



Department
for Education

Management of independent schools: proposed regulations

Government consultation response

July 2014

Contents

Introduction	3
How the consultation was conducted	3
Background	4
Overview	5
Summary of responses received	6
Question 1	6
Question 2	7
Question 3	7
Question 4	8
Question 5	9
Question 6	10
Question 7	11
Question 8	11
Question 9	11
Question 10	12
Question 11	12
Question 12	13
Question 13	13
Question 14	13
Question 15	14
Question 16	14
Question 17	14
Question 18	15
Question 19	15
Next steps	16
Annex A: Summary Response to each consultation question	17
Annex B: List of respondents to the consultation	35

Introduction

How the consultation was conducted

1. The consultation on the Department for Education (DfE) proposals, to make regulations allowing the Secretary of State to bar people from taking part in the management of independent schools (including free schools and academies) in England, ran for 9 weeks from 7th February to the 10th April. There were 20 responses to the consultation, categorised as follows:

Table 1 Respondent types totals

Type	Reponses	
Independent school	4	20%
Independent school association	3	15%
School Inspector	2	10%
Parent/Carer	1	5%
Faith or Belief Group	0	0%
Academy/Free school	0	0%
Academy/Free school association	0	0%
Headteacher/Principal	2	10%
Governor	0	0%
Other	8	40%
Total	20	100%

Table 2 Respondent types totals

2. This report provides an overview of the responses received, summarises the responses to each question, and provides the government's response. A full statistical breakdown of the responses to each question is provided at Annex A. A full list of respondents who were content to have their names and or organisation's names published is attached at Annex B.

3. In addition to the web-based consultation, the DfE held a number of meetings with the Independent Schools Council in the run up to and during the consultation to explore some of the issues in further detail.

Background

4. The Secretary of State currently possesses powers to bar people from taking part in the management of an independent school, as set out in section 142 of the Education Act 2002. We believe these powers, in some instances, leave a gap in the Secretary of State's ability to protect and safeguard children and young people from contact with people who are unsuitable. In particular, we believe that the current powers leave a gap in the Secretary of State's ability to protect children, schools and the education service generally from extremism, and in some instances unsuitable individuals, that have been found to be in breach of professional standards by a professional body.

5. The proposed regulations form a component of a larger package affecting independent schools in England. We shall be commencing most of the provisions of the Education and Skills Act 2008 relating to independent schools (replacing the framework set out in the Education Act 2002); and revising the Independent School Standards, on which we launched a consultation on 23rd June.

6. The proposed regulations will be made under section 128 of the Education and Skills Act 2008. The regulations will set out the grounds on which persons can be barred from taking part in the management of an independent school in England. The bar will apply to senior managers in schools, proprietors that manage schools, and members of boards of governors that carry out functions analogous to those of a maintained school governing body. As academies and free schools are constituted as independent schools, the regulations apply directly to them in the same way.

7. A bar under the existing section 142 powers leads to the individual concerned being disqualified from holding office as a governor of a maintained school. The government has therefore updated the disqualification schedule in the Constitution regulations for maintained school governing bodies, so that a bar under section 128 similarly leads to the individual also being disqualified from being a maintained school governor.

Overview

8. The overall response to the vast majority of the consultations questions was a positive one.
9. In particular a majority of respondents agreed to the need for additional powers, agreed the powers addressed the “gap” in existing powers, agreed a conduct ground is necessary and agreed that “relevant conduct” is reasonable grounds to consider a direction.
10. Respondents were split on the Secretary of State being the appropriate authority to make a direction.
11. There was majority support for how the variation and revocation process has been set out and respondents were overwhelmingly in favour of the Health, Education and Social Care Chamber being the appropriate destination for appeals.
12. We provide a more detailed breakdown of responses and the government’s response in the following pages.

Summary of responses received

13. We appreciated all the comments received from the respondents and have considered them carefully. The government's response, where appropriate, is below the summary of responses for each question.

