

**EXPLANATORY MEMORANDUM TO
THE EDUCATION (EDUCATIONAL PROVISION FOR IMPROVING BEHAVIOUR)
(ENGLAND) REGULATIONS 2010**

2010 No. 1156

1. This explanatory memorandum has been prepared by the Department for Children, Schools and Families and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments and the House of Lords Merits Committee.

2. **Purpose of the Instrument**

2.1 These Regulations relate to a power exercisable by governing bodies of maintained schools under section 29A of the Education Act 2002, to require pupils to attend educational provision at a place outside the school premises to improve their behaviour. They describe who must be notified of the imposition of the requirement, and how its imposition must be kept under review. Their purpose is to provide safeguards to ensure that the power is exercised reasonably, so that pupils are not required to be out of school any longer than is necessary to improve their behaviour.

3. **Matters of special interest to the Joint Committee on Statutory Instruments**

3.1 None.

4. **Legislative Context**

4.1. These Regulations are being made in order to comply with obligations in section 29A(3) which state that Regulations must make provision requiring that (a) prescribed persons are given prescribed information relating to the imposition of a requirement that a pupil attend educational provision outside school premises, and (b) the imposition of the requirement must be kept under review. They also make additional provision relating to how long the requirement may be imposed for. During the passage of the Education and Skills Bill 2008, concerns were raised that the Bill clause, as drafted, would leave pupils vulnerable to being placed in alternative educational provision by governing bodies and simply left there indefinitely. Particular concerns were raised about the effect this might have on pupils with special educational needs. It is known that a high proportion of excluded pupils have special educational needs and the fear was that governing bodies could use this power as a way of ‘unofficially’ excluding these pupils. Ministers therefore agreed to include a number of safeguards for pupils to prevent this from happening. Those in the Regulations are as follows:

i. Not less than 2 school days’ notice must be given in writing to the pupil’s parent (or to the pupil if over the age of 18) and additionally to the local authority where the pupil has a statement of special educational needs. The notice must set out the number of days for which it is intended that the requirement is to be imposed and contain details of where the alternative educational provision that is to be made for the pupil is situated and details of the person the pupil must contact on the first day. It must also specify the reasons for imposing the requirement;

ii. The requirement cannot extend beyond the end of the school year in which it is imposed;

i.i.i. Review meetings must be held every 30 days to determine whether the requirement should remain in place. Specified persons must be given notice of the meeting, invited to attend and provided with written notification of the outcome;

iv. Governing bodies exercising functions under section 29A of the Education Act 2002 must have regard to guidance issued by the Secretary of State.

5. Territorial Extent and Application

5.1 This Instrument applies in relation to maintained schools in England.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy Background

7.1 Governing bodies of maintained schools have, for some time, had a power under section 29(3) of the Education Act 2002 (as amended by the Education Act 2005) to “require pupils at the school to attend at any place outside the school premises for the purposes of receiving any instruction or training included in the secular curriculum for the school”. This power was intended to enable schools to send pupils to other schools or FE colleges to take academic or vocational subjects that their own school could not provide, and it also enables the school to send a whole class on a field trip or similar activity.

7.2 It came to the attention of the Department, through information supplied by a number of local authorities, that the power was being used for purposes that may have gone beyond those set out in section 29(3) of the 2002 Act. It was difficult to ascertain the numbers of schools involved, but it was clear that some schools were using the power for the purpose of sending challenging pupils to various forms of alternative provision as an alternative to resorting to the more punitive option of exclusion. Relying on section 29(3) to send pupils to off-site provision, where the underlying reason for removing them was behaviour-related rather than instruction- or training-related, was considered to be a questionable use of the power. It was feared that governing bodies using the power for this purpose might face a successful legal challenge.

7.3 This prompted further concern that school partnerships created for the purpose of improving behaviour and tackling persistent absence would not be able to operate effectively. Challenging pupils could not be transferred between schools or from school to alternative provision without the parents’ consent, even in situations where the parent was a major part of the problem. Ministers wanted schools to use early intervention more frequently, including removal of pupils to other settings for the purpose of improving their behaviour, and they made their views on this clear in the White Paper, ‘Back on Track’, which was published in May 2008. It was therefore vital to the success of the ‘Back on Track’ policy that schools should be given wider powers under section 29, to enable them to use alternative provision as an early intervention to address pupils’ behavioural problems before they escalated to the stage exclusion stage.

