

Summary: Intervention & Options

Department /Agency: Department for Education	Title: Impact Assessment of The Early Years Foundation Stage (Exemptions from Learning and Development Requirements) (Amend)	
Stage: Final	Version: Final	Date: 21 June 2012
Related Publications:		

Available to view or download at:

<http://www>.

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

Regulations currently allow the SoS to grant exemptions from the EYFS learning and development requirements on a case by case basis, where there is conflict with providers' established practice and philosophy. Feedback suggests the process to apply for exemptions can be burdensome for providers: specifically the requirement to consult both with LAs and parents and to renew the application regularly. Intervention is necessary to reduce bureaucracy and save on administration costs. To deregulate further we propose to widen exemption to good-quality independent schools as recommended by a review

What are the policy objectives and the intended effects?

1. Streamline the exemptions process in order to reduce provider, local authority and departmental costs.
2. Allow greater freedom for good-quality independent schools to deliver early years provision in line with parental preferences, with little intervention from the state.
3. Maintain market flexibility, continuing to enable settings to deliver a more tailored curriculum in line with their teaching principles and to suit parents' preferences.

What policy options have been considered? Please justify any preferred option.

The preferred option (Option 2) is informed by evidence from the Tickell Review of the EYFS and consultation with practitioners, parents, professional organisations and inspectorates. It simplifies the existing exemptions pathway and provides a new pathway allowing independent schools to be exempt from the learning and development requirements as long as they maintain good quality provision, increasing the flexibility of the provision they can offer to parents.

Option 1, to do nothing, will not achieve the goal Option 3, to simplify the process but not to extend exemption to independent sch

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects? 09/2016

Ministerial Sign-off For SELECT STAGE Impact Assessments:

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

Signed by the responsible Minister:

S Teather

..... Date: 16/7/2012

Summary: Analysis & Evidence

Policy Option: 2

Description: Preferred option: Simplify the exemptions process and open it up to independent schools

COSTS	ANNUAL COSTS		Description and scale of key monetised costs by 'main affected groups' A new exemptions path to independent schools increases the one-off administrative costs for these schools and for the Department. Local authorities may incur additional costs in assessing whether independent schools can retain funding to deliver free early education places. Representative bodies of independent schools will have increas
	One-off (Transition)	Yrs	
	£ 0.3		
	Average Annual Cost (excluding one-off)		
	£ 0		Total Cost (PV) £ 0.3
<p>Other key non-monetised costs by 'main affected groups' The inspectorates may incur minimal new costs in settign up systems for exempt schools and revising guidance. However, there are savings in knowing the schools that will need assessment only against a single framework the ISS which is also used for primary and secondary provision.</p>			

BENEFITS	ANNUAL BENEFITS		Description and scale of key monetised benefits by 'main affected groups' Existing exempt providers no longer need LA' views or to survey parents or to submit renewals. These save the Department time. Estimated 50-70% of independent schools taking up exemption spend less hours on EYFS administration. LAs save by not moderating EYFS profiles of these schools.
	One-off	Yrs	
	£ 0		
	Average Annual Benefit (excluding one-off)		
	£ 0.46		Total Benefit (PV) £ 3.8
<p>Other key non-monetised benefits by 'main affected groups' The Department can now do in-house what it previously contracted QCDA and an independent adviser to do. Schools partially or fully exempted will spend less time on EYFS-related activities. Some parents also benefit from being able to send children to a school with curriculum of their choice.</p>			

Key Assumptions/Sensitivities/Risks : i) Around 50-70% of independent schools will opt for exemptions based on schools responses ii) will not be large numbers of individual providers requesting exemptions due to their 'established principles' as regulations are largely unchanged. Risk: Undermining EYFS and some schools will not opt to be exempt due to LA remo

Price Base Year 2012	Time Period Years 10	Net Benefit Range (NPV) £ 3- £4.1	NET BENEFIT (NPV Best estimate) £ 3.5
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What is the geographic coverage of the policy/option?		England		
On what date will the policy be implemented?		26/10/12		
Which organisation(s) will enforce the policy?		DfE, Inspectorates		
What is the total annual cost of enforcement for these organisations?		£ 0		
Does enforcement comply with Hampton principles?		Yes		
Will implementation go beyond minimum EU requirements?		N/A		
What is the value of the proposed offsetting measure per year?		£ -0.007m		
What is the value of changes in greenhouse gas emissions?		£ NA		
Will the proposal have a significant impact on competition?		No		
Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium	Large
Are any of these organisations exempt?	Yes	Yes	N/A	N/A

Impact on Admin Burdens Baseline (2005 Prices)		(Increase - Decrease)	
Increase of	£	Decrease of	£ 0.007m
		Net Impact	£ -0.007m

Key: Annual costs and benefits: Constant Prices (Net) Present Value

Evidence Base (for summary sheets)

[Use this space (with a recommended maximum of 30 pages) to set out the evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Ensure that the information is organised in such a way as to explain clearly the summary information on the preceding pages of this form.]

Evidence Base (for summary sheets)

1. Problem under consideration

1.1 The Early Years Foundation Stage (EYFS) Framework, introduced as a national requirement for all early years providers in 2008, has been reviewed and a new framework is expected to be in place by September 2012. The Early Years Foundation Stage (Exemptions from Learning and Development Requirements) Regulations 2008 have been reviewed at the same time and we propose here to amend them via the Early Years Foundation Stage (Exemptions from the Learning and Development Requirements) (Amendment) Regulations 2012. These amendments are proposed because the current exemptions process set down in regulations is known to be burdensome for users and we need new regulations to allow independent schools access to exemptions.

1.2 The 2008 EYFS Exemptions Regulations enable individual providers to apply to the Secretary of State for exemption from the EYFS learning and development requirements if they have “established principles” that are irreconcilable with those requirements. Providers can also apply for a time limited exemption if they are temporarily unable to meet the requirements. In addition parents can be granted EYFS exemptions by their providers if they require exemption from all or part of the EYFS learning and development requirements on grounds of their religious or philosophical convictions. The planned changes affect only provider level exemptions as the individual child process is little used (based on feedback from LAs in South East – no figures are formally collected) and no issues have been reported concerning the individual child process over the 4 years that EYFS has been running.