Question 1: Do you agree these additional powers are required to fill the gap that we have discussed in terms of the current barring process? If not, why not?

The majority of the respondents (61%) agreed that additional powers are required.

Where respondents disagreed the concerns included:

- Some respondents suggested the proposed regulations don't achieve anything that isn't already covered by section 142.
- Some respondents suggested the proposed regulations have moved away from Parliament's original intentions for section 128.
- References were made to there being no gap to be filled and that the inspectorate regime along with Disclosure and Barring Service (DBS) and National College for Teaching and Leadership (NCTL) provided enough protection for children and the education system.
- There was concern regarding the "unlimited" nature of the powers.

Government response

We believe the regulations will provide additional scope for the Secretary of State to bar unsuitable people, particularly in relation to extremist behaviour and professional misconduct, which in our view, is in some instances, not possible, or limited, under section 142.

The world has moved on a great deal since the debate on the 2008 Act. We believe that it would be inappropriate to try and list every offence that might be "relevant". Neither is it particularly helpful to try and use a definition such as the severity of the sentence. We believe the approach we have taken will enable the Secretary of State to use the power carefully, in the instances we envisage it being required, rather than being bogged down in numerous cases because a prescribed offence has been committed. The appeal right means that inappropriate use of the power for offences not justifying a bar would be curtailed by the Tribunal.

DBS and Ofsted do not have powers to direct that a person may not take part in the management of an independent school. NCTL is an executive agency of the Department for Education and as such has no powers that the Department does not already have.

The regulations do not give Secretary of State unlimited powers, although they do give him considerable discretion. The Secretary of State will exercise the section 128 power in accordance with normal public law principles (including human rights law).

Question 2: Do you agree that the additional powers that we are proposing will address the issues we have discussed in terms of “misconduct” and “extremism”? If not, why not?

The majority of the respondents (61%) agreed that additional powers will address the issues we set out in the consultation with regards to “misconduct” and “extremism”.

Where respondents disagreed the concerns included:

- Some respondents pointed out the differing approach to independent schools and maintained schools.
- There was some criticism of the drafting of 2 (5) (a) and the fact it isn't an adequate definition of “extremism”.

Government response

Ultimately children's welfare is the paramount concern to the government and the regulatory regimes it puts in place are geared to reflect this. This can mean different regulations to match the unique legal position and relationship between various types of school and the Secretary of State.

Although we want to cover extremism in regulation 2 (5) (a), it isn't the only area of conduct we have in mind when describing relevant conduct. It is for this reason we don't make explicit reference to extremism, although it would clearly fall within the definition. The definition is closely aligned with the “Prevent Strategy” definition of extremism¹.

Question 3: Do you agree that a “conduct” ground is needed as well as one based on convictions? If not, why not?

The majority of the respondents (72%) agreed that a conduct ground is necessary.

¹ <https://www.gov.uk/government/publications/prevent-strategy-2011> (pg 109)

Where respondents disagreed the main concern was:

- That this was an unnecessary intrusion on the independence of the management of independent schools and the senior management having the ability and right to hire or appoint whomever they see as appropriate to management or governing roles.

Government response

We agree that the best people to make decision regarding the management team of an independent school are the proprietor and senior management of that school, and in the vast majority of instances the Secretary of State has no intention to be involved. However we do believe it is necessary for the Secretary of State to intervene where children's education or welfare is at risk. We therefore think these powers are entirely appropriate.

Question 4: Do you agree that “relevant conduct” as set out in regulation 2 (5) (a) (b) and (c) is reasonable prescribed grounds to consider a section 128 direction? If not, why not?

The majority of the respondents (63%) agreed that “relevant conduct” as set out is reasonable prescribed grounds to consider a section 128 direction.

Where respondents disagreed the main concern was:

- There was some criticism of the drafting of this regulation and particular reference was made to the Statutory Instrument Practice (S.I.P) Manual.