7.4 Ministers therefore decided to introduce an explicit power for governing bodies to require pupils to attend off-site provision specifically aimed at improving their behaviour. In order to implement this policy objective, an amendment to existing legislative provisions in section 29 of the 2002 Act was needed. Section 154 of the Education and Skills Act 2008 amends section 29 of the 2002 Act to enable pupils to be required to attend off-site provision for the purpose of improving their behaviour.

7.5 During the passage of the Education and Skills Act 2008 through Parliament, concerns were raised that the new power would enable governing bodies to remove pupils from the school indefinitely, without regard to the needs of the pupil and whether those needs were being met by the off-site provision. There were particular concerns about the effect this would have on pupils with special educational needs. Were the power to be used in this way it could have the effect of a

permanent exclusion, without the governing body having to comply with the statutory exclusions procedures and with the pupils and their parents having no right of appeal. Ministers therefore agreed to amend the clause to introduce safeguards for pupils who are referred off-site by governing bodies using the new power, to address the concerns. Some of these safeguards are on the face of the primary legislation, while others are included in the regulations and guidance, which will be published in its final form later in 2010.

7.6. There has been little public interest in the policy, and no media interest apart from one press article during the consultation. The legislative change and ensuing Regulations are not considered to be of significant political or legal importance. Because it has been necessary to provide governing bodies with new powers, and to regulate the exercise of those powers, the policy change has had to be implemented through primary legislation, with detailed requirements relating to the exercise of the power set out in Regulations. It has not been possible to implement the policy through non-legislative means.

8. Consultation outcome

8.1 The Department consulted, via its consultation website, on the Regulations, which were accompanied by guidance explaining their purpose and what they do. The consultation started on 10 December 2009 and ended on 4 March 2010 and was open to schools, local authorities, Pupil Referral Units, teaching unions and associations, national organisations and parents. There were 32 responses; 38% were from local authorities, 19% from school governors, 9% each from teaching unions or associations and national organisations and 6% from school staff, including head teachers. 65% of the respondents considered the regulations and guidance helpful or very helpful, while 21% thought it not very or not at all helpful. The remaining 14% considered them neither helpful nor unhelpful.

8.2 The responses to the consultation were mixed and to some extent contradictory – while some respondents felt that 30 days was too long a period between reviews, others said that 30 days was not enough time to deal with pupils' problems; some thought that it was good that a referral could not go beyond an academic year, others were critical of this and felt that it would be better for pupils if could do so. It is possible, however, to determine some major themes. The role of governors and of local authorities was a concern raised several times, with some saying that this power should be for the local authority, others saying that it should rest with school staff and not governors, while others wanted clarification of whether governors could delegate the function to a sub-committee of governors, one governor or the head teacher of the school. Some wanted local authorities to have a role of overseeing the way the power is used. One major issue was the way that this power may effect pupils with special educational needs and one particularly mentioned that the two days notice of a placement may not be enough for pupils with autism.

8.3 The Department has given careful consideration to all of the points made during the consultation and, having taken these into account, the regulations have been amended to provide that: the local authority must be given notice of the off-site provision where the pupil has a statement of special educational needs and advised of the outcome of any review meeting; and that the provider of the off-site provision must also be invited to review meetings and advised of their outcome.

9. Guidance

9.1 The Department consulted on draft guidance as well as the regulations and there may be changes made to the guidance as a result of the consultation responses. In particular, it may be possible to address some of the concerns outlined in paragraph 8.2 above by amending the guidance and we will consider whether we should do so and, if so, how. The guidance will be published to coincide with the coming into force of the regulations but, because of the possible amendments, is not yet ready for publication. It is likely that the guidance will be included as a sub-set of the current exclusions guidance.