1.3 The current process for early years providers however, requires settings to provide extensive evidence of their practice, LA and parental support for their request and a detailed request for exemption or modification against each specific aspect of the learning and development framework that they are unable to meet due to “established principles”. Individual cases are processed by the Department with recommendations for the Secretary of State – he or a Minister or a senior official on his behalf, then make the decision to grant or reject each aspect that the provider wants exemption (or modification) from. This process can take several weeks or even months if there are any delays in ministerial decisions or problems with paperwork that providers have submitted. Currently exempted providers have to apply again every 2 years to ensure continued eligibility.

1.4 The need to reform the 2008 Exemption Regulations was identified during the review of the wider EYFS framework in 2010 by Dame Clare Tickell, who made three recommendations in relation to the exemptions regulations and process which the Government agreed to consider. These are, in summary:

a) That the Government consider whether the learning and development exemptions process could be widened to allow professional organisations representing groups of independent schools to seek exemptions on behalf of the schools they represent, where schools have a track-record of good-quality early years provision. This would apply in circumstances where the professional organisations can show both support from parents whose children attend the schools seeking the exemption, and demonstrate how the professional organisations would

continue to ensure delivery of high quality early years provision. This applications process must be robust, ensuring strong ministerial oversight and responsibility, based on the evidence and ongoing scrutiny of quality provided by these bodies.

b) That the Government extend the exemptions from these early learning goals to all settings within the Steiner-Waldorf Foundation.

c) That the procedure for exemption should be simplified for providers meeting the existing stringent criteria – by replacing the requirement to consult local authorities with a requirement to inform them.

1.5 This IA covers the reforms to the exemption arrangements which we are introducing as a result of the Tickell review. Our reforms go further than the Tickell recommendations. Details of the proposed changes are outlined in section 6 below.

1.6 We believe the reforms we are introducing reduce bureaucracy and thus reduce costs overall for the early years providers that seek full or partial exemptions from the learning and development requirements of the EYFS. Furthermore, the new pathway for exemptions to certain independent schools introduces new freedoms so that they can operate more freely in the market and base their offer on what parents are demanding. The Independent Schools Council say that their parents want an “independent curriculum” for early years, much as they already have when children reach school age (as they are not required to follow the National Curriculum).

1.7 The consultation which we ran from 3 May to 1 June 2012 had 205 responses and most of the early years providers and the parents responding supported the changes. Those who opposed changes that would make exemptions from the EYFS learning and development requirements easier, were mostly early years sector representative organisations, teaching unions and some local authorities who were concerned that the changes undermined the universal EYFS framework and consequently could impact on the quality of early years learning in independent schools. The proposed new route enabling independent schools to opt-in to an exemption, is however, only open to schools with inspection judgements which are ‘good’ or better. Inspectors will continue to inspect the learning and development provision but against the lighter touch Independent Schools Standards (ISS) rather than EYFS. No early years provision is able to be exempt from the welfare requirement of EYFS and therefore there is no question of the welfare of children being put at risk.

1.8 We went further than the Tickell recommendation for independent schools on the grounds that limiting exemptions to schools belonging to particular independent school associations was legally challengeable and unfair. Data showed that association membership was not in every case an indicator of high-quality provision and that there were some non-association schools achieving higher ratings than those belonging to associations. Using inspection reports as an indicator of quality, offered a universally-understood and transparent marker. We are not in a position to offer the same quality based exemption to early years providers which are not independent schools because they have no alternative set of standards in place equivalent to the ISS which inspectors can use to judge learning and development performance in place of EYFS.

2. Rationale for intervention

2.1 The EYFS is a Government regulatory framework, and Government intervention is therefore necessary to make recommended improvements to the current system. We want to make the system less bureaucratic for both users and the Department to reduce costs and burdens to both. We have made a public commitment to address the issues identified by Dame Clare Tickell, reflecting the many respondents that informed her review. At the same time the EYFS review supports the value of the EYFS framework in raising the learning and development outcomes of children and confirms that the framework should remain a universal standard for young children. We do not want to erode significantly that universality, allowing exemptions only where we can balance the need to safeguard the quality of childcare, so that more children are school ready when they reach Key Stage 1, against the need to enable free parental choice of foundation years provision for their children. Although the new EYFS framework being introduced in 2012 is flexible enough to encompass nearly all early years practice, there still needs to be a process to enable independent practice or “alternative” practice to be exempt where parents demand this.

2.2 We considered the request from independent schools to exempt them from the EYFS learning and development requirements on the basis that they want to set their own independent curriculum which they believe will benefit children. They want the same ‘independence for their early years provision that they have for children of compulsory school age which enables them not to have to follow the government-set National Curriculum. There has been a high level of demand for exemptions from the independent sector and we want to accommodate this as long as there are sufficient safeguards on the quality of their provision when schools are no longer tied to the learning and development requirements of the EYFS. As mentioned above (at 1.7) the ISS provide a lighter touch but adequate framework that inspectorates can use to assess the quality of independent school early years provision. For early years provision in independent schools the standards are being strengthened with a new requirement k) under Schedule 1 Part 1 “where the school has pupils below compulsory school age, a programme of activities which is appropriate to their educational needs in relation to personal, social, emotional and physical development and communication and language skills. These standards are acceptable to the Department.

2.3 We have considered offering exemptions to other early years providers but this does not seem a feasible policy option even if their inspection reports indicate similar high quality because there are no ISS or equivalent in place in these settings. This means that, in settings other than independent schools, there would be no national standards of learning and development in place for children and no framework for inspection judgements to be made against. The level of demand for exemption from these settings has also been low and it is not something that this part of the sector is calling for as they are generally content to follow the EYFS. The Tickell Review concluded that the EYFS should remain a universal framework as it has driven up standards in childcare for young children. Extending exemptions beyond independent schools would undermine this notion – one which the Government accepted in designing the new EYFS framework due to be implemented from September 2012.