Government response

We do not agree with this criticism. Paragraph 2.15.2 of S.I.P sets out the Joint Committee on Statutory Instruments' view that “delegated legislation itself should be detailed, specific and self-explanatory and should not depend on the exercise of ministerial or departmental discretion unless provision to that effect is expressly contained in the enabling Statute”. In this case, the primary legislation (the enabling statute) does envisage the Secretary of State exercising discretion when making a direction under s.128 otherwise s.128(2) would not allow them to prescribe the grounds. As Parliament recognise, it is not sensible to try to set out exactly all of the possible circumstances in which a person should be prohibited from taking part in the management of an independent school. It necessarily involves some degree of judgment depending on the context.

In any event, the regulations are as specific as possible given the policy aims. They set out the several bases which a direction may be made. Directions based on a simple list

of offences / professional misconduct could lead to arbitrary outcomes where the Secretary of State is pressured to make a direction barring people when, looking at the facts of the individual case, a bar may not be appropriate. Alternatively, if the regulations provided that a person could be prohibited from managing an independent school if the Secretary of State thinks that a person is unsuitable to do so – that would arguably be vague/ unspecific. The Tribunal provides a brake on inappropriate use of the power.

Question 5: Do you think “relevant conduct” as set out in regulation 2 (5), (a), (b), and (c) is adequately defined? If not, why not?

A small majority agreed that “relevant conduct” as set out is adequately defined.

Where respondents disagreed the main concerns were:

- Existing company and charity law provides the basis to remove or bar company directors and trustees.
- There was criticism of the term “egregious”.
- Some respondents suggested “relevant conduct” should be more tightly defined.
- Some respondents were concerned about the implications for those found guilty of minor professional misconduct or professional misconduct that has no bearing whatsoever on their ability to manage a school.

Government response

Company and charity law provide a basis for action against directors and trustees, but not the full range of individuals who may be involved in the management of a school. The grounds on which a person may be removed from a company or charity are different from the grounds we are prescribing in these regulations; and company / charity law would not give the Secretary of State the same sanction as section 128 (ultimately, removal of the school from the register of independent schools).

We have taken on board a number of comments regarding the proposed use of the word “egregious”, and consequently we have changed the reference to “so inappropriate”. The dictionary definition of egregious is “outstandingly bad; shocking” and a key element of the root of the word is something that stands out from the ordinary. We are confident that changing this to “so inappropriate” will retain this sense whilst providing greater clarity as to what the term means. We don’t want to be overly prescriptive when it comes to “relevant conduct”. If we issued a list of examples of “relevant conduct” there is a danger that this might be seen as exhaustive, or alternatively as automatically leading to a bar – in other words fettering discretion.

We do think it is necessary to retain a “so inappropriate” ground. We want to be clear that it will be only used in cases where it is clear the individual’s conduct means that he or

she should not be allowed to manage the education of children. In the majority of cases where the Secretary of State is barring an individual we would expect the individual to fall under the relevant offences grounds or the conduct grounds as set out in 2 (5) (a) and (b). However, as the main policy objective of these regulations is to ensure that the Secretary of State has the necessary powers to bar unsuitable people from managing independent schools we believe it is necessary and appropriate to include a “so inappropriate” ground. We hope, that by setting out “relevant offences” and “relevant conduct”, (at 5 (a) and (b)), we provide a good indication as to the scenarios we generally envisage the Secretary of State barring an individual.

The “so inappropriate” ground is essential in ensuring serious cases, that may present significant risks to children’s welfare and education, don’t slip through the barring regime because they don’t fall under one of the other more specific grounds. The Secretary of State will have to consider that due to the professional misconduct in question that the person was unsuitable to take part in the management of an independent school (and of course this decision will have to be defensible at a Tribunal if an individual appeals). We are not talking about the Secretary of State pursuing bars against people for instances of minor professional misconduct or professional misconduct that has no bearing on their suitability to be in a management position at an independent school. The regulations don’t allow for this.

Question 6: Do you think that “relevant offences” as set out in regulation 2 (1) (a) (i,ii,iii) and the description at regulation 2 (2) are reasonable prescribed grounds to make a section 128 direction. If not, why not?

