

Title: Validation Stage IA - Amendment to the Care Standards Act 2000 IA No: RPC13-FT - DfE-1915 Lead department or agency: Department for Education Other departments or agencies:	Impact Assessment (IA)
	Date: 07/04/2014
	Stage: Final
	Source of intervention: Domestic
	Type of measure: Secondary legislation
Contact for enquiries: Mark Burrows, 02077838079	

Summary: Intervention and Options	RPC Opinion: EANCB Validated
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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
	£-0.63m	£0.06m	Yes IN

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

Currently, when there are serious concerns about the care of children in a home (e.g. allegations that children in a home have been abused), Ofsted can restrict local authorities from placing further children in homes. They cannot suspend the registration of these homes, thereby ensuring that no children are accommodated in the home over a short period of time. This can result in extremely vulnerable children remaining in homes where they are potentially unsafe.

What are the policy objectives and the intended effects?

The objective is to improve the range of enforcement powers available to Ofsted by enabling them to suspend children's homes following concerns of child safety. This will reduce the risk of adverse events affecting the well-being and safety of looked after children.

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

To enable Ofsted to be able to suspend a home's registration by making a minor revision to the Care Standards Act 2000, with mirrors a provision currently available in Wales. As a result of this revision, over the period of a suspension, a home cannot operate and local authorities responsible for the care of the children in the home must remove them and place them in an alternative care placement.

Will the policy be reviewed? It will/will not be reviewed. If applicable, set review date: Month/Year					
Does implementation go beyond minimum EU requirements?				Yes / No / N/A	
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.		Micro Yes/No	< 20 Yes/No	Small Yes/No	Medium Yes/No
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)		Traded:		Non-traded:	

I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs.

Signed by the responsible Minister:  **Date:** 7.2.14

Summary: Analysis & Evidence

Policy Option 1

Description:

FULL ECONOMIC ASSESSMENT

Price Base Year 2013	PV Base Year 2013	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate:

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

Description and scale of key monetised costs by 'main affected groups'
Maximum of 5 lines

Other key non-monetised costs by 'main affected groups'
Maximum of 5 lines

BENEFITS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional		Optional	Optional
High	Optional		Optional	Optional
Best Estimate				

Description and scale of key monetised benefits by 'main affected groups'
Maximum of 5 lines

Other key non-monetised benefits by 'main affected groups'
Maximum of 5 lines

Key assumptions/sensitivities/risks
Maximum of 5 lines

Discount rate (%)

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			In scope of OITO?	Measure qualifies as
Costs: £0.2m	Benefits: £0.2m	Net: £-0.1m	Yes	IN

Evidence Base (for summary sheets)

The policy issue and rationale for Government intervention

In April 2013, Ministers launched a programme of work to reform the provision of children's homes care for looked after children. Evidence gathered over the course of this work shows that aspects of the current regulation, inspection, and enforcement framework for children's homes limits Ofsted's ability to act swiftly and decisively in respect of those homes that are failing to meet the regulations and the National Minimum Standards (NMS). Extremely vulnerable children placed in these homes, which are funded by local authorities, may be at considerable risk as a result.

We want Ofsted to have the appropriate range of enforcement powers so that it is able to take robust action when it comes across serious concerns about the welfare of children living in children's homes. Currently, Ofsted can *restrict* local authorities from placing further children in homes where there are significant concerns about how they safeguard vulnerable children. However, unlike in Wales where this measure is already in operation, Ofsted cannot formally suspend the registration of homes whilst they carry out further inquiries. This can result in extremely vulnerable children remaining in homes where they are potentially unsafe.

Policy objectives and intended effects

This measure seeks to ensure that some of most vulnerable and challenging children in society, who are placed in children's homes at considerable cost to the state, are effectively safeguarded and protected. There are a small number of private or voluntary sector homes (approx. 83 based on most recent data) that Ofsted currently classifies as being 'inadequate'. In some of these homes, extremely vulnerable children are potentially unsafe. It is in relation to a subset of this very small group of underachieving and underperforming homes that we want to enable Ofsted to have the appropriate enforcement powers to demand a minimum quality of provision.