2.4 Relevant to the consideration of this proposal and its rationale is the impact assessment on the overall EYFS framework undertaken earlier in 2012 which considers the need for all early years providers to be required to adhere to the EYFS framework:
<http://www.legislation.gov.uk/ukxi/2012/937/impacts>

3. Waiver of micro businesses exemption from new regulations (the moratorium)

3.1 We are seeking a waiver from micro-business exemption as these regulations are aimed at reducing burdens on businesses and it would therefore be unfair to exclude micro-businesses. Exemptions from the learning and development requirements of the EYFS should be available to all providers who come within the circumstances set out in the 2012 Regulations and who meet the conditions in the direction, irrespective of the size of the provider. The majority of early years providers are small businesses, and the reforms are intended to reduce the burden on providers wishing to be granted exemptions by making the process more streamlined (for example, by removing the necessity for renewals). Burdens on practitioners in independent schools which are subject to an exemption will also be reduced because they will no longer have to produce EYFS Profiles (assessments of each child's progress) for children at age 5.

4. Consultation

4.1 We have completed a 5-week limited consultation between May 3 and 1 June 2012. We selected a limited rather than full consultation because exemptions from the learning and development requirements are only of interest to a minority of early years providers and previous consultations on the EYFS had shown little interest from the wider early years sector on exemptions. We distributed the consultation to affected and potentially affected providers, all local authorities and a range of sector representative organisations and parents to enable sufficient coverage. The consultation was in the form of a consultation proposal and questionnaire which was emailed to:

- all registered independent schools (including those which currently have exemptions)
- representative bodies of independent schools including the Independent Schools Council and the Steiner Waldorf Schools Fellowship
- all inspectorates including Ofsted
- representative bodies of the wider foundation years sector including the Early Childhood Forum
- some independent schools parental forums in association and non-association schools including 2 arranged by Steiner providers, leads and moderators)
- all local authorities (directors, early years leads and moderators)
- a selection of primary heads and primary school organisations
- members of the Department's Bureaucracy Reform Group
- a selection of Academies and Free Schools
- representative bodies of academies
- Council of International Schools
- teacher unions
- National College of School Leadership
- The Teaching Agency

4.2 In addition to the formal consultation, we have consulted the Independent Schools Council and various independent schools representative bodies, the Steiner Waldorf Schools Fellowship, representatives of French schools operating in England (two of which currently have exemptions), the four inspectorates, settings which made unsuccessful bids for exemption during 2008-12 and various internal colleagues with an interest in EYFS exemptions during the year to help inform our proposals. We also sent a shorter consultation questionnaire aimed specifically at parents to eight independent schools across England and held face-to-face consultations with parents at independent schools and Steiner schools.

4.3 Results of the consultation

The consultation had 205 responses, including 18 parent questionnaires. It was supplemented by discussions with practitioners, local authorities, parents and sector representatives.

Respondents

The organisational breakdown of respondents to the online consultation was as follows:

	Number	Percentage
Parents/Carer	22 (including 18 parent questionnaires)	11%
Maintained school	1	0%
Local Authority	29	14%
Nursery	6	3%
Academy/Free School	2	1%
Inspectorate	2	1%
Early Years Sector Representative	8	4%
Independent School	115	56%
Other	14 (including 3 that did not categorize themselves)	7%
Union Representative	4	2%
Independent School Association	2	1%
TOTAL	205	100%

Responses to the consultation were generally positive:

- The majority of respondents (66%) agreed with the proposal to extend the possibility of exemptions to children aged 3 and over in independent schools which met the quality threshold set by the Secretary of State. However, opinions varied between different groups – for example, 88% of independent schools agreed with this proposal compared to only 44% of all other respondents. Other respondents, such as two-thirds of LAs and early years sector representatives like the National Children’s Bureau, Pre-School Learning Association and National Day Nursery Association opposed the new route for independent schools as they felt the universal EYFS learning and development requirements safeguarded quality for children and opposed any widening of exemptions in principle.
- The majority of respondents (63%) were content with setting the quality threshold for these schools at ‘good or better’, although some felt it should be ‘outstanding’ and others believed no quality threshold should be set. Whilst those who didn’t approve of the proposed independent schools route also did not approve of a threshold being set.
- The overwhelming majority of respondents agreed with our proposals to simplify the exemptions procedure. 80% agreed that no renewals should be required and 85% agreed our proposals aimed at simplifying arrangements for consulting parents. However, some felt we should not be encouraging exemptions by making the process easier.
- 80% of people agreed that we should maintain the existing route to exemptions based on ‘established principles’, including many of those opposed to exemptions for independent schools, such as local authorities and unions.
- Most respondents (70%) agreed with creating a block procedure for independent schools seeking exemptions although a significant minority (30%) disagreed or were unsure. Some respondents mistakenly thought that a block procedure would mean all schools would be forced to take exemptions.

5. Policy objectives

- i. To reduce bureaucratic burdens on early years providers applying for EYFS exemption, reducing their administration costs and the time spent on administration tasks, so that they can spend more time on front-line activities with children.
- ii. To reduce bureaucracy and minimise administration costs for local authorities and the Department in handling cases, decreasing public spending on exemptions.
- iii. To reduce the constraints on the early years practice of good quality independent schools, so that they can meet the requirements and choice of parents, and provide child care and education in a manner that their professional experience dictates.
- iv. To maintain market flexibility by continuing to enable settings to deliver a more tailored curriculum in line with their teaching principles and to suit parent's preferences.
- v. To protect the universality of the EYFS framework and safeguard the quality of early years provision for young children.

6. Description of options considered (including do nothing)

Option 1: Do nothing – continue the present system of requiring settings to first consult the LA and seek a written statement from them; to survey parents and provide data on the numbers supporting the request; to renew their exemptions every 2 years and requiring good quality independent school settings to continue to deliver the full EYFS. This fails to meet the objectives above.

Option 2: Streamline the exemptions process and introduce a new pathway for good-quality independent schools to gain exemption from the learning and development requirements.

