the need to protect pupils and students.

b. **Option 2:** Seek voluntary agreement from online education providers not to employ prohibited teachers; and continue to take necessary action to remind third parties that cases of serious misconduct could be referred to the Teaching Regulation Agency.

i. Further Education colleges, Special Post-16 Institutions and Independent Training Providers are already prevented (via a clause in their funding agreement) from employing prohibited teachers, and we expect that a similar requirement will be included in the criteria for the Online Education Accreditation Scheme which is expected to launch later this year (2022) to give accreditation to online education providers (but this would obviously only apply to those who successfully register with the scheme).

ii. Seeking similar voluntary agreements with those not within the Online Education Accreditation Scheme and with the Independent Education Institutions not currently covered by the misconduct regime would probably require negotiation with individual providers and would therefore be particularly resource intensive for the

provider and for DfE, and there would be no power for DfE to be able to challenge if the provider reneged on the agreement.

- iii. Also, whilst this option would help to ensure that all of these education institutions do not employ prohibited teachers, it would not give the Teaching Regulation Agency jurisdiction to consider serious misconduct of individuals employed in these settings.
- iv. Additionally, this option does nothing to enable the Teaching Regulation Agency to accept referrals from DfE officials who identify serious misconduct in the course of their normal duties. It would mean we would still need to rely on third parties being aware of the misconduct and making a referral to the Teaching Regulation Agency.

c. **Option 3: Make Legislative changes.**

- i. Extending the scope of the teacher misconduct regime, to cover additional institutions where 14-18 year olds are increasingly taught, broadens the protection provided to pupils and students by the regime. It provides additional certainty in respect of the standard and suitability of individuals who will be permitted to teach young people in all settings where those under the age of 19 are most likely to be accessing their education. This will give parity of treatment for all young people in education.
- ii. Only by amending legislation can we provide certainty that online education providers, all Independent Education Institutions, Independent Training Providers, Special Post-16 Institutions and FE colleges will engage fully with the teacher misconduct process, including considering and then making referrals to the Secretary of State thereby giving the Teaching Regulation Agency authority to investigate those referrals. We believe that this certainty is vital in order to properly protect and safeguard both the interests of the pupil and the pupil themselves.
- iii. Removing the current requirement, which stipulates that in order to investigate and consider whether to prohibit an individual from teaching the Secretary of State must receive a referral from a source external to the DfE, requires an amendment to primary legislation. The existing legislation sits within the Education Act 2002 and cannot be amended by any other method.

356. It is for these reasons that we consider Option 3 to be the most appropriate to progress.

Impact on key groups

357. Online education providers not registered with the Online Education Accreditation Scheme and Independent Education Institutions that are not already covered by the teacher misconduct regime will incur a small resource cost as a result of having to undertake a check to confirm whether any new staff (employed to teach students under 19 years) are prohibited from teaching work.

358. We expect this to be minimal, given that we would expect that these providers will already be undertaking pre-employment checks when engaging new staff to teach students in order to satisfy themselves that they are employing suitable individuals.

359. As set out above, online education providers registered with the Online Education Accreditation Scheme, some Independent Education Institutions, Further Education Colleges, Special Post-16 Institutions, and Independent Training Providers will already be undertaking these checks and so will not incur any additional costs.

360. All of the providers we want to bring into the teacher misconduct regime will incur a small resource/administrative cost for considering making, and then subsequently making, a referral to the Teaching Regulation Agency when they dismiss staff for serious misconduct

361. Again, we would expect this to be minimal, and an additional step in the process they already operate in relation to disciplinary action and staff dismissal.

362. Our proposals to enable the Teaching Regulation Agency to consider the misconduct of an individual who has previously undertaken teaching work, and to enable DfE officials to refer cases of serious misconduct to the Teaching Regulation Agency, will not specifically impact on providers.

Direct Costs to Business or charity

363. We have quantified costs associated with estimated time spent by staff to conform to new regulation. We expect there to be 3 cost impacts on education settings following the new legislation:

- a. Labour costs from time spent reading the new regulation documentation
- b. Labour costs from time spent performing checks to ensure prospective staff have not been prohibited
- c. Labour costs from time spent deciding if a teacher being investigated for misconduct should be referred to the teaching regulation agency

364. **Labour costs from time spent reading the new regulation documentation.** We estimate the labour costs from reading the regulation guidance, a total of 31 pages, to be £166 per education setting. This assumes a headteacher, safeguarding lead and an administrative (support) staff read the guidance. This is a one-off cost incurred once the legislation is enacted.

