

Title: The Education (Non-Maintained Special Schools) (England) Regulations 2015 IA No: RPC14-FT-DfE-2300 Lead department or agency: Department for Education Other departments or agencies:	Impact Assessment (IA)			
	Date: 27/07/15			
	Stage: Final			
	Source of intervention: Domestic			
	Type of measure: Secondary legislation			
Contact for enquiries: Michael Bell michael.bell@education.gsi.gov.uk 01325340430				
Summary: Intervention and Options			RPC Opinion: GREEN	

Cost of Preferred (or more likely) Option			
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, Two-Out? Measure qualifies as
£30,028	£30,028	-£2,743	Yes Zero Net Cost

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

The Education (Non-Maintained Special Schools) (England) Regulations 2011 (2011 Regulations) set out the conditions for Non-Maintained Special Schools (NMSS) approval, and the requirements to remain approved by the Secretary of State. As with all sectors in the school system some level of government intervention is essential to ensure the safety of children and the cost & quality of their education. The 2011 Regulations require updating; both to reflect new and amended legislation and to reflect updated policy position; as well as removing what we know are burdensome requirements on NMSSs.

What are the policy objectives and the intended effects?

The main policy objective is to bring the regulations that set out the conditions that NMSS must meet to be approved and remain approved (and as such function as a school) up to date. Major changes include:

1. A new emergency power, 2. Updated safeguarding requirements, 3. Reduced bureaucracy in recording complaints and drafting the school prospectus. The main intended effects are twofold. Firstly, the Secretary of State will have up to date powers to hold NMSSs to account. Secondly, the sector will be working within a fully up to date framework with unnecessary bureaucracy stripped out. Full details provided from page 3.

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

1. Do nothing- leave the 2011 Regulations in place. This would leave NMSS working with requirements that in some instances are out of date, in some instances don't match up with primary legislation and in some instances don't match the policy intent of the Department.
2. Make The Education (Non-Maintained Special Schools) (England) Regulations (2015 Regulations) that will replace and revoke the 2011 Regulations. This is the preferred option. This will allow the Department to update the requirements for NMSS to be approved and remain approved. Important changes include a new emergency closure power and updated safeguarding checks that strengthen the safeguarding regime. In some instances the 2015 regulations allow the department to remove outdated bureaucratic process that will save NMSSs time. Full details set out from page 3 below.

Will the policy be reviewed? It will be reviewed. If applicable, set review date: 09/2018					
Does implementation go beyond minimum EU requirements?			N/A		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.		Micro Yes	< 20 Yes	Small Yes	Medium Yes
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)		Traded: N/A		Non-traded: N/A	

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: _____ **John Nash** _____ Date: 30/07/15

Summary: Analysis & Evidence

Policy Option 1

Description:

FULL ECONOMIC ASSESSMENT

Price Base Year 2014	PV Base Year 2014	Time Period Years10	Net Benefit (Present Value (PV)) (£m)		
			Low: £0.0245	High: £0.0349	Best Estimate: £0.03

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	£0.005	£0	£0.005
High	£0.016	£0	£0.016
Best Estimate	£0.011	£0	£0.011

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

- 1) NMSSs Familiarisation costs due to new regulations created minus streamlining benefits(central: £6,064)
- 2) Cost created by NMSSs having to revise their Curriculum to include fundamental British values (central: £4,484)

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

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	£0.003	£0.027	£0.03
High	£0.011	£0.040	£0.051
Best Estimate	£0.007	£0.033	£0.041

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

- 1) The time saved as no longer formally having to record verbal complaints (central: £3,858)
- 2) The time saved as a result of the removal of mandatory requirements for NMSSs prospectuses (central: £7,366)

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

Key assumptions/sensitivities/risks	Discount rate (%)	3.5%
Proportion of NMSSs affected, time taken to read new regulation(hrs.), hourly salary off Head Teacher, hourly salary off chair of Governors, on costs (non-wage labour costs), average salary off senior management, saved time in reducing complaints (hours per complaint), saved time in producing prospectus (hrs per year).		

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			In scope of OITO?	Measure qualifies as
Costs: £0.001	Benefits: £0.0037	Net: £0.0027	Yes	Zero net cost

Evidence Base (for summary sheets)

1. Problem under consideration

The 2011 Regulations set out the conditions for NMSS approval, and the requirements to remain approved by the Secretary of State. The 2011 Regulations require updating to reflect new and amended legislation as well as to reflect updated policy position and remove burdensome requirements on NMSSs.