This, our preferred option, offers a new route to exemption for good quality independent schools and more stream-lined processes overall for all providers that might apply or opt-in to exemptions. Details of the changes are as follows:

- i. Allowing exemptions from the learning and development requirements of the EYFS for provision for pupils aged 3 and over in independent schools which reach the required quality threshold, as set by the Secretary of State;
- ii. Creating a 'block' exemptions process for independent schools opting for exemption to reduce burdens on schools and the Department; and
- iii. Simplifying the exemptions process to reduce administrative burdens on all providers applying for exemption through either the existing 'established principles' route or the 'independent schools' route with the following changes:
 - a. Advising rather than consulting LAs: Tickell recommended replacing the requirement for providers to consult local authorities over exemptions with the requirement to inform them, as many providers have complained that seeking the LA's views via a letter has held up their applications for exemption. We therefore plan to change the regulations so that providers are required to notify, rather than consult, the relevant LA about any exemption they are planning to exercise. 80% of respondents consulted during May and June 2012 agreed that local authorities should be advised rather than consulted by providers planning to take up exemptions from the learning and development EYFS requirements. The 16% who opposed were mostly, although not exclusively, LAs who were concerned that their role to drive up the quality of local early years provision was being undermined. Nevertheless 28% of LAs were in favour of only being advised rather than consulted. Schools nearly all supported the change.

b. Removing the possibility of temporary exemptions: There has been no demand, and no evidence of any demand for providers to apply for exemptions based upon the fact that the provider is, or will be, temporarily unable to deliver the learning and development requirements of the EYFS. No provider has ever applied on this basis since 2008 when the framework was first introduced and we therefore recommend revoking regulations 5 and 6 which concern this route to exemption. 92% of those responding to the consultation thought removal of the temporary exemptions route was acceptable.

c. Simplifying arrangements for securing parental support: Current regulations require that the majority of parents agree with the provider's request for a direction [for exemption] and departmental guidance asks providers to formally consult with all parents and provide us with figures on the numbers of parents that supported the request. Providers, however, already inform parents about exemptions in open evenings, prospectuses and so on and feel that formal surveys of parents are unnecessary. We therefore suggest being less prescriptive and allowing schools to decide how they can best demonstrate parental support for exemptions. We would, though, make it clear that all parents should be informed when a school decides to take up an exemption for the first time and the impact this could have on free entitlement funding. 85% of those responding to the consultation, endorsed simplification on how providers demonstrate parental support.

d. Removing the renewals process: Currently, providers must apply for exemption every 2 years, following the same process as they originally went through. So far, all schools which have applied for renewals have been re-granted exemptions. We propose to remove the necessity for renewals and providers would remain exempt for as long as the conditions upon which they had been granted exemption still applied (e.g. the school remained above the quality threshold or provider maintained principles which conflicted with the learning and development requirements of the EYFS). 80% of those responding to the consultation approved the removal of a renewals process – this included all the providers who currently have EYFS exemptions. Some LAs opposed the change and were concerned that providers who were no longer eligible might slip under the radar or that quality of early years provision would drop. This is unlikely because inspectors will continue to assess quality as well as whether providers are following their stated 'established principles' and this will also be supported by assessment visits from associations – for example, the Steiner Waldorf Schools Fellowship in the case of Steiner schools.

e. Changing the date of grant commencement: The current regulations state that exemptions are granted from the date at which the provider first applies but if they are inspected before the provider receives the Department's response, inspectorates cannot assume the provider's application will be granted by the Secretary of State and therefore are uncertain if they are exempt. Also if there is a delay in processing an application this shortens the period of exemption by up to 12 weeks from what was meant to be a 2 year exemption period. We therefore plan to change this so that any exemptions granted through an application process begin from the date of the letter granting the exemption. 72% of those consulted agreed with the change of date – this included all the providers who currently have EYFS exemptions. 22% were not sure, mostly because they were unclear about the implications of the change. (These changes are proposed as part of Option 2 in this paper.)

This option responds to feedback from the sector and introduces a means for independent schools that have attained a good level of quality (as measured by inspectorates at a level that the Secretary of State deems sufficient) to be able to apply for full exemption as long as their parents support this. This option allows new flexibility in the childcare market to meet the demands of independent schools and the parents that use them.

Although opening up a new route to exemption to independent schools initially increases burdens on these schools and on the Department (when schools opt-in for an exemption), this will be minimised by enabling a block process for these schools whereby they will be exempted under a single Direction from the Secretary of State rather than be required to apply for

exemptions and complete an application form. Schools will 'opt-in' under the Direction and they or their associations will only be required to notify the Department and their local authority of this. This should require minimal administration work from schools, which will be outweighed by the benefits of gaining an exemption and no longer be required to follow the learning and development requirements of the EYFS, in particular to carry out EYFS Profile assessments of children at age five (an undertaking that independent schools especially complained of as they complete their own profiles any way).

This option also reduces bureaucracy for all applicants (individual providers and independent schools) by reducing the time it takes to get a response from LAs, reducing the need to survey parents every 2 years and the need to go through the application process every two years in order to renew exemptions.

We also considered the impact of allowing all independent schools regardless of quality the freedom to be exempt from the learning and development requirements if parents support it (as some schools had asked for this). Although this creates even greater market flexibility it undermines the sectoral and Government preference to retain EYFS for schools that are less than 'good' to remain within the EYFS as opting out may have an adverse affect on the outcomes for children at these schools. The Independent Schools Council which represents a large number of association independent schools favours a quality threshold so that schools judged as less than 'good' by inspections are not eligible to be exempt through this route. 89% of parents thought that there should be a quality threshold governing which independent schools should be eligible to opt to be exempt. One of them said, "Only schools which have continually demonstrated the highest standards and delivered educational success should be allowed a degree of self governance in respect of the curriculum". In any case, most independent schools (93%) are currently judged 'good' or 'outstanding' against the EYFS framework, meaning that only a small minority of satisfactory or inadequate schools will be barred from seeking exemptions.

We do not believe that other private providers, such as private nurseries, should benefit from similar exemptions as those being offered to independent schools, as they, in the main, are content with following the learning and development requirements of the EYFS. These settings are also not subject to any other regulations governing their provision as independent schools are. The safeguard in the case of independent schools is that their educational provision for children aged 3 and above is governed by the Independent School Standards (ISS) as explained at 1.7 above.