The majority of the respondents (67%) agreed that “relevant offences” as set out are reasonable prescribed grounds to make a section 128 direction.

Where respondents disagreed the main concerns were:

- There was criticism of the circular nature of the test

Government response

We don’t think there is any circular reasoning in the test. The first part of the test is whether a person has a relevant conviction, caution, finding or conduct: this is the objective test. The second part of the test is whether the Minister considers that because of the facts surrounding that conviction, caution, finding or conduct, the person is not suitable to take part in the management of an independent school: the subjective test. Most offences would be “relevant convictions” but whether they make a person unsuitable to manage an independent school will depend on the context. Again, this is a decision that would have to be defensible at a Tribunal.

Question 7: Do you agree that the Secretary of State is the appropriate person to make directions? If not, why not?

This was the most divisive question of the consultation. 44% agreed that the Secretary of State is the appropriate person to make directions and 44% disagreed.

Where respondents disagreed the alternatives included:

- NCTL, the DBS or an independent panel.

Government response

We don't think it would be appropriate or a good use of public funds to set up a new body, as some have suggested, to make the barring decisions and give directions.

We think the Secretary of State should make the decisions on these cases on the basis that the decisions made might not just be related to risk of harm with children, but will also include issues such as extremism and financial conduct, and prohibitions related to other factors (for example being a disqualified solicitor). It should also be noted that the Education Act 2008 provides that appeals will go to the First-tier tribunal as a full merits hearing, whereas the DBS provisions go to the upper tribunal and only on a finding of fact or point of law. Consequently the DBS would have to develop a wholly new decision making process and procedure, and so there are no economies of process if DBS were to take this function on.

With the Secretary of State as the appropriate authority it would be possible for NCTL, as part of DfE, to exercise the power on a day to day basis, but at present we think that since the use of the power in specific cases is likely to be so intimately connected with the Department's regulatory role for independent schools that this would not be helpful. Therefore the Independent Education and Schools Governance Division would carry out the necessary work and the Secretary of State as the appropriate authority will make any decisions.

Question 8: Do you agree that notifying anyone that is potentially going to be barred in advance, in writing, to allow them the opportunity to make representations is the fairest and simplest way to manage the notification process? If not, why not?

The responses received were almost unanimous (94% positive) in their agreement to our approach in allowing the opportunity to make representation.

Question 9: When the Secretary of State does not know and cannot reasonably ascertain the whereabouts of a person is it reasonable for the Secretary of State

not to have to notify the person in writing and give them opportunity to make representations? If not, why not?

The majority of the respondents (65%) agreed to the approach when the Secretary of State cannot reasonably ascertain the whereabouts of a person.

Where respondents disagreed the main reason was:

- It was suggested that for the Secretary of State to be considering issuing a bar the whereabouts of the person must be known.

Government response

We have noted a number of comments that suggest it's inconceivable that the Secretary of State would be about to issue a bar on a person but not know where they are. We expect to be able to locate and notify a person and give them the opportunity to make representation in most cases. However we do think it's prudent to have the power to press ahead with the bar, even in the unlikely scenario where an individual may have moved and we are unable to trace them. Although unlikely it isn't impossible for instance that a person engaged in "so inappropriate" behaviour resigns from their post, perhaps after being exposed, and disappears, or has engaged in extremist conduct and subsequently moves to another country. We think it's essential that individuals who are unsuitable to take part in the management of an independent school and as such deserve to be barred can't manoeuvre their way around the system and avoid a bar by making themselves difficult for the Department to find.

Question 10: Do you agree that the Secretary of State should have the opportunity to vary or revoke a direction if new evidence comes to light or there is a material change in circumstances? If not, why not?

The responses received were almost unanimously in favour (94% positive) of the approach to vary or revoke a direction if new evidence came to light.

Question 11: Do you agree that the person concerned should have the opportunity to request a variation or revocation if new evidence comes to light or there is a material change in circumstances? If not, why not?