Policy options considered

To revise the current regulatory framework with a change to the Care Standards Act 2000. We propose to introduce a new power in England that enables Ofsted to suspend the registration of a regulated provider following a serious incident. This will be achieved by extending certain Welsh provisions in the Care Standards Act to England – in particular sections 14A (suspension of registration) and 20B (urgent procedure for suspension or variation).

Estimated costs to business

Here we set out background context and analysis to support an estimate of the likely costs to business associated with the policy option above.

Background context: Ofsted inspection and grading framework

At 31 March 2013 there were 1,514 children's homes owned by private or voluntary sector providers.

	All Children's Homes	
	Local Authority Owned	Private/Voluntary Owned
Number of homes at 31 March 2013	536	1,514

Source: <http://www.ofsted.gov.uk/resources/official-statistics-childrens-social-care-providers-and-places>

When inspecting and grading children's homes, Ofsted give consideration to: the Care Standards Act 2000, the Children's Homes Regulations 2001,¹ Children's homes: national minimum standards² and

¹ The Children's Homes Regulations 2001; <http://www.legislation.gov.uk/ukxi/2001/3967/contents/made>.

² Children's homes: national minimum standards, DfE, 2011;

<https://www.education.gov.uk/publications/standard/publicationDetail/Page1/DFE-00030-2011>.

Children Act 1989 guidance volume 5: children's homes (and other statutory guidance from the Department for Education).³ They carry out one full inspection and one interim inspection each year. In full inspections, Ofsted give ratings on overall effectiveness as either 'outstanding', 'good', 'adequate', or 'inadequate'. Ratings for interim inspections give consideration to the progress made in addressing any requirements or recommendations made at the previous inspection. Homes can be rated as making either 'good progress', 'satisfactory progress,' or 'inadequate progress'.

In both inspections, 'judgements are made on carefully balanced consideration of the impact on children and young people, and not on a formulaic approach'. For example, meeting all the statutory requirements of the regulations will not necessarily result in a judgement of good or outstanding, nor will failure to meet all the requirements in full necessarily result in a judgement of inadequate.

The published grade schedule does, however, note that homes are judged as 'adequate' "if there are no breaches of regulations or failures to meet national minimum standards that impact negatively on the welfare or safety of children and young people." There were 83 private or voluntary sector homes rated as 'inadequate' in their overall effectiveness in full inspections between 1 April 2012 and 31 March 2013.⁴ This represents approximately 5% of all private and voluntary sector homes.

Background context: Ofsted enforcement powers

Ofsted currently have a range of powers at their disposal to enforce compliance with the legal requirements. They operate what they term as an 'escalating tariff', which means that they take action at the lowest possible 'level' to ensure that a service complies with the legal requirements.⁵ For example, when they find non-compliance in an inspection, they use *non-statutory* actions whenever possible. This involves 'making recommendations' or issuing a 'notice to improve.' The later involves writing a letter to the service telling them what they should do and by when. We would expect that all homes rated as inadequate would, at a minimum, be subject to non-statutory actions. Some homes not rated as inadequate may also be, because, as noted above, failure to meet all the requirements does not necessarily result in a judgment of inadequate.

The set of *statutory* actions Ofsted can currently take are summarised in the table below.

Table 1: Summary of statutory enforcement powers available to Ofsted

Action	Summary
Serve a compliance notice ¹	A notice that sets out the actions that a provider must take by a certain date to meet the regulations. The aim of the notice is to remedy a specific matter. Unlike 'notices to improve', a provider commits an offence if they do not take the actions set out in this notice.
Impose or vary conditions	This is imposed if other enforcement action has failed to achieve, or is unlikely to achieve, the outcome needed within a reasonable timescale.
Prosecute for an offence or issue a single caution	Prosecution can be imposed on providers who do not take the action in a compliance notice. Prosecution can also occur if providers do not notify Ofsted of a significant or 'notable' event as set out in the regulations. ²
Emergency action to impose or vary a condition	Ofsted can apply to a magistrate for an emergency variation, removal or imposition of conditions on a registration where they is evidence to show that unless an order is made there will be a serious risk to a person's life, health, or well-being and that any other action is unlikely to reduce the risk to a person's life, health, or well-being.
Serve a notice	Ofsted can serve this notice if they believe that there is a risk of

³ Children Act 1989 guidance and regulations volume 5: children's homes, DfE, 2011; <https://www.education.gov.uk/publications/standard/publicationDetail/Page1/DFE-00024-2011>.