Option 3: Streamline the process but exclude the new route for exempting independent schools. As

Option 2, however this option excludes the new route being offered to independent schools for exemption on the grounds that these schools are successful at delivering EYFS - 93% are judged 'good' or better – and therefore they do not need the exemption. If any school finds that its established principles and practices do not fit well with the EYFS framework they can apply for exemptions in the way that Steiner and French schools currently do. The breadth and flexibility of the new EYFS framework is such that it can accommodate most curricula and practices hence independent schools generally have not applied for exemptions to date. This option however would not be welcomed by the Independent Schools Council and most associated independent schools argue that their parents expect greater independence for the schools that they have specially selected and paid for (independent school fees being considerably higher than average childcare costs). Some of these schools do not want their EYFS provision to be moderated by local authorities as they feel they should not be subject to

this level of state control . The Government would not be responding to the market and parental choice by ignoring so many independent schools' pleas to be exempt.

7. Monetised and non-monetised costs and benefits of each option (including administrative burden)

Option 2 (the preferred option)

Costs

One-off costs:

Independent schools - 1,365 independent schools meet the required quality threshold and would therefore be eligible for exemptions. In our May 2012 consultation, 47% of schools indicated that they would take up the exemption options and 36% were undecided. Estimating that half the undecided schools would go on to take up an exemption would give a total of 65% (47% plus (36% / 2)). However, most respondents were from Independent Schools Council affiliated schools, who are more likely to want an exemption than non-affiliated schools. Around a third (34%) of independent schools eligible for exemptions are not affiliated, so we have adjusted the 65% estimate down to 60% to reflect that these schools are less likely to want an exemption. We have also calculated lower and upper ranges of 50% and 70% (used on summary sheets) to reflect the uncertainty of this estimate.

For each independent school applying for exemption, time will be taken to read guidance, consider exemption, consult parents, talk to LA about funding free early education places, notify association or inspectorate and Department for Education. We estimate that this will require around 2 hours of Head Teacher time, 7 hours of class teacher time and 3 hours of school administrator time for each school that applies. Cost of this time has been estimated below (sources explained in assumptions section):

2 hours of head teacher time @ £36.02 = £72.04

7 hours of class teacher time @ £20.74 = £145.18

3 hours of school administrator time @ £13.11ph = £39.32

Total: £257 per school

£175,216 for 50% (683) schools

£210,106 for 60% (819) schools

£245,251 for 70% (956) schools

Local authorities – time taken to discuss exemptions with independent schools and any impact on funding to deliver free early education. This is estimated to take approximately 3 hours of senior LA officer time for each school that applies. Costs will vary depending on the number of schools applying in each LA, but on a national basis costs are estimated to be:

3 hours of senior LA officer time @ £32.80 = £98.41 per application

Total:

£67,216 for 50% (683) schools
£80,600 for 60% (819) schools
£94,082 for 70% (956) schools

Independent school associations – time taken to consider exemptions and discuss with schools, and to record which schools are taking up exemptions. This is estimated to take 15 hours of middle-ranking officer time for each of the 8 associations under the Independent Schools Council, at a cost of:

15 hours of middle-ranking officer time @ £22.75 = £341

For 8 associations: £2,729

Department for Education – receiving and recording notifications from independent schools and dealing with enquires about this new route. This is expected to take 6 days of Higher Executive Officer (HEO) time and 5 days of Senior Executive Officer (SEO) time:

6 days of HEO time @ £175 per day = £1,025

5 days of SEO time @ £215 per day = £1,051

Total: £2,075

Total one off costs:

£247,237 for 50% (683) schools

£295,510 for 60% (819) schools

£344,138 for 70% (956) schools

Annual costs:

Independent schools need to opt-in to exemptions only once, so there are no significant on-going costs of exemption. We anticipate that most schools interested in exemption would opt-in as soon as the opportunity became available, and so we have captured all costs of application (outlined above) in year 1. It is possible that some of the 50% - 70% of schools we estimate as being interested in applying for exemptions would delay their applications until future years. This has not been monetised, as it would be a re-profiling of costs across years rather than additional costs. The cost per additional school applying for exemption is around £355 (cost to school plus cost to LA set out above), so reductions due to discounting in future years is likely to be negligible and have therefore not been monetised.

Benefits

One-off benefits – none

Annual benefits

Independent schools – independent schools that take up exemptions from EYFS L&D requirements will no longer have to complete the EYFS Profile. The estimated time taken for a teacher to do an EYFSP assessment for one child (based on new format) is one hour. The estimated average number of children in Reception class at independent schools is 17.5 (Independent Schools Census, 2012), so each school would save 17.5 hours of class teacher

time. There would also be time savings from not having to do undertake moderation activities with the LA – assumed to be 3 hours of class teacher time per school. This leads to a total saving of 20.5 hours of class teacher time per school:

20.5 hours of class teacher time @ £20.74 = £425 per school

£290,391 for 50% (683) schools

£348,214 for 60% (819) schools

£406,463 for 70% (956) schools

Steiner schools and French schools – currently exempt schools will no longer have to renew their exemptions every 2 years. This is expected to save 15 hours of teacher time in no longer having to consult the local authority to get a letter of ‘approval’ for exemptions, and no longer having to conduct formal parental consultations around exemptions. In addition, there are expected to be around 20 hours of savings in teacher time from not having to undergo the applications procedure. Total savings in teacher time are therefore expected to be 35 hours every 2 years.

35 hours of class teacher time @ £12.70 = £444.50 per school every 2 years.

Assuming that the re-applications of the 35 currently exempt Steiner and French schools were evenly spread across 2 year intervals, this equates to an average of £222.25 (£444.50 / 2) per school each year, an annual total of:

$35 \times £222.25 = £7,779$

Local authority – no longer have to be consulted and write letters for schools renewing exemptions. This is estimated to save around 20 hours per renewal. Assuming that the re-applications of the 35 currently exempt Steiner and French schools were evenly spread across 2 year intervals, there would be an average of 17.5 renewals (35 exempt schools / 2) each year.