10. Impact

10.1 An Impact assessment has been prepared for these regulations and a copy is attached.

11. Regulating small businesses

11.1 The legislation does not apply to small businesses.

12. Monitoring and review

12.1 The outcome the Department wants for this legislative change, and for the new Regulations and guidance is that schools intervene early to resolve behavioural problems before they escalate. We will be reviewing whether this outcome is being achieved in 2013. Indicators that the legislation has been successful will be:

- an increase in the number of pupils placed in alternative provision by schools;
- whether pupils are being referred at an earlier age - one of the findings of the last alternative provision surveys (2005) was that alternative provision was used most often for pupils in Key Stage 4 but 'Back on Track' encourages schools and local authorities not to wait until then to intervene when a pupil's behaviour is causing concern; it is often too late by KS4. So an increase in the number of pupils being referred in KS3 and below will be a clear indication that the power is being used for the intended purpose;
- whether there is a fall in the number of exclusions, both fixed period and permanent.

12.2 There are a number of factors to take into account when reviewing the impact of the legislation. The Department will monitor the data on numbers of exclusions from now until 2013, and may commission a further survey of alternative provision in 2013 to see how often the power has been used. Further decisions will be made in 2013 in relation to whether any other steps are needed in order to ensure operation of the power is monitored effectively.

13. Contact

13.1 Tim Youlden at the Department for Children, Schools and Families (tel 0207 340 8314 or e-mail Timothy.Youlden@dcsf.gsi.gov.uk) can answer any queries regarding the instrument.

Summary: Intervention & Options

Department /Agency: DCSF	Title: Impact Assessment of Regulations and Guidance under Section 154 of the Education and Skills Act 2008.	
Stage: Final Proposal Stage	Version: 2	Date: 24 March 2010
Related Publications:		

Available to view or download at:

<http://www.>

Contact for enquiries: Tim Youlden

Telephone: 020 7340 8314

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

Section 154 of the Education and Skills Act 2008 enables schools to direct pupils off-site for behaviour related training. However, there is a risk that this power is used by schools to keep difficult pupils out of mainstream school. Therefore, Government intervention is necessary to prevent indefinite referrals. This will ensure equitable treatment for all pupils.

What are the policy objectives and the intended effects?

The objective of the regulations is to ensure that the power in section 154 is used appropriately as a tool to improve behaviour and not just a way of removing pupils from the school. Alternative provision that is aimed primarily at behaviour improvement may not have enough of an academic element for pupils to progress and gain qualifications, so prolonged use of it will worsen the likely outcomes for pupils rather than improve them, potentially leading to an increase in the number of young people not in education, employment or training.

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

To provide the power to governing bodies without any safeguards, although this would not meet commitments made in Parliament. The safeguards were introduced during the passage of the Bill in response to concerns that pupils would be left indefinitely in off-site provision and that pupils with special educational needs could be particularly disadvantaged by section 154.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects? We will seek to evaluate the impact of this legislation in late 2013, after the guidance and the legislative duty has been in place for 3 years.

Ministerial Sign-off For consultation stage Impact Assessments:

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

Signed by the responsible Minister:

Vernon Coaker.....Date: 30 March 2010

Summary: Analysis & Evidence

Policy Option:	Description:
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COSTS	ANNUAL COSTS		Description and scale of key monetised costs by 'main affected groups' We have considered four scenarios that reflect the different number of meetings per year that we could expect (costs over 10 years) – See Evidence Base sector: 1) 3,150 meetings (costs = £3.6m), 2) 19,200 meetings (costs = £16.8m), 3) 36,300 (costs = £31.2m), 4) 57,600 (costs = £50.4m)
	One-off (Transition)	Yrs	
	£	1	
	Average Annual Cost (excluding one-off)		
£		Total Cost (PV)	£
Other key non-monetised costs by 'main affected groups'			

BENEFITS	ANNUAL BENEFITS		Description and scale of key monetised benefits by 'main affected groups' As follow, the number of pupils that have to benefit effectively (each year) from this intervention to cover the costs associated to each scenario in the most likely situation in brackets percentage of the pupil population in PRUs: 1) 19 pupils (0.2%), 2) 90 pupils (1%), 3) 170 pupils (2%) and 4) 265 pupils (3%)
	One-off	Yrs	
	£		
	Average Annual Benefit (excluding one-off)		
£		Total Benefit (PV)	£
Other key non-monetised benefits by 'main affected groups' This intervention is likely to reduce the pupil's average stay in alternative provision and, therefore, reduce costs since the cost of educating a child in alternative provision is around £15,000 compared to £4,000 per year in mainstream school. Yet this reduction in costs has not been quantified due to the lack of data.			