365. We estimate that 1,110 education settings will be affected. This results in a total cost of £222,184.

366. Note that DfE is only aware of 6 Independent Education Institutions that will now be included under new legislation, but this is likely a lower bound. There could be many more Independent Education Institutions that the department is not aware of, which would be included under the new regulations. This would increase the predicted cost.

367. **Labour costs from time spent performing checks to ensure prospective staff have not been prohibited from teaching.** When employing a new member of teaching staff, education settings will have to check that the prospective employee has not been prohibited from teaching. There is no explicit cost for these checks, but we approximate a cost for the time taken, a maximum of 20 minutes. Where a setting has a DfE sign-in account (which is used for a wide range of DfE activities, not limited to teacher misconduct), they will be able to access the Employer Services system (operated by the Teaching Regulation Agency) to input the teacher's details (e.g. name, date of birth, teacher record number etc) to perform an automatic check against the prohibition record maintained by the Teaching Regulation Agency. Depending on how familiar the member of staff is with DfE sign-in and the Employer Services system this may take only a few minutes or it may take much longer.

368. Where the setting does not have a DfE sign-in account, this check would involve a member of support staff contacting the Teaching Regulation Agency via email or telephone, who can then confirm from their records whether the teacher has been prohibited.

369. The time taken for either of these options is an educated guess: whilst some of the settings will have a DfE sign-in account, some will not, and of those that do some will be more familiar with it than others. For those who do not have such an account we have estimated the time it would take to draft and send an email and read the reply or make a telephone call. For some settings, these checks will only take a few minutes, and for other they may take longer than this. Taking this into account, and after discussion with Teaching Regulation Agency staff, we have taken an educated guess that 20 minutes would be a realistic average time.

370. We estimate the cost of a member of support staff running appropriate checks to be £4 per prospective employee. This is an ongoing cost, incurred each time a member of teaching staff is employed. The £4 cost is calculated as 20 minutes of a member of support staff's time at £10.68/hour salary. Wage assumptions were provided by the Central Economics Team within DfE, and are based upon school workforce census figures.

371. If the checks were to take 3 times longer than estimated, i.e. 60 minutes, the cost would increase to £14 per prospective employee.

372. We are unable to estimate the number of checks that would be undertaken per setting, per year, since this would depend on the size of education setting,

number of teaching staff etc., which we do not have data on, nor can we make a reliable assumption of.

373. Note that of the new types of education settings being included under new regulation, only online education providers (n=30) and independent education institutions (n=6, although this is a lower bound) will be impacted by the employment check cost. Other institutions such as further education colleges, special post-16 institutions and independent training providers will already be undertaking these checks as required by their fundings arrangements, since 2017.

374. Labour costs from time spent deciding if a teacher being investigated for misconduct should be referred to the Teaching Regulation Agency.

Education settings that will be included in the new regulation will be required to decide whether a teacher facing misconduct proceedings should be referred to the Teaching Regulation Agency. There is no direct cost for this referral, but again there will be some time cost associated with this process. We have not been able to quantify this, as the number of teaching staff in online education providers and Independent Education Institutions is unknown.

375. Nonetheless, we expect that the cost will be low, since the proportion of teachers referred for misconduct in the existing teaching staff population is very low. Of the 511,387 teaching staff subject to regulation in 2020, only 628 were referred in 2020-21. This equates to 0.12% of teaching staff. These figures do not include teachers in independent schools, as these are not included in the department's workforce censuses from which this is sourced. The pandemic has meant that this is lower– in 2019-20 there were 900 referrals.

376. This is an ongoing cost, incurred each time a member of teaching staff is referred for misconduct.

377. As discussed above, we have not been able to fully quantify the ongoing costs from staff checks and time taken for referrals. As such, the EANDCB of £222,184 comprises a one-off cost from reading the new documentation. The calculator has not been used to estimate 10-year costs, as we have not fully quantified the ongoing costs, thus there is only a one-off cost in the first year.

Wider Impacts and Transfers

378. There are no specific wider impacts: this policy only directly applies to the settings which will become subject to the teacher misconduct regime. The only requirements placed on these settings are to undertake administrative action to ensure they do not employ prohibited teachers, and to consider making a referral to the Teaching Regulation Agency where they dismiss a teacher on the ground of misconduct and where they believe a consideration of teacher prohibition by the Teaching Regulation Agency may be appropriate.