20 hours of senior LA officer time @ £32.80 = £656.08 per exemption renewal

17.5 renewals each year = £11,481

In addition, LAs would no longer have to moderate the EYFSP results of independent schools that take up exemptions. As set out above, this is expected to take 3 hours per school.

3 hours of senior LA officer time @ £32.80 = £98.41 per school

£67,216 for 50% (683) schools

£80,600 for 60% (819) schools

£94,082 for 70% (956) schools

Department for Education – no longer process applications to renew exemptions from the currently exempt 35 schools. As discussed above this is expected to save processing an average 17.5 applications per year as schools currently renew exemptions every 2 years. Each case takes 3 days of and 2 hours SEO time:

3 days of HEO time @ £175 per day = £512.35
2 hours of SEO time @ £29.02 per hour = £58.05
Total of £570.40 per renewal
Total for 17.5 renewals per year = £9,982

Total annual benefits:

£386,849 for 50% (683) schools
£458,056 for 60% (819) schools
£529,787 for 70% (956) schools

Net monetisable benefits (Benefit less cost)

Over a ten year period = £4.2m (range of £3.6m - £4.9m)
Present value = £2.9m (range of £2.8m - £4.1m)

Non-monetised costs and benefits

Non-monetised Costs

There will be small one off costs to DfE for issuing new guidance, and to schools currently using the exemptions process to familiarise themselves with the new guidance. We have not monetised these costs as both will be negligible. Inspectorates will have some small costs checking providers remain eligible for exemptions but these are balanced out by the benefit of knowing about inspections before they go to inspect and fewer standards to judge the provider upon.

Non-monetised Benefits

There are also benefits for practitioners spending more time with children, and for parents with children at independent schools who want a more school led and less state-controlled education.

Option 3 (simplify exemptions but do not extend to independent schools)

Costs

Monetised Costs – none

Nothing additional will be undertaken by providers using the current exemptions path.

Benefits

Monetised Benefits

One-off benefits - none

Annual benefits

Annual benefits would be as for currently exempt Steiner and French schools under Option 2 (£7,779

per year), and as for LAs under Option 2 in terms of consultation and letter writing for currently exempted schools (£11,481 per year) as set out on page 13 above.

Total annual benefits: £19,260

Total benefits over a 10-year period: £192,602

Present value of benefits: £160,179

Non-monetised costs and benefits

Non-monetised Costs

As with Option 3, there will be small one off costs to DfE for issuing new guidance, and to schools currently using the exemptions process to familiarise themselves with the new guidance. We have not monetised these costs as both will be negligible.

8. Rationale and evidence that justify the level of analysis used in the IA (proportionality approach)

8.1 In proportion to the introduction of the revised EYFS framework, EYFS exemptions total net savings to business are estimated at around £2.6m (£0.05m scored for OIOO) and the new framework learning and development requirements are £10.5m. In addition, current usage of the exemptions procedure is just 35 providers. This is likely to rise to up to around 1000 schools/providers if the new exemptions route for independent schools is introduced. However, this is still only affecting a minority of children in early years, as children are more likely to attend child minders, nurseries and maintained schools. As this is relatively small scale within early years we have estimated the number of schools and providers that are likely to use the EYFS exemptions process rather than based it on observation or widely collected data samples.

8.2 In Option 2 the estimated take up of exemptions is based on the May 2012 consultation results where schools were asked if they would opt for the proposed exemption route if it were available. This estimate will be revisited when we review the impact of changes in 2016. We estimated LA time to deal with notifications from schools and advising the schools on whether the funding to deliver free early education places would be available if the school were exempt from the learning and development requirements. We also estimated the cost to independent schools associations in representing their members and departmental time in receiving notifications (with the latter based on current timings needed to process exemptions). As no renewals are needed, costs to schools, associations, local authorities or the department beyond the first year, are minimal.

8.3 The DfE will have to set up a record of the new exempt schools but the costs are concentrated in the first year. Over the ten year period the major cost is in the first year only but we assume there will be a small number of new schools opting for exemptions that had not done so before and a small number of schools that are no longer eligible, where we will need to check that the LA is notified.

8.4 Benefits are based on known savings of schools not having to do annual profile assessments of the children aged 5 and the LAs no longer having to modify schools profile assessments. Without renewals, after the first year, LAs will have fewer exemption queries or notifications. Savings to the 35 providers that currently use the exemptions process (33 are Steiner and 2 are French schools) are based on reduced costs of applying to LAs and ourselves when they no longer have to renew applications. DfE makes associated savings after the first year. The LA makes savings on no longer having to liaise with and write to schools seeking exemptions and once the first year's notifications are over on-going work will be minimal compared to the current process.

Option 3 - involves no new costs only benefits to 35 providers that currently have exemptions. There may be a handful of additional providers taking up this route in the future. As above the major saving is from reduced administration through not having renewals every 2 years and LAs no longer having to respond to schools taking up or renewing exemptions.

9. Risks and assumptions

9.1 Risks:

- High-quality settings other than independent schools which are not able to get exemption (e.g. Academies, private nurseries etc) challenge the new route for independent schools and claim it unfairly discriminates against them. However, most of these settings are in favour of the EYFS and are unlikely to want exemption. Academies and representatives of the wider early years sector were included in the consultation. It may be possible, when the EYFS is reviewed again in the future (September 2016) that the possibility of widening exemptions further is considered.
- By not requiring an application process for independent schools we lose control over the process and schools which are not eligible decide to take up exemption. However, this should be picked up by inspections and visits by associations (more independent schools with early years provision are in an association (c.900) compared to non-association (c.450)).
- Relations between LAs and independent schools become strained if LAs decide that schools cannot have funding to deliver free early education places if they take an exemption. This may effectively force some schools to remain within the full EYFS. This may also lead to a divide between independent schools with wealthier parents (who do not need the LA funding) and those whose parents cannot send their children to the school unless they receive the 15 hours of childcare under the free early education places offer. The Minister will assess this risk separately in conjunction with revisions to the free early education statutory guidance.
- Independent schools may not adequately consult with parents on becoming exempted, and the links this has to the funding of free early education places. This may lead to some schools becoming exempt and parents losing funding for their free 15 hours of early education and being forced to find alternative provision for their children.
- Exemptions lead to the overall quality of early years education deteriorating in independent schools. The risk is considered to be low as association schools' quality is monitored regularly by their associate bodies and schools are operating in a competitive market where parents are unlikely to choose poor-quality provision.