2. Rationale for intervention

As with all sectors in the school system some level of government intervention is essential to ensure the safety of children and the quality of their education. The rationale for government intervention is well established and the sector expects to be held to account via the NMSS regulations – most recently the 2011 Regulations. The sector has made clear it is keen for the 2011 Regulations to be updated to reflect the most up to date legislative and policy positions and the Department is confident (following consultation) that NMSSs will broadly welcome the 2015 Regulations.

3. Policy objective

The policy objective is to update the 2011 Regulations so they reflect recent changes in primary legislation. This includes updating the safeguarding requirements (from Protection of Freedoms Act 2012¹) and reflecting the changes to the special educational needs (SEN) regime (from the Children and Families Act 2014²). The changes to the safeguarding regime will ensure that NMSSs are being held to account in line with the latest safeguarding legislation. Specifically requirements regarding regulated activity and when a full enhanced disclosure and barring check should and shouldn't be carried out. Changes to the SEN regime reflect the introduction of Education and Health Care Plans. It should be noted that the 2015 Regulations do not add any burden for NMSSs in terms of SEN and safeguarding. The schools are already required to follow the safeguarding and SEN regimes based on the primary legislation. The 2015 Regulations will ensure the sector are being held to account based on the latest requirements.

The Department also wants to reflect updated policy positions such as the requirement to promote fundamental British values. The policy derives from the Prevent Strategy³. It is government policy that fundamental British values should be actively promoted across all schools in England. This is consistent with the requirement on independent schools, which also applies to academies and free schools, and the expectation on maintained schools as articulated in the Departmental guidance to the maintained sector on promoting fundamental British values as part of the spiritual, moral, social and cultural development of pupils. Details on practical implications for NMSSs will be included in guidance. In addition, in some instances, the 2011 Regulations are overly bureaucratic and in response the Department is proposing to remove a number of requirements that will ease the bureaucratic burden on NMSSs.

The 2015 Regulations will provide that the Secretary of State has the power to withdraw approval from a school where it has not complied with any requirement in the Regulations. Before withdrawing approval the Secretary of State must give written notice specifying the requirements which must be complied with, along with timescales to meet the requirements, and may agree to temporary arrangements pending compliance with such requirements. This is not a new position and reflects the 2011 Regulations.

¹ <http://www.legislation.gov.uk/ukpga/2012/9/contents>

² <http://www.legislation.gov.uk/ukpga/2014/6/contents>

³ <https://www.gov.uk/government/publications/prevent-strategy-2011>

Where there is a serious safeguarding concern, the 2015 Regulations will provide the Secretary of State with the power to seek an emergency order from a Justice of the Peace (JP) for the school to cease to be approved, which would have the effect of closing a NMSS immediately (at least pending the outcome of a successful appeal against the making of such an order). This is a new regulation. The Department have committed to using this regulation as a back stop power in a last resort. The use of the power over the next 10 years is estimated to be negligible. It is however important for the Secretary of State to have access to emergency closure powers when children's welfare might be at serious risk – something that isn't currently provided by the 2011 Regulations.

4. Options considered

1. Do nothing – leave the 2011 Regulations in place.

This would leave NMSSs working with requirements that in some instances are out of date, in some instances don't match up with primary legislation and in some instances don't match the policy intent of the Department.

Costs

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

2. Make the 2015 Regulations that will replace and revoke the 2011 Regulations. **This is the preferred option.**

This will allow the Department to update the requirements for NMSSs to be approved and remain approved. Important changes include a new emergency closure power, updated safeguarding checks that strengthen the safeguarding regime and ensure there is no confusion with regards to the types of disclosure and barring service checks that are required. In some instances it will allow the Department to remove outdated bureaucratic process that will save NMSSs time and money.

Consultation

The Department ran a targeted consultation with the 69 schools in the sector and their main representative body- the National association of Special Schools and Non-maintained Special Schools (NaSS).

The Department provided all schools with a copy of the new draft 2015 Regulations with an explanation as to the proposed changes and a response form for comments.

In addition to this the Department took part in an online question and answer session with the sector, facilitated by NaSS, which over ten schools took part in and provided a useful opportunity for the sector to ask questions and seek clarification from the Department on various proposed changes.

