

Title: Validation IA: The Management of Independent Schools: The Independent Educational Provision in England (Prohibition on Participation in Management) Regulations IA No: DFE0048; RPC12-FT-Df Lead department or agency: Department for Education Other departments or agencies:	Impact Assessment (IA)		
	Date: 04/09/2014		
	Stage: Final		
	Source of intervention: Domestic		
	Type of measure: Secondary legislation		
Contact for enquiries: Michael Bell 01325735779 michael.bell@education.gsi.gov.uk			
Summary: Intervention and Options		RPC Opinion: EANCB Validated	

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
N/A	N/A	£0.082m	Yes IN

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

At present the Secretary of State can bar persons from participating in the management of an independent school only on grounds of misconduct (as set out in s. 142 of the Education Act 2002). This is vague and narrow in scope, and is not a secure basis for taking action against individuals whom the Department might wish to see barred from such positions. Two groups in particular are the target of the new powers: those who spread extremist messages, and those who have engaged in financial or legal malpractice but have not been convicted of an offence. Government intervention is necessary to ensure the safeguarding and welfare of children in independent schools by protecting them from contact with unsuitable people.

What are the policy objectives and the intended effects?

The policy objective is to make regulations under s. 128 of the Education and Skills Act 2008 to bring into operation powers to bar unsuitable individuals from occupying management positions in independent schools. The objective is to strengthen the existing s. 142 powers the Secretary of State already has at his disposal. The effect of a direction would be to bar the individual concerned from taking part in the management of any independent school in England, or to put limits on the way that person could take part in school management. Management positions include acting as proprietor, governor, head teacher or being another employee in a managerial role.

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

a. To do nothing - leaving the Secretary of State with what we believe is an important gap in his powers to bar unsuitable people from management positions in independent schools;

b. (Preferred option) to make regulations under s.128 of the 2008 Act to enable barring direction to be made, and also make regulations to treat the few existing bars made under earlier legislation (s. 142 of the 2002 Act) as if they were made under s.128;

c. Make regulations to enable barring directions to be made, but with no action in respect of existing bars;

d. Alternatives to regulation - There are no viable alternatives to regulation. There are no other powers for persons to be barred from managing independent schools. A voluntary system as an alternative to regulation is not considered likely to have any effect because of the nature of the intended targets for barring powers.

Will the policy be reviewed? It will be reviewed. If applicable, set review date: 09/2017					
Does implementation go beyond minimum EU requirements?				N/A	
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.		Micro Yes	< 20 Yes	Small Yes	Medium Yes
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)				Traded: N/A	Non-traded: N/A

I have read the Impact Assessment and I am satisfied that (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 _____ **Date:** 4th September 2014
SELECT SIGNATORY: _____ **e:** _____

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: N/A	High: N/A	Best Estimate: N/A

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	0.294	0.002	0.313
High	1.176	0.089	1.939
Best Estimate	0.588	0.030	0.845

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

Staff time costs related to ensuring compliance in independent schools (i.e. familiarisation costs).
Advertising costs and staff time costs to recruit a member of staff to replace someone that was barred (i.e. ongoing annual costs).

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

If the power to bar an individual is used, in the majority of cases it will be a simple matter of recruiting a replacement (set out above). However if the individual is the sole proprietor and the school has to close, significant costs could arise. We think this is unlikely to occur often, given that most independent schools are not run by a sole proprietor, and that the power given by the regulations is likely to be used rarely.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Not Quantified	Not Quantified	Not Quantified
High	Not Quantified	Not Quantified	Not Quantified
Best Estimate	Not Quantified	Not Quantified	Not Quantified

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

None quantified.

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

Most benefits are non-monetised as they are related to the welfare of students.

Key assumptions/sensitivities/risks

Sensitivities surround the number of independent schools affected by the regulation and required to make changes to their management to be in compliance.

Discount rate (%) N.A.

BUSINESS ASSESSMENT (Option 1)

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

Evidence Base (for summary sheets)

- **Problem under consideration**

Occasionally the Department comes across evidence that a person is unsuitable to be managing an independent school, and wishes to ensure that they no longer do so.

At present the Secretary of State for Education can bar persons from participating in the management of an independent school only on grounds of misconduct (as set out in s. 142 of the Education Act 2002).

This is a backstop power and used only rarely, and only as necessary, to protect children from unsuitable people and unsuitable influences. It has been used three times in approximately 10 years.