379. However, an unintended consequence might be that teachers who are no longer able to be employed by these settings because they are prohibited, may seek teaching employment elsewhere in unregulated settings (e.g. out of school settings) and therefore not be subject to the teacher misconduct regime. It is likely that prohibited teachers may have sought and been successful in securing employment in such settings before this policy proposal in any event. Narrowing the number of settings which in the future may be able to employ them may mean that prohibited teachers, who may have previously sought work in unregulated settings, may continue to do so but in a much smaller pool.

Impacts on Small Businesses

380. Some of the settings above will be managed by a small business who will face administrative/resources costs of having to undertake the checks to ensure they do not employ prohibited teachers, and for considering whether to make a referral to the Teaching Regulation Agency following dismissal for serious misconduct.

381. However, this same requirement is placed on all settings subject to the teacher misconduct regime and is considered proportionate in order to protect and safeguard pupils, maintain public confidence in the teaching profession, and uphold proper standards of conduct.

Implementation and evaluation

382. We will undertake communications with the providers and settings that will be impacted by the changes to the teacher misconduct regime. We will identify as wide a range of available communication channels and opportunities both internally within DfE and externally, for example with representative bodies or organisations or other stakeholder groups. Where this is not possible (because we have not been able to identify providers/settings) we will consider how best to target information to make such providers aware of how they are affected by our changes.

383. We will undertake initial communications to alert the providers and settings that they will become subject to the teacher misconduct regime and ensure that they have access to appropriate information and guidance. We will also utilise existing safeguarding stakeholder networks once the measures are in place, to gauge general understanding and how providers and settings are complying with the duties placed on them by the regime. We will also identify a sample of providers and settings that we can contact to seek feedback directly.

b. Safeguarding equalities impact: summary

384. The measures regulating independent educational institutions will generate positive equalities impacts, or maintain current impacts on children in independent educational settings. Since unregistered institutions largely exist outside the department's regulatory regime, they are under no requirement to, and provide no assurance that they, meet any particular set of standards, for example, relating to quality of education or safeguarding. Our measures to make it easier to identify and prosecute people running unregistered independent educational institutions should lead to more children attending registered settings which meet relevant regulatory standards. Changes to enforcement powers and to how certain appeals against de-registration are heard should encourage independent educational institutions to improve their adherence to the applicable standards and reduce the incidence of them operating for long periods without full compliance. Material change proposals will give increased flexibility to approve changes to independent educational institutions that are in the educational interests of the pupils and the ability to prevent proprietors who are not fit and proper from running these institutions. Overall, improved quality and consistency of education should mean that pupils benefit more from their education in these settings. In turn, this will mean that they are better prepared to succeed when they leave school. Therefore, we judge that these proposals will broadly support and protect pupils at independent educational institutions.

385. Creating local authority Children Not In School registers will enable better local authority support to be made available to more families who are electively home educating. The registers will also potentially improve understanding of those children in scope, who share particular protected characteristics; and will help local authorities undertake their existing responsibilities to ensure a suitable education is being provided, and, where appropriate, to safeguard children. We therefore are of the view that these proposals will broadly have a positive or neutral equalities impact.

386. Expanding the scope of the teacher misconduct regime will protect more children by capturing more teachers who commit misconduct and ensuring that those teachers are able to be dealt with appropriately by the Teaching Regulation Agency. The measure will have a neutral equalities impact. While there are more female teachers in the workforce, data shows that male teachers are more likely to face to misconduct procedures that result in prohibition.

Children Not in School registration & School Attendance Order

Protected characteristic	Type of impact: Children Not In School registration	Type of impact: School Attendance Order
Disability	Positive	Positive - Neutral
Pregnancy and maternity	Neutral	Neutral
Marriage or civil partnership	Neutral	Neutral
Race	Positive - Negative	Positive - Negative
Religion or belief	Positive - Neutral	Positive
Sex	Positive	Positive
Sexual orientation	Neutral	Neutral
Gender reassignment	Neutral	Neutral
Age	Positive - Neutral	Neutral

Table 68: Impact of Children Not in School registration & School Attendance Order

Policy Context

387. Creating local authority **Children Not In School registers** will enable better local authority support to be made available to more families who are electively home educating. The registers will also potentially improve understanding of those children in scope who share particular protected characteristics; and help local authorities undertake their existing responsibilities to ensure a suitable education is being provided, and, where appropriate, to safeguard children.