The Department received 5 consultation responses from schools and a response from NaSS.

There was general support for the new regulations. A number of respondents requested guidance to support the commencement of the 2015 Regulations and this is something the Department is committed to doing.

MOJ

The Department has started the process with Ministry of Justice that will set up the appeal right to the new emergency power.

Costs

When approving this IA's suitability for the fast-track route, the RPC recommended that "the department will need to test its estimates during the consultation". The analysis presented in this validation IA uses the same assumptions as the triage IA. The Department has already conducted a focussed consultation and believes it would be disproportionate to seek to collect better evidence. Further information is provided at the beginning of Annex A.

5. Summary of costs and benefits for preferred option (Further explanation in Technical Annex A)

The estimated costs are:

- i) Familiarisation: the cost to read and understand the new regulations. The costs of familiarisation are offset by some streamlining benefits.
- ii) Active promotion of fundamental British values (FBVs): the cost of time to introduce this into the curriculum.

The estimated benefits are:

- i) Less bureaucracy when recording complaints: the benefit of time saved in no longer having to officially record certain types of complaints.
- ii) Fewer requirements for NMSSs prospectuses: the benefit of time saved from not having to include specific text and items in the prospectuses.

Summary of Overall Economic Costs and Benefits (central estimate)

The tables below present: the transition (once-off) costs and benefits from our central scenario, presented in nominal terms; average annual costs and benefits, where costs and benefits recur (nominal); total annual costs in discounted terms; and total discounted costs and benefits. The NPV is in the bottom row. See Annex B for low and high scenario NPVs.

Costs (rounded)

	Transitional Costs (nominal)	Average Annual Costs (nominal)	Total Annual Costs (discounted over 10 year period in 2014 prices)	Total Discounted Costs
Familiarisation minus streamlining	£6,064	-	-	£6,064
Curriculum revision – FBVs	£4,484	-	-	£4,484
Total overall costs	£10,548	£0	£0	£10,548

Benefits (rounded)

	Immediate benefits (nominal)	Average Annual benefits (nominal)	Total Annual benefits (discounted over 10 year period in 2014 prices)	Total discounted benefits
Verbal complaints recording	-	£3,858	£33,211	£33,211
Prospectuses	£7,366	-	-	£7,366
Total overall Benefits	£7,736	£3,858	£33,211	£40,577
NPV				£30,029

Summary of Costs to Business (central estimate)

The Costs to Business are the same as the Overall Economic Costs.

Direct impact on business (Equivalent annual)

Combining total transition costs of this regulation change and total transition benefits as well as net annual benefits of regulation change with the 2014 EANCB calculator derives an EANCB estimate of this regulation change of (£2,743).

Details on how this value is calculated can be found in Annex B.

Summary and preferred option with description of implementation plan

Option 2 is the preferred option.

The Department intends to make and lay the new regulations in March 2015 with the intention for them to commence in September 2015.

The Department has been in close contact with the sector throughout the regulation making process to date and will continue to do so.

The Department are committed to publishing guidance on the 2015 Regulations in advance of their commencement.

Economic Analysis

When confirming that this IA was suitable for the Fast Track route, the RPC suggested that the Department should attempt to improve the evidence that supports the assumptions. This annex presents the same analysis as the original IA. We believe that retaining the original assumptions is a proportionate approach: to gather better evidence, we would need to carry out a survey of some schools or a consultation with focussed questions. Take, for example, the case of familiarisation: we would need to find out who how long schools would expect to spend reading such a document or how long they have spent reading a similar document or the last change to the NMSS.

Aside from the expected disproportionate cost of such a survey or consultation, it is not clear that we would collect better evidence. Such surveys can suffer from response bias, where respondents incorrectly recall how long they have spent on previous documents or consciously misrepresent how long it might take. The response the Department received to a separate consultation on Independent School Standards tells us that schools are unlikely to estimate how long such tasks might take, even when explicitly asked to.

Finally, we believe it would be disproportionate to attempt to gather new evidence given how low in quantum the costs are: in our cautious high scenario total costs are just £16,022.

1. Monetised costs of regulatory changes

a) Familiarisation costs minus streamlined benefits

When determining the costs of familiarisation with the regulations, the following factors are considered:

Numbers Affected

It is assumed that the Head Teacher and Chair of Governors in each NMSS will read the revised regulations. This means that **138** people (69 x 2) will read the new regulations.