The responses received were almost unanimously in favour (94% positive) of the approach to give a person the opportunity to seek a variation or revocation of a direction if new evidence came to light or there is a material change in circumstances.

Question 12: Do you think what has been proposed are reasonable grounds to seek a variation or revocation? If not, why not?

The majority of the respondents (69%) agreed the grounds to seek a variation or revocation are reasonable.

Where respondents disagreed the main reasons were:

- Some respondents suggested the grounds for seeking a variation or revocation should be wider.
- A particular concern was 5 (1) (a) should lead to an automatic revocation.

Government response

We have noted respondents' concerns and have amended the regulations to broaden the grounds for seeking a variation or revocation. Individuals who have been given a direction based on a conviction or caution will be able to seek a variation or revocation on the same basis as those given a direction based on conduct. Regulation 4(a) provides for revocation "where appropriate".

In practice, where a conviction / caution has been quashed, there will be a strong case for revocation of the s. 128 direction, but it is sensible to retain the consistent approach of saying that we will revoke the direction where appropriate (and retaining a degree of discretion), rather than binding the Secretary of State in the regulations.

Question 13: Do you consider that the Health, Education, and Social Care Chamber of the First-tier Tribunal is an appropriate destination for these appeals? (Asked on behalf of the Ministry of Justice)

The vast majority (86%) of respondents agreed that the Health, Education, and Social Care Chamber of the First-tier Tribunal is an appropriate destination for appeals, the other 14% were not sure.

Question 14: Do you consider that any amendment needs to be made to the Tribunal Procedure (Health, Education, and Social Care Chamber) Rules 2008 for the handling of these appeals? If so, what amendment do you propose? (Asked on behalf of the Tribunal Procedure Committee).

We have noted the mixed response to this question and discussed with the Tribunal Procedure Committee.

Government response

We have agreed with the Committee that the time limit for appeals will be three months. This will bring the time limit in line with other barring time limits. The Rules provide for the time to run from when a decision is sent to the Appellant. The Appellant could ask for an extension of time if the decision was not received. Whether the extension was granted would depend on the circumstances.

Question 15: Do you agree that the new regulations will achieve our policy goal of providing additional but proportionate powers for the Secretary of State to protect children from behaviour that could be harmful to them and in particular address extremism concerns with regards to behaviour that is inappropriate but does not meet the threshold with regards to criminality? If not, why not?

The majority of responses (56%) received agreed the regulations will achieve our policy goal as set out in the question.

The majority of concerns expressed on this question were reiterating earlier points.

Question 16: Do you agree the new regulations will achieve our policy goal of providing additional but proportionate powers for the Secretary of State to protect schools and the education service generally from fraud and deception? If not, why not?

The majority of responses (60%) received agreed the regulations will achieve our policy goal as set out in the question.

The majority of concerns expressed on this question were reiterating earlier points.

Question 17: Do you agree the new regulations will achieve our policy goal of providing additional but proportionate powers for the Secretary of State to protect children and independent schools when there is clear evidence that justifies a barring order but such an order may not have been possible under section 142 of the Education Act 2002 because it doesn't amount to 'misconduct? If not, why not?

The majority of responses (63%) received agreed the regulations will achieve our policy goal as set out in the question.

The majority of concerns expressed on this question were reiterating earlier points.

Question 18: Do you agree the proposed procedure for giving a section 128 direction, seeking to have it varied or revoked and appealing against it is fair and proportionate? If not, why not?

The majority of responses (53%) agreed the procedure is fair and proportionate. We have noted the concerns of the respondents (40%) that disagreed.

The majority of concerns expressed on this question were reiterating earlier points.

Question 19: Please let us have your views on responding to this consultation (e.g. the number and type of questions, whether it was easy to find, understand, complete etc.).

The majority of comments regarding responding to the consultation were of a positive nature. We have noted all comments and will consider them when writing consultation documents in the future.