Key Assumptions/Sensitivities/Risks Assume there will be no increase in the number of pupils referred off-site; that pupils will benefit from the provision and not be disruptive when they return to class.

Price Base Year 2008	Time Period Years 10	Net Benefit Range (NPV) £	NET BENEFIT (NPV Best estimate) £
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What is the geographic coverage of the policy/option?		England only		
On what date will the policy be implemented?		September 2010		
Which organisation(s) will enforce the policy?		N/A		
What is the total annual cost of enforcement for these organisations?		£ N/A		
Does enforcement comply with Hampton principles?		Yes		
Will implementation go beyond minimum EU requirements?		No		
What is the value of the proposed offsetting measure per year?		£ N/A		
What is the value of changes in greenhouse gas emissions?		£ N/A		
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?	No	No	N/A	N/A

Impact on Admin Burdens Baseline (2005 Prices)		(Increase - Decrease)	
Increase of	£ N/A	Decrease of	£ N/A
		Net Impact	£ N/A

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

[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.]

1. A school governing body already has the power under section 29(3) of the Education Act 2002 (as amended by the 2005 Act) to “*require [registered] pupils at the school to attend at any place outside the school premises for the purposes of receiving any instruction or training included in the secular curriculum for the school*”. This power was intended to enable schools to send pupils to other schools or FE colleges to take academic or vocational subjects that their own school could not provide, and it also enables the school to send a whole class on a field trip or similar activity. Legislation already gives parents responsibility for their child’s attendance at such off-site provision.
2. In addition to this, Ministers decided to introduce a power for governing bodies to refer their pupils to off-site provision specifically aimed at improving their behaviour and introduced an amendment to this effect to section 29 of the 2002 Act as section 154 of the Education and Skills Act 2008.
3. During the passage of the Education and Skills Act 2008 through Parliament, concerns were raised that the new power would mean that governing bodies would be able to remove pupils from the school indefinitely, without regard to the needs of the pupil and whether those needs were being met by the off-site provision. There were particular concerns about the effect this would have on pupils with special educational needs. Were the power to be used in this way it could have the effect of a permanent exclusion, without the governing body having to comply with the statutory exclusions procedures and with the pupils and their parents having no right of appeal. Ministers therefore amended the relevant clause to introduce safeguards for pupils who are referred off-site by governing bodies using the new power, to address the concerns raised by the opposition. Some of these safeguards are on the face of the primary legislation, while others are included in the regulations and others will be in forthcoming guidance.
4. The regulations set out the detail of how the power under section 154 should be exercised by governing bodies. They should ensure that the power will be used appropriately as a measure to address behavioural problems before they escalate to a level where exclusion becomes necessary, and not just as a way of removing pupils from the school because they are a problem to deal with. The safeguards set out in regulations and the potential benefits of each of them are:
 - *The governing body must give written notice of the requirement for a pupil to attend offsite provision not less than 2 school days before the requirement comes into effect. The notice must specify the address of the offsite provision, the number of days for which the requirement will be imposed, details of the person at the offsite provision to whom the pupil must report on first attending, the reasons for and objectives of imposing the requirement to attend offsite provision and the times of the sessions at the offsite provision.*

This ensures that the requirement cannot be imposed without notice to the pupil and their parents. It is only reasonable to provide sufficient notice to the pupil and their parents, so that they can make travel arrangements. And any placement is likely to be more successful if the parents are supportive, so it is important that they are fully informed. This notice also ensures that the governing body is clear about what they want the placement to achieve and that the pupil and their parents are aware of it. It ensures that the governing body must be able to justify any decision to refer pupils offsite and that the placement is genuinely designed to address the pupil’s behavioural problems.

- *The governing body cannot require a pupil to attend offsite provision beyond the last day of the academic year in which the requirement is imposed.*

This ensures that a governing body cannot simply refer a pupil to offsite provision and leave them there indefinitely, regardless of the benefit or otherwise to the pupil. This is designed to prevent a governing body from using offsite provision as a way of removing a pupil from the school without having to go through the exclusion process.