⁴ Official statistics: Children's social care inspections and outcomes <http://www.ofsted.gov.uk/resources/official-statistics-childrens-social-care-inspections-and-outcomes>

⁵ <http://www.ofsted.gov.uk/children-and-families-services/for-children-and-families-services-providers/inspecting-children-and-families-services/inspect-14>

restricting accommodation	harm to a child or young person if they do not restrict accommodation at a provider. This notice prevents a children's home from taking any new placements.
Cancel the registration ³	Ofsted can issue a 'notice of proposal' and then a 'notice of decision' to cancel a provider's registration. This is applied: when the registered person has been convicted of a relevant offence; and/or where the provider has failed to comply with a compliance notice; and/or where successful prosecution is unlikely to achieve the safety and well-being of children; when Ofsted consider that cancellation is the only way to assure the safety and well-being of children.
Emergency cancellation	Ofsted can apply to a magistrate for an emergency cancellation where there is evidence to show that unless an order is made there will be a serious risk to a person's life, health or well-being; and any other action is unlikely to reduce the risk to a person's life, health, or well-being

Source: Ofsted (2013). Compliance, investigation and enforcement handbook: children's social care <http://www.ofsted.gov.uk/resources/social-care-compliance-handbook>

¹ Compliance notices are issued under the Care Standards Act 2000, section 22A

² See Children's Homes Regulations 2001, Regulation 30

³ See Care Standards Act 2000, 14(1) for grounds for cancelling the registration

The Impact of the amendment on business

The key impact of this amendment is that it introduces a new statutory power to Ofsted additional to their existing powers listed in table 1 above. Currently, Ofsted cannot suspend the registration of a children's home (i.e. restrict the home from accommodating any children over a short period of time). Rather than suspending homes, Ofsted do have a power to serve a 'notice restricting accommodation.' This power prevents the home from taking any new placements (i.e. they can continue to accommodate the current children that reside at the home, but cannot accept new children). Emergency cancellation and full cancellation are the strongest of Ofsted's powers, but the legal thresholds over when they can be applied are extremely strong.⁶

The variables required for estimating the costs to businesses are as follows:

- (1) the number of businesses affected by a suspension;
- (2) the typical period of suspension; and
- (3) the lost profit over that period.

(1) The number of businesses affected

We believe that the main effect of the amendment is that it will allow Ofsted to 'suspend' the registration of homes rather than 'restrict' the accommodation in homes. As noted above, Ofsted, as a policy, take action at the lowest possible level to ensure that a service complies with the legal requirements. This means that only a proportion of those homes that have had notices restricting accommodation served against them in the past would have had suspensions served against them if this power had existed.

Ofsted will only use a restriction or suspension power when they 'reasonably believe that there is a risk of harm to a child or young person' if they do not do so.⁷ For example, during 2010/11, Ofsted restricted accommodation in a home while an investigation into serious allegations of physical abuse was carried out. We cannot sensibly forecast the number of such incidents which may occur in children's homes in the future. Moreover, we cannot forecast the level to which Ofsted will use the power (e.g. how often they will chose to suspect rather than restrict).

⁶ Emergency cancellation can only be applied in the most serious of cases. A magistrate will only grant an emergency order under strong thresholds, including: evidence that the risk to children and young people at the home is 'likely to happen' and the consequences for them are serious, for example a service user may die or suffer abuse or significant harm. The application to the court must also demonstrate that Ofsted have considered alternative action and ruled it out at having failed to reduce, or being unlikely to reduce, the serious risk identified.