9.2 Assumptions:

- We have made a number of assumptions about the time saved for removing activities and time taken to undergo new activities. These are based on internal knowledge of the system and close working with stakeholders. While there may be some variation in these times at individual school and LA level, we expect them to be reasonably accurate on average and therefore give a fit for purpose assessment of the impact of the policy change. The proposals have been developed in close consultation with the sector and we are confident that they represent a significant streamlining of the existing system. Hence 70% of respondents agreed with introducing a block exemptions process for independent schools and 80-85% endorsed the suggested simplifications to the administrative processes. One respondent said, "All steps are logical and will simplify the process".
- Wage assumptions have been used as follows:
 - o Headteachers (Independent schools) - £28.36p/h (Salary data and teacher numbers from School Workforce Census November 2010 uplifted by the 2011, 2012 and 2013 pay awards. Hourly rate estimated using data from the Teacher Workloads Diary Survey 2010)
 - o Teachers (Independent schools) - £16.33p/h (Salary data and teacher numbers from School Workforce Census November 2010 uplifted by the 2011, 2012 and 2013 pay awards. Hourly rate estimated using data from the Teacher Workloads Diary Survey 2010)
 - o Teachers (Steiner schools) - £10p/h (estimate from Steiner Waldorf Schools Fellowship)
 - o School administrators - £10.32p/h (average hourly wage for School secretaries, ASHE 2011)

- o Senior administrative officers (independent schools association) - £17.91p/h (average hourly wage for senior official in special interest organisation, ASHE 2011)
- o Senior administrative officers (LAs) - £25.83p/h (average hourly wage for senior official in local government, ASHE 2011)
- o SEO - £22.85p/h (based on mid point of internal DfE paycales)
- o HEO - £18.57p/h (based on mid point of internal DfE paycales)
- All wage estimates have been uplifted by 27% to reflect additional non-labour costs.
- That independent schools with variable inspection results do not choose to be exempted, leading to a 'see-saw' effect of schools being exempted, then losing exemptions and then being exempted again. Taking on EYFS trained staff to practice EYFS and measure the EYFS profiles when the school is not exempt would be expensive and time consuming for the school. To discourage this we will talk to the larger independent schools associations about the potential costs to these schools.
- That there will not be a significant number of new exemptions applications from Steiner and French schools. There are around 10 Steiner and French schools that are not currently exempt from the EYFS framework. These schools are already eligible for exemptions, so if they have not previously chosen to seek exemption based on their established principles, they are unlikely to do so purely as a result of the streamlined process.
- Local authorities are comfortable with making their own judgements about whether to fund free early education places in independent schools which take up full exemption from the learning and development requirements of the EYFS, without any direction above and beyond the statutory guidance on the free early education which is due to come into force in September 2012. It is possible that the department will need to deal with increased queries from local authorities seeking advice.

10. Direct costs and benefits to business calculations (following OIOO methodology)

One-In-One-Out (OIOO)

10.1 The costs and benefits to independent schools associated with the extension of eligibility for exemption are not in scope of One-In-One-Out as they depend on the voluntary decisions of schools to apply for exemption, rather than being direct consequences of the regulatory change. Only the impacts relating to schools already using the system are in scope, so only they have been included in the business assessment calculations. These impacts represent a reduction in existing burdens and so this qualifies as an OUT for ONE-IN-ONE-OUT purposes.

11. Wider impacts

11.1 Children – enabling providers to offer provision outside of the EYFS learning and development requirements increases the variety of early years provision available to children as providers have greater flexibility in what they can offer. Although a number of those in the sector are concerned that provision outside of the EYFS will not offer a high-quality experience for children, there are safeguards in that exempted provision is inspected, as is EYFS compliant provision, and for the new route only provision judged as 'good' or better against EYFS requirements are able to opt-in for exemption. The 35 providers that have been granted exemptions, Steiner and French schools are mostly rated 'good' or better by inspectors making it comparable to other EYFS compliant provision. There is no facility for exemption from EYFS welfare requirements so there is no risk to the safety and protection of children.

11.2 Parents – the rights of parents to choose childcare which adheres to their principles will remain, and parents who choose to send their children to independent schools will have a wider range of curriculum offers to choose from. However, some parents sending their children to independent schools may be disadvantaged if local authorities choose not to fund free early education places in exempted schools. Schools must consult with parents and explain any implications of loss of funding caused by them opting-in for exemption from EYFS.

11.3 Practitioners and teachers – the new measures reduce bureaucracy and allow teachers in independent schools more scope to offer the type of curriculum which parents want. Practitioners say it will give them more time to spend with the children.

11.4 LA – LAs will spend less time making assessments of exemptions and writing letters for providers to give their judgement. They will also spend less time moderating the EY Profiles in independent schools. However, they will be required to spend some additional time in assessing whether schools taking exemptions should receive funding to deliver free early education places. Some LAs were concerned that they would have less control over the quality of local childcare by exempting independent schools.

11.5 Small Firm Impact Test

We are applying for the moratorium for micro-businesses to be waived for the purposes of these regulations because exemptions should be available to any early years provider which wishes to have one, including providers which are micro-businesses. Exemptions are aimed at allowing providers with particular 'established principles' to be able to operate. Without this regulation applying to them, micro-businesses would not be able to enjoy the same rights to exemptions as larger businesses, which could force certain small businesses with particular 'established principles' to close.

11.6 Competition Assessment impact test

The new regulations will not directly limit the number or range of suppliers.

The new regulations will not indirectly limit the number or range of suppliers.

The new regulations will not limit the ability of suppliers to compete nor reduce suppliers' incentives to compete vigorously.

The amendments to the regulations affect some types of businesses more than others – for example, independent schools. However, this is in response to demands from those schools themselves to be able to offer early years provision free from state control. The changes proposed create more flexibility in the market for independent schools to meet demand from parents for a certain type of early years education for their children.