Protected characteristics that are significantly impacted:

388. **Age:** Currently, there is no data on the age of children not in school; however, we can assume that children aged 4-18 years old will be impacted by the proposed measures. Compulsory school age children (4-16 years old) will be positively impacted by these measures. The creation of CNIS registers and accompanying duties (such as a duty on parents) will support local authorities (LAs) identification of children not in school, resulting in a positive impact. By identifying this cohort of

children, LAs can assess whether children are receiving a suitable education, and, where necessary, safeguarded. In 2021, the Association of Directors of Children's Services (ADCS) Elective Home Education (EHE) data showed that 50% of responding LAs reported that KS1 students made up the lowest proportion of EHE children in their respective areas.ⁱ However due to the steady increase of children on roll from reception to Year 3 in school roll data, we can assume that some children do not enter school until aged 7-8 (KS2).ⁱⁱ

389. The LA duty to provide support to home educators will have a positive impact for children, for instance within GCSE age groups (typically ages 14-16) where the duty to support could include assistance with exams. These measures could potentially have a neutral impact for children aged 16-18 as they are not within the scope of CNIS, yet legally must still be educated or trained in some manner. Some of these home-educating children may be taking A-levels or equivalent qualifications, but the support duty would not cover them. We will therefore as part of our statutory guidance suggest LAs consider including children aged 16-18 on their registers and providing support.

390. **Disability:** In 2021, there were 3,660 children with EHCPs being home educated (out of an estimated 81,196 home educated children).ⁱⁱⁱ We do not have detailed data, but LAs and SEND stakeholders such as the National Network of Parent Carer Forums (NNPCF) have provided feedback to suggest that there is a high percentage of children with SEND (both diagnosed and undiagnosed) not in school. Although the percentage of children not in school with SEND appears to be lower than the percentage attending school, we believe this group will nevertheless be affected by CNIS measures.^{iv} We know from engagement that some home educating parents feel their child's SEND needs are not being met by schools, and so feel they are forced to home educate. By creating a duty for LAs to provide data from registers to the department, we will be able to identify the proportion of children with SEND and highlight potential challenges. LAs will have a duty to provide support to families if requested, which could include SEND specific support. The changes to School Attendance Orders (SAOs), including the increase to level of sanction for a breach, could also have a greater impact on families with SEND children whose disability may have been central to the decision to home educate.^v Some families may not wish to send their child to a school in any circumstances, but SAOs will continue to be issued if unsuitable education is being provided at home, or there is insufficient information is provided to an LA to reach such a conclusion. A clearer SAO process will reduce the burden on LAs therefore creating more capacity to provide support to those who desire it. There may also be accessibility concerns for parents with disabilities providing information to LAs. We will encourage LAs to consider accessibility as part of the measures, in line with their public sector equality duty.

391. **Race:** LAs report that Gypsy, Roma, Traveller (GRT) children are overrepresented in their cohorts of children not in school. The Traveller Movement

found that 61% of 40 GRT students surveyed left school straight after primary or during secondary school.^{vi} This LA data demonstrates a likelihood that a higher percentage of GRT children will home educate or be missing education, and would likely be disproportionately affected by the CNIS and SAO measures. The LA registers may impact some GRT families adversely if they do not have a fixed address and/or frequently move between LAs. We have noted this disadvantage as specific to this group, and we will ensure any regulations and guidance considers this through engagement with GRT representative groups. The changes to SAO response timeframes could negatively impact GRT children who may be more likely to be subject to SAO and the potential difficulty of ensuring relevant information reaching parents. SAOs would only be issued if unsuitable education is being provided at home. We believe that simplifying the SAO process will reduce burdens on LAs therefore creating more capacity to provide support. Data collected through the registers will provide information needed for government to make policy decisions in this space.

392. There would also be impacts to Jewish families. However, where this group can come under both Race and Religion, we have considered these in more detail below under Religion.