Time taken

Overall, there have been 10 additions to these regulations since the last release and it is thought time will be spent reading the new regulations. In some cases, schools may request clarification. Internal estimates suggest it would take an individual two hours to read the regulations in the level of detail required to understand them (assuming no prior knowledge of the area).

As the Head Teacher and Chair of Governors are familiar with the previous regulations, it is assumed they will be able to read and understand the new regulations in less time. It is reasonable to expect it to take **one and a half hours** on average to read and understand the changes made.

Cost of time

There is no available salary data for head teachers in NMSSs. We have therefore used published DfE school workforce statistics⁴ for state-funded schools. This dataset provides annual earnings data and we use a figure for school leaders which is £56,100 per annum.

⁴ School Workforce In England: November 2013, DfE SFR 11/2014

It is assumed head teachers work 40 hours per week, for forty weeks a year. This produces an estimate of the wage of a head teacher of **£35 per hour**. We have increased this salary by 25% to be sure that we have not underestimated this salary due to the fact that these schools are non-maintained. This presents a possibility that due to the independent nature of these schools they may be paid more than the average head teacher.

We have used a figure for the wage of a Chair of Governors that was presented in a previous IA⁵ submitted and cleared by the RPC. This assumes that governors are unrepresentative of the average worker and that they are more likely to come from the professional and higher skilled population. They therefore use the average wage of the U.K population and increase by 25%. We do the same for our low estimate but also increase this by a further 25%pts for our central and high estimates (£6 and £9 respectively).

On Cost uplift

Non-wage labour costs: An on-cost uplift to average hourly gross wages of 22.13% is applied to the salary figures. This is based on a Departmental estimate of non-wage labour costs average employer pension and NI contributions (for the teacher workforce). This is in line with HM Treasury guidance⁶ to incorporate both salary and non-wage labour costs.

On-costs for non-staff school governors may be lower than this, but to be cautious we apply the same uplift for all staff in this impact assessment.

The table below shows the low, central and high estimates of the cost of familiarisation. Our central cost is £6,064.

Streamlining benefit

The minor changes to the regulations (contained in the Schedule) are intended to streamline the regulations and make the document easier to read. We estimate that these changes will cut down the time taken to read the document by between 10 and 30 minutes.

Since we assume that 100% of head teachers and Chair of Governors in NMSSs will read the document in order to understand the revised regulation, we also assume that 100% will be positively affected by the reduced time required to read the entire document. This therefore will somewhat offset the costs created by regulation change. All figures for the costs and the wages and on cost uplift are equivalent to those used for the familiarisation costs. Like familiarisation costs we assume this to only have a once off affect.

1. Familiarisation costs minus streamlining benefits

	High	Central	Low
Proportion of NMSS affected	100%	100%	100%

⁵ Validation IA. The Education (Independent School Standards)(England)(Amendment)Regulations 2014

⁶ HM Treasury (2011, p.20). The Green Book: Appraisal and Evaluation in Central Government.

Number of schools affected	69	69	69
Time taken read (minutes)	120	90	60
Reduced Time taken to read (minutes)	30	20	10
Net time taken (minutes)	90	70	50
Hourly salary off Head Teacher	£43.75	£43.75	£35.00
Hourly salary off chair of Governors	£21	£18	£15
On Costs (non-wage labour costs)	22%	22%	22%
Total one-off familiarisation costs (nominal)	£10,901	£7,797	£4,209
Benefit off Time saved due to streamlining	£2,725	£1,733	£702
Net cost of familiarisation	£8,176	£6,064	£3,508

b) Curriculum revisions to include fundamental British values

When determining how much this curriculum change will cost, the following factors are considered:

Proportion of NMSSs affected

This is the total number of schools that have to update their curriculum to meet the regulations to include teaching FBVs. This is expected to be quite low, as the Department knows many schools are already actively promoting these values, so we have chosen a cautious assumption that between 10%-30% of the 69 NMSSs will have to take some action.

Time taken

It is expected to take less than one day's work to reflect these changes into the curriculum. A member of senior management could do this.

Cost of time

The wages for senior management are assumed to be equivalent to those used in the familiarisation section. We also use the same "on costs" as those in the familiarisation section, 22%. The central cost is £4,484.