- *The governing body must hold a review meeting every 30 days from the date that the requirement to attend offsite provision is first imposed. The regulations also specify the people who should attend the review meetings and that the outcome of each review meeting, and the reasons on which that outcome is based, should be sent to the pupil's parent (or the pupil themselves where they are 18) and, where the pupil has a statement of special educational needs to the local authority that maintains the statement, within six school days of the review meeting.*

This requirement will ensure that governing bodies consider whether a pupil needs further time in the off-site provision to improve their behaviour. If not, the pupil can be reintegrated to school. If the governing body decide that the pupil could benefit from further time in the provision, they will have to state in writing their reasons for this decision. It also gives the governing body a chance to consider whether the offsite provision is being effective or whether some other provision might better meet the pupil's needs. Once again, this ensures that the power under section 154 is used for the right reason, that the pupils referred to offsite provision do not stay there any longer than necessary and that the provision is the best one for the pupil.

5. The guidance to accompany the regulations may be subject to change as a result of responses to the consultation. A copy of the final version of the guidance is not therefore ready at this time. This Impact assessment covers the regulations only.
6. The case for introducing the new section 154 power was made in the comprehensive impact assessment prepared for the introduction of the Education and Skills Bill. That stated that it was expected that the new provision would be cost neutral but because of the changes made to this section of the Act during its passage through Parliament and the commitments made by Ministers to include further safeguards in the regulations, there will now be cost implications. This impact assessment is only concerned with the regulations made under the Bill, rather than the complete case for a new power, and therefore includes estimates only for costs imposed by the safeguards imposed by the regulations.

The Consultation

7. The Department consulted on both the regulations and the guidance from 10 December 2009 to 4 March 2010. There were 32 responses; 38% from local authorities, 19% from school governors, 9% each from teaching unions or associations and national organisations and 6% from school staff, including head teachers. 65% of the respondents considered the regulations and guidance helpful or very helpful, while 21% thought it not very or not at all helpful. The remaining 14% considered them neither helpful nor unhelpful.
8. One of the consultation questions asked what proportion of pupils are likely to be referred under these regulations, in order to try to gauge how big the impact of the regulations is likely to be. 24 out of the 32 responses answered this question in some way (some declined saying they were not a school so could not comment, some simply left the response form blank for this question). Of those who did answer it, some gave no estimate at all but simply reiterated their view (good or bad) of the regulations. The responses that provided estimates were mixed:
 - 'very low'; 'very few'; 'minimal impact';
 - 'few at first' but increasing;

- '1%';
- '8'(pupils);
- '2 per class per year';
- '2.5% but could be higher';

As can be seen from the above, most of those who did reply with an estimate of the proportion likely to be referred said they thought it was likely to be a small proportion of pupils. Because of the small number of responses, we do not have a statistically viable basis for making any changes to the cost calculations. The costings used in this Impact assessment are therefore the same as in the one for the consultation.

9. As a result of the consultation the regulations have been amended to include:
 - a. the local authority as one of those who must be notified of a placement when a pupil has a statement of special educational needs; and
 - b. the provider of alternative provision as one of those to be invited to review meetings.
10. The first of these changes will have minimal impact and it is likely that governing bodies would notify the local authority anyway in these cases – there seems little point in them being invited to attend the pre-meeting but then not notifying them of the result. For the latter change, the provider may factor any cost for attending the review meetings into their charge for the provision – in which case it would be a cost to the school (i.e. the governing body) or the provider may decide to meet the cost themselves.

Costs and benefits of Regulations and Guidance under Section 154 of Education and Skills Act

Costs

There were 8,430 pupils dual registered in January 2006, 9,004 in January 2007 and 9,200 in January 2008 (**Source: School census**). Therefore, we will be assuming that there are 9,000 pupils at any one time.

A school year is 190 days, usually spread out over three terms – 29 school weeks, so approximately 10 weeks per term.

Very few pupils will be directed to off-site provision within the first term of an academic year – the guidance that will accompany the regulations makes clear that a direction should normally only be used where other interventions have been tried and failed, so it is unlikely that directions will be issued until the second term of an academic year. Therefore, we are looking at the 20 last weeks (two last terms)

Meetings

We expect each meeting to last an hour and involve:

- The head teacher (cost £38.59 per hour¹)
- LA representative where SEN pupil (cost £24.53 per hour²)

¹ See Tables 2 and 3 below – Head teachers in secondary schools

² The salary of the LA representative could vary among LAs, so we decided to take the top decile of the average earnings from the Annual Survey of Hours and Earnings 2009.