12. Summary and preferred option with description of implementation plan

12.1 Option 2 meets the needs of independent schools and parents to offer independent early years provision and mostly meets the needs of providers who already have exemptions. Option 1 (do nothing) meets none of these needs and Option 3 only helps the small number of providers (currently 35), that want to apply for exemptions on grounds of 'established principles' which are irreconcilable with the EYFS learning and development requirements, by making the process simpler but would do nothing to give independent schools greater freedoms despite Tickell's recommendations in the wider EYFS review.

12.2 We have gone further with Option 2 than Tickell recommended, providing an option to be exempt from the EYFS learning and development requirements to all independent schools, not just those linked to school associations, as legal advice was that this would be unfair to non-associated schools. We did not however offer full exemption or the ability to apply en block to providers seeking exemption on grounds of 'established principles' (although this is their preference) because the criteria for consideration for these providers is not based on their quality as measured by their inspection judgements but is based on irreconcilable principles of early years practice which providers need to demonstrate and explain on a case by case basis, covering each of the relevant early learning areas or education programmes and goals. In contrast the block exemption arrangement for schools seeking exemption via the 'independent schools route' involves schools declaring that they meet the criteria which are set out in a pre-published Direction by the Secretary of State.

12.3 To implement Option 2 we will give notice to the early years sector of the date that the revised regulations will come into force and provide guidance in advance on who is eligible to

apply or opt-in and what they need to do. The communication will go on-line and also be forwarded to existing exempt providers and their associations, independent schools with early years provision (as these two groups are directly affected) as well as to local authorities. This enables the school associations and individual providers to prepare by consulting parents and checking eligibility so that they are ready to apply or opt-in as soon as the Regulations come into force. It also means they can have conversations on any impact on funding of free early education places with their local authorities in advance of their application or opt-in. The team will have discussions with representatives of schools that currently have exemptions, with the inspectorates and representatives of independent schools to ensure the process will be as smooth as possible.

On the date that the EYFS Exemption Regulations come into force, we will place on our website a Direction from the Secretary of State that sets out the criteria that independent schools must fulfil to be eligible to opt-in as well as emailing the link directly to all independent schools. We will ensure there are sufficient DfE people to deal with queries and process applications or schools opting-in for EYFS exemptions during this period.

Post Implementation Review Plan

Annex 1: Post Implementation Review (PIR) Plan

A PIR should be undertaken, usually three to five years after implementation of the policy, but exceptionally a longer period may be more appropriate. If the policy is subject to a sunset clause, the review should be carried out sufficiently early that any renewal or amendment to legislation can be enacted before the expiry date. A PIR should examine the extent to which the implemented regulations have achieved their objectives, assess their costs and benefits and identify whether they are having any unintended consequences. Please set out the PIR Plan as detailed below. If there is no plan to do a PIR please provide reasons below.

Basis of the review: [The basis of the review could be statutory (forming part of the legislation), i.e. a sunset clause or a duty to review, or there could be a political commitment to review (PIR)];

The EYFS framework is to be reviewed 09/2016 at which time it is appropriate that the EYFS Exemptions regulations are also reviewed. In the interim we are committed to close contact with the sector as we implement the proposals, and will respond to issues as they arise. We will look at take-up of the exemptions routes to see if the EYFS universal framework has been significantly undermined. We will look at inspection judgements of exempted providers and compare them to mainstream results to test if concerns over quality caused by exemptions are justified. Check that providers working to established principles are still able to operate in the early years market and that parents have a choice of provision that meets their needs

Review objective: [Is it intended as a proportionate check that regulation is operating as expected to tackle the problem of concern?; or as a wider exploration of the policy approach taken?; or as a link from policy objective to outcome?]

PIR will include a review of the new exemption arrangements, testing how those changes are experienced in practice. This will be done by working with representative bodies such as the Steiner Waldorf Schools Fellowship and the Independent Schools Council, with whom we have built good relationships. We will also consult the inspectorates prior to and during the PIR to gauge any changes in quality of exempted providers in relation to EYFS compliant settings. We also intend to look at how long it takes providers to apply for exemptions and overall costs of applying.

Review approach and rationale: [e.g. describe here the review approach (in-depth evaluation, scope review of monitoring data, scan of stakeholder views, etc.) and the rationale that made choosing such an approach]

Review of data - for example, inspectorate ratings and EYFSP data - will be conducted, as will ongoing testing of stakeholder views. This will allow us to see if there is any noticeable drop in

standards in schools taking up exemptions. We would also track exemption applications – and, subject to negotiation, work with particular representative organisations, where agreed, to track quality levels in member providers.

Baseline: [The current (baseline) position against which the change introduced by the legislation can be measured] The baseline will be current numbers of providers with full or partial exemptions in 2012 and compare to the numbers in 2016. The quality base-line will be inspection results of EYFS compliant early years providers in 2016 which we can compare to those of exempt independent schools and providers in the same year.

Success criteria: [Criteria showing achievement of the policy objectives as set out in the final impact assessment; criteria for modifying or replacing the policy if it does not achieve its objectives]

Exemptions process is more effective, efficient, and satisfactory to providers. Quality of early years provision continues to improve, including the provision of exempt providers.

Monitoring information arrangements: [Provide further details of the planned/existing arrangements in place that will allow a systematic collection systematic collection of monitoring information for future policy review]

Inspectorates measure the quality of independent schools and early years provision. The Department will keep a record of which providers are exempt and the type of exemption as all providers opting for exemption will either have to apply to or notify the Department. We will also monitor complaints concerning the operation of the Regulations.

Reasons for not planning a review: [If there is no plan to do a PIR please provide reasons here]

N/A

Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	Yes	No
Small Firms Impact Test	Yes	No
Legal Aid	No	No
Sustainable Development	No	No
Carbon Assessment	No	No
Other Environment	No	No
Health Impact Assessment	No	No
Race Equality	No	No
Disability Equality	No	No
Gender Equality	No	No
Human Rights	Yes	No
Rural Proofing	No	No

Annexes

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