⁷ 'harm' is defined in the Children Act 1989, section 31 as 'ill treatment or the impairment of health or development including, for example, impairment suffered from seeing or hearing the ill-treatment of another'.

We can, however, gain reasonably robust and objective insight into the potential future usage based on Ofsted's historical usage of notices restricting accommodation.

Evidence from published data and related policies

Ofsted's usage of their power to restrict accommodation has varied widely through time. Between 2009/10 and 2010/11 they restricted accommodation at only three homes. The usage in 2012/13 was much higher with twenty two notices issued in that financial year. This reflects well-publicised serious incidents such as an abuse case in Rochdale which highlighted concerns about children's homes failing to protect young people.

Table 2: Historical usage of notices restricting accommodation and cancellations

Financial Year	Number of notices restricting accommodation	Number of cancelations (emergency or full)
2009/10 ¹	2	2
2010/11 ²	1	1
2011/12 ³	(unable to quantify)	(unable to quantify)
2012/13 ⁴	22	5

¹<http://www.ofsted.gov.uk/resources/annual-report-of-her-majestys-chief-inspector-of-education-childrens-services-and-skills-200910>. Ofsted gained the power to restrict accommodation in this year.

²<http://www.ofsted.gov.uk/resources/annualreport1011>. The cancellation refers to the same home that had its accommodation restricted. An investigation into serious allegations of physical abuse was carried out after the notice to restrict was served. Ofsted then issued a notice of proposal to cancel the registration of the home. The provider then voluntarily resigned their registration.

³<http://www.ofsted.gov.uk/resources/ofsted-annual-report-and-accounts-2011-12>. The annual report notes the use of 12 statutory notices to social care providers in this financial year. These may refer to compliance notices, notices restricting accommodation, or notices of proposal to cancel registrations (see table 1 above).

⁴<http://www.ofsted.gov.uk/resources/ofsted-annual-report-and-accounts-2012-13>

Published estimates do not exist on the number of restriction notices that have been served against voluntary/private sector owned homes, specifically. The figures in table 2 show the total number of notices served against both local authority and voluntary/private sector owned homes each year. The published sources do not present a sector breakdown.

To derive an estimate of the number of notices restricting accommodation served against private and voluntary homes we have therefore derived an estimate based on evidence of the relative Ofsted-judged performance of the business sector.

A recently published data pack shows that the distribution of Ofsted inspection judgements is very similar for local authority owned homes and private/voluntary provision. These estimates are reproduced in table 3 below.

Table 3: Ofsted rating, by sector

	Local Authority owned homes	Private/voluntary owned homes
% rated outstanding	15.4	15.0
% rated good	58.8	56.3
% rated adequate	20.9	24.9
% rated inadequate	4.9	3.7

Source: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/265944/childrens_homes_data_pack_2013.pdf

Note: The data relates to the last full inspection which had been published by 31 March 2013.

Given this, we make the assumption that there is no difference in the probability that a local authority owned home or a private/voluntary sector owned home receives a notice of restriction. As such, the expected number of notices served against the private/voluntary sector, specifically, can be derived by applying estimates of the proportion of private and voluntary sector firms in the market to the total restriction figures.

Based on the longest possible series of published historical data on Ofsted's usage of restriction notices, we estimate that 8 notices are served against children's homes per year (e.g. (2 + 1 + 22) / 3). We estimate that 6 private or voluntary sector owned homes receive a restriction notice each year based on the proportion of private and voluntary sector firms in the market (e.g. 8 x (1,514 / 2,050)).

This series is presented in table 2 above is the longest collection of data available as Ofsted gained the power to restrict in 2009/10. The trend is dis-jointed with small numbers reported pre-2012/13 and a large number of notices to restrict in 2012/13.