393. **Religion:** CNIS measures may affect persons who attend unregistered religious education settings, in particular those that cater for Jewish and Islamic faiths. We know of cases where children are home educated but receive some or all of their education in such settings, which could bring these providers in scope of the new duty for providers of out-of-school education, meeting a prescribed threshold, to provide information to LAs. Creating a registration system and duty on providers might lead to a view amongst those affected, particularly those belonging to the Jewish or Islamic faith, that they are being unfairly singled out for their faith/ethnicity, or that they are not allowed to practice their faith how they wish to – given that religious settings, such as Yeshivas and Madrassas, may potentially be more likely to fall within scope of the duty, due to offering education provision or religious teaching to children for longer periods, compared to settings of other faiths, such as Christian Sunday Schools. In addition, we are aware of cases where Jewish home educating families use supplementary or full-time Jewish education, such as Yeshivas, as part of their education provision. Ofsted and DfE have also recently prosecuted six large settings for being illegal schools, of which five catered to children of Islamic faith and, in all of those, the children were listed as being home educated.

394. The registration system will not result in LAs treating children differently relating to their faith. All EHE parents will be asked to provide information on the settings they are using. LA requests to providers for information will in general be focused on *all* types of settings – belonging to particular faiths or none – that may be, or which they reasonably believe to be, providing education to an eligible child that meets the prescribed threshold (likely to be targeted at those providing a substantial

proportion of a child’s education, without a parent’s presence). However, there may still be a disproportionate impact to certain faith settings compared to secular settings. We believe this impact is justified as it will allow children to be safeguarded and ensure that a suitable education is being provided. Data collected through registers may also allow for tailored support to be given and could enhance the safeguarding of these children, by supporting the identification of illegal schools.

395. **General impact for all protected characteristics:** Creating LA CNIS registers will enable better support to be made available to families by the LA, potentially focused on specific protected characteristics, and help LAs undertake their existing responsibilities to ensure a suitable education is being provided, and, where appropriate, to safeguard children. Data collected through registers by LAs and central government will also provide information needed to aid policy decisions. Therefore, we believe our proposed registration system and duty on LAs to offer support to home educators should benefit both children and parents with protected characteristics. A separate Children’s Rights Impact Assessment will also be undertaken for the CNIS measures.

Independent Educational Institutions regulatory reform

Protected characteristic	Type of impact: Investigator y powers	Type of impact: Registration requirement	Type of impact: Material change	Type of impact: Appeals	Type of impact: Enforcement
Disability	Neutral	Neutral	Positive (long term) Negative (short term)	Positive	Positive
Pregnancy and maternity	Positive	Positive	Neutral	Positive	Positive
Marriage or civil partnership	Neutral	Neutral	Neutral	Neutral	Neutral
Race	Positive	Positive (long term) Negative (short term)	Neutral	Positive	Positive

Religion or belief	Positive	Positive (long term) Negative (short term)	Neutral	Positive	Positive
Sex	Neutral	Neutral	Neutral	Neutral	Neutral
Sexual orientation	Positive	Positive	Neutral	Positive	Positive
Gender reassignment	Positive	Positive	Neutral	Positive	Positive
Age	Positive	Positive	Neutral	Positive	Positive

Table 79: Impact of Independent Educational Institutions regulatory reform

Policy context:

396. The measures regulating independent educational institutions will ensure that more children receive a suitable and safe education.

397. **Registration requirements** will expand on the category of institutions that provide full-time education to children of compulsory school age that are subject to the regulatory regime under the Education and Skills Act 2008 (“the 2008 Act”) to include institutions that are not schools, because they provide a narrow education, and will define what “full-time education” means for the purposes of this regime.

398. **Material change and applications to register** will introduce changes so that the regime for material changes treats all independent educational institutions similarly (currently the 2008 Act regulates many more types of material changes where an institution is specially organised for pupils with special education needs than for other types – such as where this an increase in capacity or change in the age range of pupils, or change of proprietor). A power will enable the Education Secretary to set the standards to reject proprietors on the basis that they are not fit and proper. A new power is also provided for the Education Secretary to impose a relevant restriction on how a proprietor operates their business where an unapproved material change takes place, as it is currently only possible to de-register an institution.

399. **De-registration appeals** will change the basis upon which a court determines a statutory appeal against certain decisions to remove an independent educational institution from the register from a full-merits review to a judicial review basis, affecting long-term persistently failing institutions.

400. **Enforcement** will provide a new power to the Education Secretary to suspend the registration of an independent educational institution where there are breaches of

the relevant standards and as a result the Education Secretary considers there is a risk of harm to students attending that institution, whereby it would become a criminal offence to continue operating that institution.