The power is vague and narrow in scope, and is not a secure basis for taking action against some of the people, who in the Department's view, should not be involved in the management of an independent school. The Department must protect and safeguard children and young people from contact with unsuitable people, either because the person presents a risk to their safety and welfare, or because that person's behaviour presents an unacceptable example to them. The Department must also play its part in protecting schools and the education system generally from fraud and or deception.

We believe two types of people in particular, are not captured under the current system, as they fall outside the Secretary of State's current powers: those who spread extremist messages and engage in extremist behaviour that falls short of criminal activity, and those who have engaged in financial or legal malpractice and in particular have been found to be in breach of professional standards by a professional body, but have not been convicted of an offence. The new regulations provide the Secretary of State with a more specific power to bar such people, when appropriate, from managing an independent school. In the past few years the Department has had several cases where s.128 of the Education and Skills Act 2008 would have provided a stronger clear basis for barring individuals connected with extremism. However, having no criminal convictions, or not having been disciplined by a professional body, the current 'misconduct' provision in s.142 of the 2002 Act either did not provide a clear basis for action, or one which could have been more easily contested at Tribunal because of the vagueness of this ground for barring.

The new regulations also include a power to bar someone whose conduct is 'so inappropriate' it makes them unsuitable to take part in the management of an independent school. We believe this closes an important lacuna between the vagueness of 'misconduct' and those convicted of offences.

The Secretary of State can use powers which relate to the school rather than individuals, and will normally prefer to do so. In two recent cases, schools where extremist teaching was taking place or were using extremist books and the independent school standards (made in SI2010/1997) had been breached, were served with statutory notices (under s.165 of the Education Act 2002) requiring action plans; and the schools were subsequently found to have improved to the extent that breaches of the standards had ceased. However, in these cases it was the school as a whole which was at fault and it was not appropriate to take action against individuals. In most cases action against the school is the appropriate course to take.

Action against an individual is extremely rare, but when necessary it is generally due to the extremely serious nature of the situation and it is essential that the Secretary of State has adequate powers to protect children.

- **Rationale for intervention**

The independent sector is comparatively unregulated and the government believes that this should continue to be the case. However this system of relatively light touch regulation means there is a greater danger that unsuitable individuals will be able to secure management posts or become a proprietor of an independent school. Indeed, the market is not currently working effectively because we know that parents do send their children to unsuitable schools, or schools in which unsuitable staff are employed. So we cannot rely on the market to work automatically to ensure that unsuitable people are not in management position in independent schools.

Generally speaking independent schools are very capable of managing themselves and their staffing affairs. Independent schools do not generally employ inappropriate people and, as and when

inappropriate behaviours are identified, the school itself will have the required procedures to deal with any issues. However there are rare instances where cases are so serious it is necessary for the Secretary of State to intervene. Intervention is already established and indeed used via s. 142 of the 2002 Act. The proposed regulations build on these powers.

The Secretary of State can check the suitability of a prospective proprietor of an independent school when it is first registered, or, when the proprietor of a registered school changes, and refuse to register the school or approve the change. However, he is more restricted in taking action where an existing proprietor, or a person managing the school, is found to be unsuitable. It is the issue of existing proprietors and managers where we believe additional intervention powers are necessary.

We believe the rationale for strengthening the Secretary of State's powers with regards to barring is sound. Whilst the Department believes in a comparatively unregulated independent sector we believe the evidence for intervention in certain prescribed circumstances is compelling.

With regards to convictions, extremism, professional misconduct and other inappropriate conduct that these regulations address we believe it is appropriate for the Secretary of State to have the powers to intervene, where appropriate, in the most serious cases. We are clear that where the Department becomes aware of a serious safeguarding issue, extremist behaviour or other serious inappropriate conduct it has a duty to act immediately and, where it is necessary and proportionate, to bar the person who is responsible.

In these rare but serious instances we cannot rely on the schools internal processes and market forces to stop such people being in schools. Even in cases where we might be confident that parents would act and move their children in such numbers that ultimately the school is forced to close, the instances we are talking about barring an individual will be so serious that we couldn't risk the children's safety and education whilst waiting for the market to resolve the issue. There may also be cases where a school is dealing with a matter itself but because of the seriousness of the conduct it is appropriate for the Secretary of State to intervene immediately. There is also the danger that without a bar an unsuitable person could simply move on to another school. We also know that in some instances parents of pupils at faith schools tend to be more disposed to trust the school on these matters even if that trust is not justified.

It should also be noted that in the case of proprietors, unlike heads, deputy heads and other managers, it may be the case that there is no other appropriate authority to deal with or sanction seriously inappropriate conduct. Hence in the most serious cases, and where we have serious concerns regarding safeguarding or extremism or other inappropriate conduct, we think it is crucial that the Secretary of State can step in quickly and as appropriate issue a bar.