Next steps

14. We intend that regulations will be made and laid before Parliament, to come into force on 1 September 2014.

15. The Department will write to all independent schools in August confirming that the regulations have been laid, and confirming that they will be coming into force.

Annex A: Summary Response to each consultation question

1 Do you agree these additional powers are required to fill the gap that we have discussed in terms of the current barring process? If not, why not?

There were 18 responses to this question

	Independent school	Independent school association	School Inspector	Parent/ Carer	Faith Group	Academy/ Free school	Academy/ Free school association	Headteacher/ Principal	Governor	Other	Total	
Yes	4	0	0	1	0	0	0	1	0	5	11	61%
No	0	2	0	0	0	0	0	0	0	3	5	28%
Not sure	0	0	1	0	0	0	0	1	0	0	2	11%

2 Do you agree that the additional powers that we are proposing will address the issues we have discussed in terms of “misconduct” and extremism? If not, why not?

There were 18 responses to this question

	Independent school	Independent school association	School Inspector	Parent/ Carer	Faith Group	Academy/ Free school	Academy/ Free school association	Headteacher/ Principal	Governor	Other	Total	
Yes	4	0	1	1	0	0	0	2	0	3	11	61%
No	0	2	0	0	0	0	0	0	0	3	5	28%
Not sure	0	0	0	0	0	0	0	0	0	2	2	11%

3 Do you agree that a “conduct” ground is needed as well as one based on convictions? If not, why not?

There were 18 responses to this question

	Independent school	Independent school association	School Inspector	Parent/ Carer	Faith Group	Academy/ Free school	Academy/ Free school association	Headteacher/ Principal	Governor	Other	Total	
Yes	4	0	0	1	0	0	0	2	0	6	13	72%
No	0	2	0	0	0	0	0	0	0	1	3	17%
Not sure	0	0	1	0	0	0	0	0	0	1	2	11%

4 Do you agree that “relevant conduct” as set out in regulation 2 (5)(a), (b) and (c) is reasonable prescribed grounds to consider a section 128 direction? If not, why not?

There were 19 responses to this question

	Independent school	Independent school association	School Inspector	Parent/ Carer	Faith Group	Academy/ Free school	Academy/ Free school association	Headteacher/ Principal	Governor	Other	Total	
Yes	4	0	1	1	0	0	0	2	0	4	12	63%
No	0	3	0	0	0	0	0	0	0	3	6	32%
Not sure	0	0	0	0	0	0	0	0	0	1	1	5%

5 Do you think “relevant conduct” as set out in regulation 2 (5) (a), (b) and (c) is adequately defined? If not, why not?

There were 19 responses to this question

	Independent school	Independent school association	School Inspector	Parent/ Carer	Faith Group	Academy/ Free school	Academy/ Free school association	Headteacher/ Principal	Governor	Other	Total	
Yes	3	0	0	1	0	0	0	2	0	3	9	47%
No	0	3	1	0	0	0	0	0	0	3	7	37%
Not sure	1	0	0	0	0	0	0	0	0	2	3	16%

6 Do you think that “relevant offences” as set out in regulation 2 (1) (a) (i, ii, iii) and the description at regulation 2 (2) are reasonable prescribed grounds to make a section 128 direction? If not, why not?

There were 18 responses to this question

	Independent school	Independent school association	School Inspector	Parent/ Carer	Faith Group	Academy/ Free school	Academy/ Free school association	Headteacher/ Principal	Governor	Other	Total	
Yes	4	0	0	1	0	0	0	2	0	5	12	67%
No	0	2	1	0	0	0	0	0	0	2	5	28%
Not sure	0	0	0	0	0	0	0	0	0	1	1	6%

7 Do you agree that the Secretary of State is the appropriate person to make directions? If not, why not?

There were 16 responses to this question

	Independent school	Independent school association	School Inspector	Parent/ Carer	Faith Group	Academy/ Free school	Academy/ Free school association	Headteacher/ Principal	Governor	Other	Total	
Yes	4	0	0	0	0	0	0	1	0	2	7	44%
No	0	2	0	0	0	0	0	0	0	5	7	44%
Not sure	0	0	1	0	0	0	0	1	0	0	2	13%

8 Do you agree that notifying anyone that is potentially going to be barred in advance, in writing, to allow them the opportunity to make representations is the fairest and simplest way to manage the notifications process? If not, why not?