As noted above, the large number in 2012/13 reflects well-reported safeguarding incidents involving children that resided in homes in this year. We expect that the high number of cases in 2012/13 is a historic outlier. This is because a number of other measures have recently been put in place by the Department, ensuring that a wider suite of safeguards are in place for the vulnerable group of children that rely on residential care.⁸ These explicitly seek to reduce the risk of harm to these children in the future. Furthermore, when dealing with such low numbers of restrictions, we would expect to observe fluctuations year-on-year and are not able to infer a trend from a single outlier.

Further evidence to support expected level of restriction and trend

To lend further evidence to the estimate of an average of 6 restriction notes against private or voluntary sector owned homes each year we commissioned unpublished estimates from Ofsted on their historic usage of enforcement action. This data showed the number of restriction orders against private or voluntary sector owned homes specifically from 2010/11 to 2013/14. Based on an analysis of this data we can conclude that our estimate of an historic average of 6 restriction orders per year against private or voluntary sector owned homes is robust.

This unpublished evidence also supports the case that the high estimate in 2012/13 should be viewed as an outlier (reflecting a collection of high profile safeguarding incidents that took place in that year). For the 2013/14 financial year there were 5 restriction orders served by Ofsted against private or voluntary sector homes. This confirms that the high number of restrictions served in 2012/13 was not indicative of a potential long term upward trend.

In addition, as noted above, Ofsted, as a policy, take action at the lowest possible level to ensure that a service complies with the legal requirements. This means that that in the future they will still likely continue to use the power to restrict. This again implies our estimate of the number of suspensions that may materialise is an upper bound.

(2) The period of suspension

The period of restriction when Ofsted issues a 'notice restricting accommodation' is typically six weeks.⁹ The note in their compliance, investigation, and enforcement handbook that in 'limited circumstances' they can decide to set an expiry date of less than six weeks. Moreover they note that, if necessary, they can restrict accommodation for a further period of six weeks if, for example, the provider has not taken any steps to reduce the risk of harm to an acceptable level. They only restrict further than this in what they term as "exceptional circumstances," where the home still has not taken any appropriate steps to reduce the risk of harm to children to an acceptable level or if there is insufficient evidence to suggest that they have done this.

Very similar legal arrangements apply under 'suspensions of registration' and the actions providers are required to take to comply with Ofsted following receipt of a suspension or restriction notice are the same.¹⁰ The average duration of a suspension or a restriction is likely to be the same as six weeks is the typical period applied under both, with extensions only occurring if the provider takes no steps to comply with the conditions of the suspension or restriction.

Under both powers, the provider has the right of appeal to the Tribunal against Ofsted's decision. Moreover, under both powers, the reputational effects are likely to be similar. This is because, under

⁸ <https://www.gov.uk/government/consultations/changes-to-the-childrens-homes-regulations-2001-as-amended-and-the-care-standards-act-2000-registration-england-regulations-2010>

⁹ Ofsted only serve a notice restricting accommodation when they believe that there is a risk of harm to a child or young person if they did not pursue this action. The purpose of it is to allow time for an investigation into the risk of harm to children and/or to allow time for steps to be taken to reduce or eliminate risk. See <http://www.ofsted.gov.uk/resources/social-care-compliance-handbook> for a more detailed appraisal of Ofsted's enforcement policies.

¹⁰ Ofsted can currently suspend the registration of child-minders or childcare providers.

both, Ofsted are legally required to send a notification to every local authority in England and Wales when they use the powers.

(3) Lost profit

The price paid by local authorities to the owners of private or voluntary sector homes varies widely. The mean amount spent on private/voluntary provision is £3,860 per child per week.¹¹ We have used this figure as the basis of our calculations.

There are 1,514 private or voluntary sector homes in the market. National statistics show that there were a total of 5,070 children in homes subject to children's homes regulations as at 31 March 2012.¹² Approximately 3,020 of these children were accommodated in private or voluntary sector provision.¹³ This gives an average of 2 children being accommodated in each private or voluntary sector home (e.g. 3,020 children/ 1,514 homes) at a given point in time.¹⁴

Total cost to business of proposed suspension powers

The cost to business is the additional lost profit that providers will face through Ofsted's usage of the suspension power.