For these reasons we believe that a back stop power, reserved for the most serious cases is appropriate.

- **Policy objective**

The primary legislation enabling a more comprehensive approach to barring is already in place in the Education and Skills Act 2008 (s. 128) and the government plans to commence that section and make regulations to enable directions barring individuals. Therefore the overall objective would be to give effect to Parliament's intention in passing this legislation. The policy objective is to ensure the Secretary of State has adequate powers to bar unsuitable individuals from the management of independent schools.

The intended effect is that where the Secretary of State issues a direction under s.128 the individual concerned is barred from taking part in the management of any independent school in England, or can only participate subject to limits set out in the direction.

- **Description of options considered**

A. To do nothing - leaving the Secretary of State with what we believe is an important gap in his powers to bar unsuitable people from management positions in independent schools. Given the seriousness of some of the threats to children and the independent school system in general from, in particular, extremism, fraud and deception we don't think it would be appropriate to do nothing.

- B. **(Preferred Option)** To make regulations under s.128 to enable barring direction to be made, and also make regulations to treat the few existing bars made under earlier legislation as if they were made under s.128.
- C. Make regulations to enable barring direction to be made, but with no action in respect of existing bars. We believe option B is preferable to this option as by treating the existing bars as if they were made under s.128 we will tidy up the appeal process and leave a system where all appeals are treated as if the bar was made under s.128. Option C would leave an administrative environment where the Tribunal service had to potentially deal with appeals under s. 128 and s.142.
- D. Alternatives to regulation. There are no viable alternatives to regulation. There are no other powers for persons to be barred from managing independent schools. A voluntary system as an alternative to regulation is not considered likely to have any effect because of the nature of the intended targets for barring powers. We also believe given the serious nature of the rare cases where barring is necessary, and in particular the potential safeguarding issues for the children involved, a voluntary system would not be appropriate.
- **Monetised and non-monetised costs and benefits of each option (including administrative burden)**

Option A

Option A would maintain the status quo. It would mean independent schools wouldn't have to familiarise themselves with any changes. It would mean the Secretary of State still had the power to bar individuals (under s. 142), meaning a small number of schools would still potentially face the costs associated with barring (as set out in option B, but the bar would be under s. 142), but in our view would leave a gap in the Secretary of State's powers which we think is especially important with regards to extremism, fraud and safeguarding.

Option B (Preferred Option)

In discussing setting up the new appeal right with the Ministry of Justice we have forecast the potential number of appeals resulting from bars to be in the 0-5 per year category, and have made it clear that we wouldn't be surprised that if in some years the number of bars and appeals were zero, reflecting the small number of bars that we expect the Secretary of State to make.

In addition to the s. 142 bars, looking back over the past few years the Department has only had a small number of cases where s.128 would have provided a stronger clear basis for barring individuals connected with extremism. But having no criminal convictions, or not having been disciplined by a professional body, the current 'misconduct' provision in s.142 either did not provide a clear basis for action or one which could have been more easily contested at Tribunal because of the vagueness of this ground for barring.

We do want to be clear that whilst we think this will be a relatively rarely used backstop power, we believe it is also an essential power to commence, and the case for government intervention compelling. We make clear in our arguments on alternative options that we believe government intervention is the only realistic option that will deliver the necessary outcomes with regards to safeguarding and protecting the independent education system from amongst other things, extremism, fraud and deception. The impact of not commencing this might have serious consequences for pupils in the particular but rare cases where there are concerns which aren't captured by the wording of s. 142.

If the regulations come into force, familiarisation costs will be small and likely to be between around £300,000 and £1,200,000 in total. Our best estimate for such costs is equal to roughly £588,000.

If the power to bar an individual is used, there are two possible consequences and associated costs. These are identified as:

1. The school replaces the individual, bearing a small cost of replacement/recruitment.

We estimate recruitment costs to replace a barred senior manager will be just under £ 10,000 per school and approximately £ 30,000 per year (based on 3 bars a year).

2. If the individual is crucial to the school (e.g. is the sole proprietor) then the school may become unviable and close, although, in the instance of a sole proprietor being barred if the school has a viable future then it is most likely that another proprietor will be found - for example the head teacher or a leading parent. If the school does close, this would give rise to significant costs. However, we think this is unlikely to occur often, given that most independent schools are not run by a sole proprietor, the power is likely to be used rarely, and as discussed if the school is viable a new proprietor is likely to be found. This would both provide continuity in the school, whilst only imposing small costs of transfer to a new proprietor.