There were 17 responses to this question

	Independent school	Independent school association	School Inspector	Parent/ Carer	Faith Group	Academy/ Free school	Academy/ Free school association	Headteacher/ Principal	Governor	Other	Total	
Yes	4	2	1	1	0	0	0	2	0	6	16	94%
No	0	0	0	0	0	0	0	0	0	1	1	6%
Not sure	0	0	0	0	0	0	0	0	0	0	0	0%

9 When the Secretary of State does not know and cannot reasonably ascertain the whereabouts of a person is it reasonable for the Secretary of State not to have to notify the person in writing and give them opportunity to make representations? If not, why not?

There were 17 responses to this question

	Independent school	Independent school association	School Inspector	Parent/ Carer	Faith Group	Academy/ Free school	Academy/ Free school association	Headteacher/ Principal	Governor	Other	Total	
Yes	4	0	0	1	0	0	0	2	0	4	11	65%
No	0	2	0	0	0	0	0	0	0	3	5	29%
Not sure	0	0	1	0	0	0	0	0	0	0	1	6%

10 Do you agree that the Secretary of State should have the opportunity to vary or revoke a direction if new evidence comes to light or there is a material change in circumstances? If not, why not?

There were 17 responses to this question

	Independent school	Independent school association	School Inspector	Parent/ Carer	Faith Group	Academy/ Free school	Academy/ Free school association	Headteacher/ Principal	Governor	Other	Total	
Yes	4	2	1	1	0	0	0	2	0	6	16	94%
No	0	0	0	0	0	0	0	0	0	1	1	6%
Not sure	0	0	0	0	0	0	0	0	0	0	0	0%

11 Do you agree that the person concerned should have the opportunity to request a variation or revocation if new evidence comes to light or there is a material changed in circumstances? If not, why not?

There were 17 responses to this question

	Independent school	Independent school association	School Inspector	Parent/ Carer	Faith Group	Academy/ Free school	Academy/ Free school association	Headteacher/ Principal	Governor	Other	Total	
Yes	4	2	1	1	0	0	0	2	0	6	16	94%
No	0	0	0	0	0	0	0	0	0	0	0	0%
Not sure	0	0	0	0	0	0	0	0	0	1	1	6%

12 Do you think what has been proposed are reasonable grounds to seek a variation or revocation? If not, why not?

There were 16 responses to this question

	Independent school	Independent school association	School Inspector	Parent/ Carer	Faith Group	Academy/ Free school	Academy/ Free school association	Headteacher/ Principal	Governor	Other	Total	
Yes	4	0	0	1	0	0	0	2	0	4	11	69%
No	0	2	1	0	0	0	0	0	0	2	5	31%
Not sure	0	0	0	0	0	0	0	0	0	0	0	0%

13 Do you consider that the Health, Education, and Social Care Chamber of the First-tier Tribunal is an appropriate destination for these appeals? (Asked on behalf of the Ministry of Justice)

There were 14 responses to this question

	Independent school	Independent school association	School Inspector	Parent/ Carer	Faith Group	Academy/ Free school	Academy/ Free school association	Headteacher/ Principal	Governor	Other	Total	
Yes	4	0	0	1	0	0	0	2	0	5	12	86%
No	0	0	0	0	0	0	0	0	0	0	0	0%
Not sure	0	1	0	0	0	0	0	0	0	1	2	14%

14 Do you consider that any amendment needs to be made to the Tribunal Procedure (Health, Education, and Social Care Chamber) Rules 2008 for the handling of these appeals? If so, what amendments do you propose? (Asked on behalf of the Tribunal Procedure Committee).