- SENCO where SEN pupil (cost £22.90 per hour³)
- School governor (cost £24.53 per hour⁴)
- Provider (cost £22.90 per hour⁵)

Total cost where a non-SEN pupil is involved (head teacher and school governor) = £86.02
 Total cost where SEN pupil (head teacher, LA representative, SENCO and school governor) = £133.45.

A reviewing meeting has to be held every 30 days

Review meetings (All pupils)

1. **Scenario 1** – None of the 9,000 pupils stays in alternative provision (AP) longer than 29 days. Therefore no meetings are needed and no cost involved.

2. **Scenario 2** – 2/3 of the 9,000 pupils stay in AP less than 30 days (no meetings, no cost). 1/3 of the 9,000 pupils stay 30 or more days. In this case there will be a meeting every 30 days (approx. 4 weeks). Number of meetings 3,000 x 5 (one meeting every 4 weeks means 5 meetings over 20 weeks) = 15,000 meetings per academic year.
 - a. Non-SEN (86% of 15,000 = 12,900). Cost £1,109,658
 - b. SEN (14%⁶ of 15,000 = 2,100). Cost £280,245
 - c. **Total cost £1,390,000**

3. **Scenario 3** – 1/3 of the 9,000 pupils stay in AP less than 30 days (no meetings, no cost). 2/3 of the 9,000 pupils stay 30 or more days. In this case there will be a meeting every 30 days (approx. 4 weeks, 5 meeting over the 20 weeks of the last two terms). Number of meetings 6,000 x 5 = 30,000 meetings per academic year.
 - a. Non SEN (86% of 30,000 = 25,800). Cost £2,219,316
 - b. SEN (14% of 30,000 = 4,200). Cost £560,490
 - c. **Total cost £2,780,000**

4. **Scenario 4** – All pupils stay in AP 30 or more days. Number of meetings 9,000 x 5 = 45,000 meetings per academic year.
 - a. No SEN (86% of 45,000 = 38,700). Cost £3,328,974
 - b. SEN (14% of 45,000 = 6,300). Cost £840,735
 - c. **Total cost £4,170,000**

Pre- placement meetings (only SEN Pupils)

SEN pupils have to have a pre-placement meeting.

We know that 14 % of those 9,000 pupils dual registered are SEN pupils, i.e., 1,260 pupils. However, in order to work out the number of meetings that will have to be held every year we would need to know their turnover. We do not have evidence regarding the time spent in alternative provision, so we decided to set up four different scenarios:

³ See Tables 2 and 3 below – Classroom teachers in secondary schools

⁴ School governor is an unpaid post, however there will be a cost of opportunity associated to attending these meetings. To determine the average opportunity cost of attending these meetings we drew on the top decile of average earnings from the Annual Survey of Hours and Earnings 2009.

⁵ We do not have an estimate of providers' hourly rates. Therefore, we drew on secondary school teacher hourly rate as the best estimate to our knowledge (see tables 3, 2009 with on-costs).

⁶ Based on 2009 National Pupil Dataset.

1. **Scenario 1** – If they stay (on average) 8 weeks, that will mean 1,100 meetings every 8 weeks for new comers, i.e., $1,260 \times 2.5$ (20weeks/8) = 3,150 meetings

Cost: 3,150 meetings x £133.45 each meeting = £420,367

2. **Scenario 2** – They stay (on average) 6 weeks $1,260 \times 3.33 = 4,200$ meetings.

Cost 4,200 meetings x £133.45 each meeting = £560,490

3. **Scenario 3** – If they stay (on average) 4 weeks, $1,260 \times 5 = 6,300$ meetings per year

Cost 6,300 meetings x £133.45 each meeting = £840,735

4. **Scenario 4** – If they stay (on average) 2 weeks that will mean 1,260 meetings every two weeks, so $1,260 \times 10$ (20weeks/2) = 12,600 meetings per year

Cost 12,600 meetings x £133.45 each meeting = £1,681,470

Overall (review meetings + pre-placement meetings)

1. Minimum number of meetings (Scenario 1 review meetings + Scenario 1 pre-placement meetings) = 3,150 meetings. Cost (Scenario 1 + Scenario 1) = £420,367 per year.
Costs over ten years (3.5% discount rate) = £3.6m.