401. **Ofsted powers to investigate** will expand existing powers and introduce new powers to further the investigation, prosecution and sentencing of offences committed in relation to unregistered and/or registered independent educational settings.

402. **Data sharing** will provide a power for information to be shared between the Chief Inspector and an independent inspectorate.

Protected characteristics that are significantly impacted:

403. **Religion or belief:** We assess that the overall impact will be positive. We know that there are some settings which operate full-time and only provide a very narrow religious education and these settings will face the biggest impact of these changes, in terms of short-term disruption through the requirement to register and meet regulatory requirements, change their operation (for example to part-time or evening-only operation) or close. People with certain faiths, such as ultra-orthodox Judaism, may be more significantly affected by measures relating to registration requirements because they are more likely to be served by such settings than people of other faith backgrounds (but the measures will apply equally to any such settings regardless of faith). The changes will mean that children attending these settings have greater opportunity to receive a broader, quality assured education, within a safe and secure environment. The benefit this opportunity brings to children's quality of education, and in providing oversight of safeguarding through the regulated activity, is of great importance and is part of giving children from affected faith backgrounds equality of opportunity. The alternative to these measures would be for children to remain in independent educational institutions where in some cases their education, safety and welfare is unregulated or where breaches of regulations are too difficult to identify and take action against. Changes to enforcement powers will help ensure that all settings (including those serving people of particular faiths) provide an effective, broad and safe education to children. The current standards can be delivered in a way that is compatible with faith education, and many types of faith schools already comply with current standards. Religion can also be taught within the home or community. We do not believe that the impact on the parents' right to secure a religious education for their child outweighs the benefits to children of different faiths of a broad, safe education. It would not be acceptable for public policy to support the alternative position of continuing the status quo that denies children attending affected faith settings the opportunity of a safe and broad education.

404. **Race:** The changes affect those persons of racial groups most likely to adhere to the faiths mentioned within the religion or belief section, particularly members of the Jewish race.

405. **Disability:** Better regulation of independent educational institutions specifically organised for SEN through the material change proposals will have an overall positive impact on children attending SEN provision. It is in children's long-term interests that their special educational needs are met by institutions properly organised to deal with their needs. There may also be perceptions of a negative impact in that the proposals are likely to make the choice of educational setting more restricted, but the changes only remove the possibility of attending an unsuitable setting. Changes to enforcement powers will help ensure that all settings (including those serving children with special educational needs) provide an effective, broad, and safe education.

406. **Sexual orientation and gender reassignment:** We know that some institutions currently fail to meet the standards that require them to actively encourage respect for other people, having particular regard to the protected characteristics, for example, they fail to address sexual orientation and gender reassignment. Bringing more children into settings that meet relevant regulatory standards (and taking appropriate enforcement action where the standards are not met) will impact positively on children's learning of equality issues and provide a more supportive environment for children to understand their own sexual orientation and gender identity.

407. **Age:** These changes will predominantly impact on children of compulsory-school age. We do not anticipate that there will be different impacts for different aged children. For children affected by these changes, there will be a positive impact overall (in terms of better ensuring affected children receive a broad and safe education).

408. **Interactions/Interdependencies:** The impacts of these measures will be strengthened when combined with the measures relating to CNIS registers. However, neither proposal is dependent on the other.

Teacher misconduct

Protected characteristic	Type of impact: Workforce polices	Type of impact: Attendance and Behaviour policies	Type of impact: Curriculum policies	Type of impact: Targeted Support polices	Type of impact: Systems Polices	Type of impact: Digital Polices
Disability	Neutral	Neutral	Neutral	Neutral	Neutral	Neutral
Pregnancy and maternity	Neutral	Neutral	Neutral	Neutral	Neutral	Neutral
Marriage or civil partnership	Neutral	Neutral	Neutral	Neutral	Neutral	Neutral
Race	Neutral	Neutral	Neutral	Neutral	Neutral	Neutral
Religion or belief	Neutral	Neutral	Neutral	Neutral	Neutral	Neutral
Sex	Neutral	Neutral	Neutral	Neutral	Neutral	Neutral
Sexual orientation	Neutral	Neutral	Neutral	Neutral	Neutral	Neutral
Gender reassignment	Neutral	Neutral	Neutral	Neutral	Neutral	Neutral
Age	Neutral	Neutral	Neutral	Neutral	Neutral	Neutral

Table 30: Impact of teacher misconduct measure

Policy context

409. The measure to strengthen the teacher misconduct regime will make technical changes to widen the scope of teachers who can face misconduct procedures led by the Teaching Regulation Agency. This will help to protect children by ensuring that the Teaching Regulation Agency is able to consider the misconduct of teachers regardless of how long ago the teacher last taught, regardless of the type of provider, and regardless of how the misconduct comes to light and is referred to the Teaching Regulation Agency.