	High	Central	Low
Total NMSS	69	69	69
Proportion of NMSSs affected	30%	20%	10%
Number of schools affected	21	14	7
Time taken Senior Management (hrs.)	7	6	5
Average salary off senior management	£43.75	£43.75	£35.00
"On Costs" (non-wage labour costs)	22%	22%	22%
Total one-off costs (nominal)	£7,846	£4,484	£1,495

3. Monetised benefits of regulatory changes

a) No longer formally having to record verbal complaints

It is assumed that 100% of NMSSs will be affected by this regulatory change. It is assumed that each NMSS receives 50 complaints a year, 50% of which are verbal. On average, recording a complaint would take five minutes, and recording resulting action would also take five minutes. Hence, the central estimate is that this regulation would save four hours per year of staff time.

It is assumed that a member of administration staff would be responsible for recording the initial complaint and any resulting action. The hourly wage of administration staff is obtained from Annual Survey of Hours and Earnings (ASHE)⁷ data on the hourly wage of administrative staff.

	High	Central	Low
Proportion of NMSS affected	100%	100%	100%
Number of schools affected	69	69	69
Complaints per year	60	50	40
Percentage of complaints that are verbal	50%	50%	50%
Saved time in reducing verbal complaints (hrs per year per school)	5	4	3
Hourly wage of admin staff	£11	£11	£11
“On Costs” (non-wage labour costs)	22%	22%	22%
Net savings	£4,630	£3,858	£3,087

b) Removal of mandatory requirements for NMSS prospectuses

It is assumed that 50% of NMSSs will be affected by this regulatory change and that there will be time savings from no longer having to check all of the requirements as to the content of the prospectuses are met. However, it is assumed that the majority of NMSSs will not make significant changes to their prospectuses. Those NMSSs that do though will save significant amounts of time due to no longer having to follow stringent guidelines. We thus estimate and average of the majority who will not be affected at all and the minority which will be relatively much more affected. Therefore, it is estimated that on average, each NMSS that is affected will save four hours of time per year as a result of this regulation.

It is assumed a member of senior management is responsible for updating the content of the prospectus each year, and that the wages and on cost uplifts are equivalent to those used in previous sections.

	High	Central	Low
Proportion of NMSSs affected	50%	50%	50%
Number of schools affected	69	69	69

⁷ Annual Survey of Hours and Earnings, 2014 Provisional Results

Saved time in producing prospectus (hrs per year)	6	4	2
Hourly wage of senior management	£43.75	£43.75	£35.00
“On Costs” (non-wage labour costs)	22%	22%	22%
Net savings	£11,049	£7,366	£2,946

Annex B – Calculation Details for NPVs and EANCB

NPV central scenario Calculations

Costs (rounded)

	Transitional Costs (nominal)	Average Annual Costs (nominal)	Total Annual Costs (discounted over 10 year period on 2014 prices)	
Familiarisation minus streamlining	£6,064	-	-	
Curriculum revision FBVs	£4,484	-	-	Total
Total overall costs	£10,548	£0	£0	£10,548

Benefits (rounded)

	Immediate benefits (nominal)	Average Annual benefits (nominal)	Total Annual benefits (discounted over 10 year period on 2014 prices)	
Verbal complaints recording	-	£3,858	£33,211	
Prospectuses	£7,366	-	-	Total
Total overall Benefits	£7,366	£3,858	£33,211	£40,577
				NPV
				£30,029

NPV High, Central and Low Scenarios

	<u>Costs (rounded)</u>
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	High	Central	Low
Familiarisation minus streamlining	£8,176	£6,064	£3,508
Curriculum revision FBVs	£7,846	£4,484	£1,495
Total Costs	£16,022	£10,548	£5,003
	<u>Benefits (rounded)</u>		
	High	Central	Low
Verbal complaints recording	£39,854	£33,211	£26,572
Prospectuses	£11,049	£7,366	£2,946
Total benefits	£50,903	£40,577	£29,518
NPV	£34,881	£30,029	£24,515

EANCB calculation

Costs	Benefits	Net
£964	£3,706	£2,743

Costs	Value in 2014 prices	One off/recurring
Familiarisation minus streamlining.	£6,064	Once off
Curriculum revisions FBVs	£4,484	Once off
Benefits		
Verbal complaints recording	£3,858	Recurring
Prospectuses	£7,366	Once off