2. Scenario 2 + Scenario 2 = £1,390,000 + £560,490 = £1,950,490.
Costs over ten years (3.5% discount rate) = £16.8m.

3. Scenario 3 + Scenario 3 = £2,780,000 + £840,735 = £3,620,735.
Costs over ten years (3.5% discount rate) = £31.2m.

4. Maximum number of meetings (Scenario 4 + Scenario 4) = 56,000 meetings. Cost (Scenario 4 + Scenario 4) = £4,170,000 + £1,681,470 = £5,851,470.
Costs over ten years (3.5% discount rate) = £50.4m.

Benefits

Benefits to pupils

Although we expect this new regulation to have a positive impact on pupils, it is difficult to quantify these benefits.

As an indicative guide we carried out the following break even analysis: we calculated the number of pupils who will have to benefit from this new regulation in order to cover costs - benefits estimates are based on the lifetime productivity gains that pupils are expected to obtain as a result of achieving the grades stated in table 1.⁷ ..

Break even analysis

Table 1

⁷ Internal DCSF analysis using LFS 2008/09 data, ASHE 2007 data, McIntosh, S. (2007) 'A Cost-Benefit Analysis of Apprenticeships and Other Vocational Qualifications.' Research Report No 834; and Jenkins, A. Greenwood, C. & Vignoles, A. (2007) 'The Returns to Qualifications in England: Updating the Evidence Base on Level 2 and Level 3 Vocational Qualifications.' Centre for the Economics of Education

	Costs over ten years (to the closest ,000)	No. of pupils moving from no qualifications to 5+A*-C GCSEs per year to cover costs. In brackets as percentage of the 9,000 pupils dual registered.	No. of pupils moving from no qualifications to 1-4 A*-C GCSEs per year to cover costs. In brackets as percentage of the 9,000 pupils dual registered.	No. of pupils moving from (vocational) Level 1 to Level 2 per year to cover costs (most likely situation) ⁸ . In brackets as percentage of the 9,000 pupils dual registered.
1. Minimum number of meetings	£3.6m	2 (0.02%)	5 (0.05%)	19 (0.21%)
2. Scenario 2 + Scenario 2	£16.8m	10 (0.11%)	22 (0.24%)	90 (1%)
3. Scenario 3 + Scenario 3	£31.2m	19 (0.21%)	40 (0.44%)	170 (1.9%)
4. Maximum number of meetings	£50.4m	31 (0.34%)	65 (0.72%)	265 (3%)

To show the likelihood of the impact we have quoted the percentage of pupils (of the 9,000 dual registered) who have to achieve the stated level of attainment to cover costs.

Benefits to LAs and DCSF

Table 1 refers to benefits to pupils. However, there will be also benefits to LAs and government since this regulation is bound to reduce the average stay in off-site provision and, therefore, the cost to LAs and DCSF – the average cost of off-site provision is £15,000 compared to £4,000 in mainstream school per year. Yet as we pointed out above we do not know the average time pupils spend on off-site provision nor to what extent this policy will reduce this time. As a result, to monetise this benefit was not feasible. We will use the consultation to collect information on these points. This will help to evaluate the effect of the policy in 3 years time.

The outcome the Department wants for the new Regulations is that schools intervene early to resolve behavioural problems before they escalate. We will be reviewing whether this outcome is being achieved in 2013. Indicators that the legislation has been successful will be:

- an increase in the number of pupils placed in alternative provision by schools;
- whether pupils are being referred at an earlier age - one of the findings of the last alternative provision surveys (2005) was that alternative provision was used most often for pupils in Key Stage 4 but 'Back on Track' encourages schools and local authorities not to wait until then to intervene when a pupil's behaviour is causing concern; it is often too late by KS4. So an increase in the number of pupils being referred in KS3 and below will be a clear indication that the power is being used for the intended purpose;
- whether there is a fall in the number of exclusions, both fixed period and permanent.

There are a number of factors to take into account when reviewing the impact of the legislation. The Department will monitor the data on numbers of exclusions from now until 2013, and may commission a further survey of alternative provision in 2013 to see how often the power has been used. Further decisions will be made in 20103 in relation to whether any other steps are needed in order to ensure operation of the power is monitored effectively.