- (1) *the number of businesses affected by a suspension.* The expected number of private or voluntary sector owned homes suspended each year is informed by tables 2 and 3 above. Table 2 showed Ofsted's historical usage of their notice of restriction power. The mean annual estimate based on this longest possible series of historical data is 8 restrictions per year (e.g. $(2 + 1 + 22) / 3$). We estimate that 6 private or voluntary sector firms receive a restriction notice each year based on the proportion of private and voluntary sector firms in the market (e.g. $8 \times (1,514 / 2,050)$). This is informed by evidence in table 3 which shows that the distribution of Ofsted inspection judgements is very similar for local authority owned homes and private/voluntary provision. To derive a monetary estimate, we assume that once they have the power to suspend, Ofsted will typically apply the suspension power rather than the restriction power. Therefore, we estimate that 6 private or voluntary sector homes will be suspended each year.
- (2) *the typical period of suspension.* Six weeks is the typical duration of a suspension or restriction.
- (3) *the lost profit over that period.* On average, children's homes accommodate 2 children (and have a maximum occupancy of 4 children). There is no reason to suggest that homes that are suspended or restricted are typically smaller or larger than this average. Recent estimates show that there is no statistically significant relationship between the size of a home (measured its number of registered places) and a home's Ofsted rating.¹⁵

Based on these assumptions, we estimate the annual cost to business to be £277,920 per year (2013 prices). The estimates are laid out in table 4 below. This estimate assumes a home's gross expenditure per-week post-suspension remains at the same level as their gross expenditure per-week pre-suspension. For example, they still have to pay the same staff costs etc. over the course of the six week suspension. Under this assumption, the reduction in revenue to the home (e.g. the lost fee income for the children they accommodate) is equal to the change in the home's net profit. If a home is able to reduce relative gross expenditure over the period of the suspension (e.g. for example, via a reduction in other running costs) then the fall in their net profit will be less. We are unable to robustly forecast how expenditure levels may change in a period of suspension and it is likely that the change will vary across

¹¹ <http://media.education.gov.uk/assets/files/pdf/c/childrens%20homes%20reform%20quality%20group%20%20%20final%20report.pdf>

¹² See table A3 <https://www.gov.uk/government/publications/children-looked-after-by-local-authorities-in-england-including-adoption>

¹³ See table A7 <https://www.gov.uk/government/publications/children-looked-after-by-local-authorities-in-england-including-adoption>

¹⁴ This estimate is consistent with figures reported in a recently published children's homes data pack.. Secondary analysis of Ofsted data revealed that the average number of 'registered places' (e.g. maximum occupancy) in children's homes is 4 children. <http://www.education.gov.uk/childrenandyoungpeople/families/childrenincare/childrenshomes/a00192000/childrens-homes-data-pack>

¹⁵ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/265944/childrens_homes_data_pack_2013.pdf

homes. We therefore have proxied our change in profit estimates with an estimate of the change in revenue streams.

Table 4: Estimated Costs to business

Duration of suspension	6 weeks
Number of children in home	2
Fees per child per week	£3,860
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Estimated lost income for one home due to a suspension	£46,320
Estimated number of private/voluntary sector homes suspended each year	6
Estimated lost income for all private/voluntary sector homes suspended each year	£277,920

There are at least two reasons to suspect that this best cost estimate is an upper bound:

- When Ofsted serve a restriction or a suspension, they are legally required to send a notification to every local authority in England and Wales documenting that this has happened. In response to this, it is likely that some Local authorities who have placed children in these homes would withdraw them and seek an alternative placement. If this is the case, a notice restricting accommodation may also lead to some of the current children in the home leaving during the period of restriction.
- This estimate does not account for natural turnover that may have occurred at the home if Ofsted had instead served a notice to restrict. Over the six weeks of the restriction, some children's placements may have naturally come to an end. The average length of stay in a children's home is around six months.¹⁶ Ofsted take action at the lowest possible level to ensure that a service complies with the regulations. Therefore, they will continue to issue restriction orders even if they have the power to suspend.