There were 13 responses to this question

	Independent school	Independent school association	School Inspector	Parent/ Carer	Faith Group	Academy/ Free school	Academy/ Free school association	Headteacher/ Principal	Governor	Other	Total	
Yes	2	0	0	1	0	0	0	0	0	1	4	31%
No	1	0	0	0	0	0	0	1	0	3	5	38%
Not sure	0	1	0	0	0	0	0	1	0	2	4	31%

15 Do you agree that the new regulations will achieve our policy goal of providing additional but proportionate powers for the Secretary of State to protect children from behaviour that could be harmful to them and in particular address extremism concerns with regards to behaviour that is inappropriate but does not meet the threshold with regards to criminality? If not, why not?

There were 18 responses to this question

	Independent school	Independent school association	School Inspector	Parent/ Carer	Faith Group	Academy/ Free school	Academy/ Free school association	Headteacher/ Principal	Governor	Other	Total	
Yes	4	0	0	1	0	0	0	2	0	3	10	56%
No	0	2	0	0	0	0	0	0	0	3	5	28%
Not sure	0	0	1	0	0	0	0	0	0	2	3	17%

16 Do you agree the new regulations will achieve our policy goal of providing additional but proportionate powers for the Secretary of State to protect schools and the education service generally from fraud and deception? If not, why not?

There were 15 responses to this question

	Independent school	Independent school association	School Inspector	Parent/ Carer	Faith Group	Academy/ Free school	Academy/ Free school association	Headteacher/ Principal	Governor	Other	Total	
Yes	4	0	0	1	0	0	0	2	0	2	9	60%
No	0	2	0	0	0	0	0	0	0	1	3	20%
Not sure	0	0	1	0	0	0	0	0	0	2	3	20%

17 Do you agree that the new regulations will achieve our policy goal of providing additional but proportionate powers for the Secretary of State to protect children and independent schools when there is clear evidence that justifies a barring order but such an order may not have been possible under section 142 of the Education Act 2002 because it doesn't amount to misconduct? If not, why not?

There were 16 responses to this question

	Independent school	Independent school association	School Inspector	Parent/ Carer	Faith Group	Academy/ Free school	Academy/ Free school association	Headteacher/ Principal	Governor	Other	Total	
Yes	4	0	0	1	0	0	0	2	0	3	10	63%
No	0	2	0	0	0	0	0	0	0	1	3	19%
Not sure	0	0	1	0	0	0	0	0	0	2	3	19%

18 Do you agree the proposed procedure for giving a section 128 direction, seeking to have it varied or revoked and appealing against it is fair and proportionate? If not, why not?

There were 15 responses to this question

	Independent school	Independent school association	School Inspector	Parent/ Carer	Faith Group	Academy/ Free school	Academy/ Free school association	Headteacher/ Principal	Governor	Other	Total	
Yes	3	0	0	1	0	0	0	2	0	2	8	53%
No	0	3	0	0	0	0	0	0	0	3	6	40%
Not sure	0	0	1	0	0	0	0	0	0	0	1	7%

Annex B: List of respondents to the consultation.

- Association of School and College Leaders (Martin Ward)
- Averroes (Jabbar Hussain)
- British Humanist Association (Richy Thompson)
- Catholic Education Service (Christine Fischer)
- Fizia, Damian
- Focus Learning Trust (Ted Picton)
- Hincks, Sue (Bolton School Girls' Division)
- Independent Schools Council (Matthew Burgess)
- Independent Schools Inspectorate (Rowenna Abel)
- Lewis, Susan (Lancaster House School)
- Meredale Independent School (Michelle Homer)
- National Association of Head Teachers (NAHT) (Valentine Mulholland)
- National Governors' Association (Rani Kaur)
- National Society (Church of England) (Garry Neave)
- Ofsted (Jos Parsons)
- Pattison College (Elizabeth McConnell)
- SENAD Group (Mark Flynn)
- St Dunstan's Educational Foundation, The (Norman Wallace)
- Voice the union (MICHAEL SADLER)



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for Education

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