⁸ We think this is the most likely situation given that pupils in PRUs seem to be less academically oriented. Thus, according to the GCSE and Equivalent Results in England, 2008/09 SFR (<http://www.dcsf.gov.uk/rsgateway/DB/SFR/s000880/index.shtml> - table 5) only 1.2 percent of KS4 pupils in hospital schools and PRUs achieved 5 GCSEs at grades A*-C or equivalent; 13.1 per cent achieved 5 or more grades A*-G; and 63.7 per cent achieved any pass. This compares with 45.6%; 90.6% and 98.8% for all schools.

Table 2

Teachers' Workloads		2003	2004	2005	2006	2007	2008
Primary							
	Heads	55.5	55.6	52.9	53.5	54.2	55.2
	Deputy He:	56.4	55.7	55.7	53.4	51.4	52.8
	Classroom	51.8	52.5	50.9	50.1	51.5	52.2
Secondary							
	Heads	60.9	60.8	62.6	65.1	57.6	59.5
	Deputy He:	56.5	54.1	58.1	61	53.6	58
	Heads of F	52.7	51.6	51.2	51.5	50.2	52.9
	Classroom	50.8	49.9	49.3	49.1	48.7	49.9
Special							
	Classroom	47.6	46.3	45.6	43.9	45	48.3

Angle, H., Gilby, N., Fearn, A., Sasssett, C., Elston, D. and S. McGinival (2008) "Teachers's workloads <http://www.ome.uk.com/review.cfm?body=7>

Table 3

Source: School Workforce in England - <http://www.dcsf.gov.uk/rsgateway/DB/SFR/s000813/index.shtml>

2007		Annually	Weekly*	Daily**	Hourly***	Average number of hours per day
Head						
	Nur/Pri Head	50,000	1,282.05	256.41	23.74	10.8
	Sec Head	69,500	1,782.05	356.41	29.46	12.1
Dep/asst Head						
	Nur/Pri Dep Head	42,100	1,079.49	215.90	20.56	10.5
	Sec Dep Head	50,000	1,282.05	256.41	22.30	11.5
CT						
	Nur/Pri CT	30,400	779.49	155.90	15.28	10.2
	Sec CT	33,400	856.41	171.28	17.48	9.8

* 39 weeks of work per year

** 5 days a week

*** Based on average 2006, 2007 and 2008 (see Teachers' Workloads)

2009 = 2007's data uplifted by 2.45%¹ and 2.3%[†] to account for 2008 and 2009's pay raise respectively

2009		Annually	Weekly*	Daily**	Hourly***
Head					
	Nur/Pri Head	52,762	1,353	270.57	24.88
	Sec Head	73,339	1,880	376.10	30.87
Dep/asst Head					
	Nur/Pri Dep Head	44,425	1,139	227.82	21.55
	Sec Dep Head	52,762	1,353	270.57	23.37
CT					
	Nur/Pri CT	32,079	823	164.51	16.02
	Sec CT	35,245	904	180.74	18.32

¹ <http://www.teachernet.gov.uk/docbank/index.cfm?id=12833>

[†] <http://www.teachernet.gov.uk/docbank/index.cfm?id=14150>

* 39 weeks of work per year

** 5 days a week

*** Based on average 2006, 2007 and 2008 (see Teachers' Workloads)

2009 With On-Costs (+ 25%)		Annually	Weekly*	Daily**	Hourly***
Head					
	Nur/Pri Head	65,952	1,691	338.22	31.10
	Sec Head	91,674	2,351	470.12	38.59
Dep/asst Head					
	Nur/Pri Dep Head	55,532	1,424	284.78	26.94
	Sec Dep Head	65,952	1,691	338.22	29.21
Classroom Teacher					
	Nur/Pri CT	40,099	1,028	205.64	20.02
	Sec CT	44,056	1,130	225.93	22.90
Supply Teacher					
<i>Data for permanent teachers more suitable due to quality of supply teacher data (see separate sheet)</i>					

* 39 weeks of work per year

** 5 days a week

*** Based on average number of hours per day 2006, 2007 and 2008 (see Teachers' Workloads)

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	No	No
Small Firms Impact Test	No	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	No	No
Rural Proofing	No	No