We are unable to robustly account for these factors with evidence and have therefore not incorporated them into our method to derive a best estimate.

Total benefit to business of proposed suspension powers

The lost income from those providers who have their registration suspended will be met with increased income to the other providers in the market (i.e. as they take over the accommodation of the children at the other home). As noted above, at 31 March 2013, there were 536 Local authority owned homes and 1,514 homes owned by the private or voluntary sector. Given this, we estimate that the probability that a child from a suspended home moves into a private/voluntary sector home is 0.74 (e.g. 1,514 / 2,050).

An alternative method to derive this probability estimate would be to use Ofsted data on the number of registered places across the two sectors. This shows that there were 3,400 registered places in local authority owned children's homes at 31 March 2013. There were 8,381 registered places in private/voluntary homes.¹⁷ This implies that 71 per cent of places across the whole market are private/voluntary sector owned. Therefore, this approach would make no substantive difference to the results.

At a national level, there is substantial spare capacity in both the public and private/voluntary sector. This can be inferred by comparing Department of Education data on the number of children placed in homes with Ofsted data on the number of registered places across homes.¹⁸ As noted above, there are

¹⁶ <http://media.education.gov.uk/assets/files/pdf/c/childrens%20homes%20reform%20quality%20group%20%20%20final%20report.pdf>

¹⁷ <http://www.ofsted.gov.uk/resources/official-statistics-childrens-social-care-providers-and-places>

¹⁸ <http://www.ofsted.gov.uk/resources/official-statistics-childrens-social-care-providers-and-places>;

<https://www.gov.uk/government/publications/children-looked-after-by-local-authorities-in-england-including-adoption>

11,781 registered places (3,400 in local authority provision and 8,381 in private/voluntary) accommodating 5,070 children. Occupancy ratios are marginally higher for local authority provision; however there is no reason to suggest that capacity constraints, in the aggregate, should influence placement choice across sectors at the child placement decision level.

Whether children placed in private or voluntary sector homes are systematically more likely to be placed in another private or voluntary sector home following a suspension is incredibly difficult to assess. The choice of placement for a given child is based on a balanced consideration of a number of factors. These include the home's Ofsted rating, its geographical location, the capacity of home to meet the child's assessed needs (which will also be affected by the specific needs and characteristics of other residents within the home), and cost.¹⁹ A small proportion of private sector homes do offer a 'unique' specialist provision. For example, they may cater for children with complex disabilities or severe mental health issues. However, the number of these specialist homes, or measurable unique characteristics of the children that they typically accommodate, is not measured in national data collections. Therefore we cannot incorporate this into the estimate of the likely sector of the alternative placement over the suspension period.

The expected increase in income to the private/voluntary sector is £205,254 per year (e.g. £277,920 x (1,514 / 2,050)). We assume that this increase in income is equal to the increase in profit. Evidence from a detailed study into the residential care market supports this assumption.²⁰ The study reports that, "costs for each residential unit are relatively fixed. Staff are salaried employees not paid by the hour, who need to be experienced in child care, and a home needs to be staffed in readiness to accept a referral, so many cannot reduce the staffing cost element when a home is under-occupied (PWC, 2006, p.38)." We are unaware of any robust sources of evidence that would allow us to derive an estimate the average marginal cost of accommodating an additional child across the range of private and voluntary sector homes in the market.

Total net benefit to business of proposed suspension powers

Over a ten year appraisal period, the business net present value is £-0.63m and the net cost to business per year (EANCB on 2009 prices) is £0.06m. These measures are in scope of OITO and are classified as an IN under the methodology.²¹

¹⁹http://www.cwrc.ac.uk/documents/Childrens_homes_understanding_the_market_Research_Brief_Jan_2014.pdf

²⁰ PWC (2006) DfES Children's Services: Children's Homes and Fostering
<http://webarchive.nationalarchives.gov.uk/20130401151715/https://www.education.gov.uk/publications/RSG/AllPublications/Page1/RW74>

²¹ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/31616/11-671-one-in-one-out-methodology.pdf