Protected characteristics that are significantly impacted:

410. **Sex:** Available data shows that there are more female teachers than male teachers, and therefore the proposed changes would be expected to have a disproportionate effect on women. We believe this would be justifiable given the purpose of the policy.

411. However, prohibition data shows that only around a quarter of prohibitions are female teachers, and around three quarters of prohibitions are male.

412. This demonstrates that although the teaching workforce is made up of more women than men, it is a majority of male teachers that are likely to be subject to teacher misconduct proceedings that result in prohibition.

413. **General:** The teacher misconduct regime, including the changes proposed in the teacher misconduct measures in the Schools Bill, applies equally to all those who fall within the scope of the regime – i.e. those carrying out teaching work (as specified) in a specified setting. The impact would therefore apply equally to both individuals with and without particular protected characteristics.

414. The teacher misconduct regime only applies to teachers who commit serious misconduct – annually prohibition is imposed on less than 0.2% of the total teaching workforce. Prohibition is limited in its effect to preventing the individual from carrying out teaching work (as defined in legislation) only. As such, there will continue to be a wide range of employed roles both within the educational sector and elsewhere that would utilise the skills gained as a teacher and which a prohibited teacher could lawfully carry out.

415. In some cases the teacher will have been subject to the disciplinary process operated by their employer before the case was referred to the Teaching Regulation Agency. When taking disciplinary action, including any decision to dismiss a teacher for serious misconduct and considering whether to refer the matter to the Secretary of State to allow prohibition to be considered, employers of teachers are required to comply with equalities legislation. They must ensure that they do not act in a way that is discriminatory, including taking action that would constitute unlawful discrimination towards those who share particular protected characteristics.

416. On receipt of referrals from employers, the Teaching Regulation Agency considers information gathered during the local disciplinary process and will explore with the employer any ambiguity within evidence provided that may suggest that potential discrimination took place.

417. The Teaching Regulation Agency applies the same level of scrutiny to referrals and evidence received from sources other than employers.

418. Further, at each stage of the teacher misconduct process the Teaching Regulation Agency makes every effort to ensure that the needs of the teacher are taken into account, and that reasonable adjustments are made where possible.

419. A key benchmark used to determine whether a teacher's behaviour is incompatible with being a teacher and so should warrant prohibition from teaching, would be whether the behaviour was a serious departure from the personal and professional conduct elements of the Teachers' Standards. In developing these

standards, consideration was given to their impact in relation to equalities, and no evidence was found to suggest that introducing such Teachers' Standards would have a negative impact or indirectly discriminate against any particular group of teachers.

ⁱ 50% of responding LAs report that KS1 students make up the lowest proportion of EHE children in their respective areas ([ADCS EHE Survey 2021 Report FINAL.pdf](#))

ⁱⁱ [Create your own tables, Table Tool – Explore education statistics – GOV.UK \(explore-education-statistics.service.gov.uk\)](#)

ⁱⁱⁱ [Education, health and care plans, Reporting Year 2021 – Explore education statistics – GOV.UK \(explore-education-statistics.service.gov.uk\)](#)

^{iv} The percentage of children with SEND is 12.2% as of January 2021 and the ADCS survey states this percentage is between 0-10% of CNIS. However, we have heard from NNPCF that many CNIS may have an undiagnosed SEND. [Special educational needs in England, Academic Year 2020/21 – Explore education statistics – GOV.UK \(explore-education-statistics.service.gov.uk\)](#)

^v Attendance of pupils with an education, health and care plan (EHCP), and pupils with a social worker is typically lower than for other pupils Attendance in education and early years settings during the coronavirus (COVID-19) pandemic, Week 10 2022 – Explore education statistics – GOV.UK ([explore-education-statistics.service.gov.uk](#))

^{vi} [TTM-Barriers-in-education_web.pdf \(travellermovement.org.uk\)](#)