We are confident that the overall costs of this regulation on a handful of affected schools will fall well below £1 million in any year.

To be clear, these potential costs exist under the existing s. 142 bar of the 2002 Act. The scenarios regarding costs are the same under s. 128 of the 2008 Act: it is the broadening of the Secretary of State's powers that is the major change.

The consultation on the proposed change, held between 07/02/2014 and 10/04/2014, received only twenty responses, none of which mentioned costs as an issue with regards to the proposed regulations.

Option C

This is identical to option B apart from not treating s. 128 of the 2008 Act bars as if they were given under s. 142 of the 2002 Act. In terms of costs and benefits to individuals and schools this option is no different to option B. What option B does is tidy up the legislation and ensures the Tribunal service only have to deal with any appeals as if they were given under s. 128. As only three bars that have been given under s. 142 are currently 'live', we are talking about tiny numbers. However we believe it is sensible to tidy up the legislation in this way and as such prefer option B to option C.

Option D

As we have made clear earlier in the IA, we do not think a voluntary system and more broadly a system simply relying on the market to resolve such serious issues would be appropriate. Therefore, we have not considered costs and benefits of option D as we are certain that a legislative framework is essential (and something we already have) to deal with safeguarding, extremism, financial irregularities etc.

- **Rationale and evidence that justify the level of analysis used in the IA**

We do not quantify or monetise the costs to a school of a bar being placed on an individual (the sole proprietor) that would result in the closure of that school. This is based on the reasoning that:

1. The frequency of usage of barring is uncertain and will be very small as it is a backstop power to be exercised when all other methods of dealing with incidents fail;
2. Most schools are not run by a sole proprietor;
3. In the instance of a sole proprietor being barred if the school has a viable future then it is most likely that another proprietor will be found - for example the headteacher or a leading parent; and
4. Any costs would be very difficult to estimate with any degree of meaningful accuracy, as they would depend on the particular circumstances of the school affected, which could vary considerably. Thus, as set out in the above bullets, years and years could go by without a single bar being issued that leads to a sole proprietor being barred and a school having to close as a result.

- **Risks and assumptions**

- Our assumption with regards to these regulations is that, like the s. 142 power, the proposed s. 128 power will be a back stop power that is rarely used.
- Our assumption based on consultation responses is that potential costs of the regulations are not an issue for the sector.
- Based on responses to our consultation our assumption is that there is a general acceptance that the Secretary of State should have the power to bar unsuitable people from management positions in independent schools. We have however noted the concerns of a number of respondents with regards to the drafting of the regulations and the broad nature of Secretary of State's powers. We address these concerns in the consultation response document which we will be publishing in late May/early June.
- We believe there will be a real risk to the safety of children and financial integrity of the independent education system if our proposed regulations do not come into force.

- **Direct costs and benefits to business calculations (following OITO methodology)**

Familiarisation Costs

Schools Affected

This regulation will affect 2,417 independent schools in England¹. We believe that the regulation will not have any additional impact on schools that are opened in future years: new schools will have to comply with all regulations that are in force anyway. Although there may be some transitional familiarisation costs we do not anticipate that the revised regulations will be any more burdensome than the current regulations to understand.

How Schools Will Be Affected

We are confident that the benefits of the measure to society will exceed the costs to business. However due to the nature of the measure – and uncertainty about what actions will be undertaken by the very small number of schools expected to be impacted by a barring order – it is not possible to derive reasonably accurate total monetary value for the total benefits and total costs to either society or business.

Estimation of the total costs would involve calculating three types of costs: familiarisation costs, the replacement/recruiting costs that arise in case an independent school has to replace an individual as a

¹ Edubase.

result of the new regulations, and the costs of transferring the ownership of the school or of closing it down in case the barred manager is the sole proprietor. Familiarisation costs are monetisable. Such costs are related to the estimated time for the school staff to read and digest the new regulation and to carry out any adjustments required to comply with it.

One-off familiarisation costs (transition costs) will be approximately £600,000.

We estimate recruitment costs to replace a barred senior manager will be just under £ 10,000 per school and approximately £ 30,000 per year (based on our central scenario for recruitment costs and for an average of 3 bars a year).

Significant ongoing costs are unlikely to arise often, given that most independent schools are not run by a sole proprietor, and that the power given by the regulations is likely to be used rarely. Only three individuals were barred under s. 142 of the 2002 Act in the last ten years and there are only a small number of cases that we are aware of over the last few years where we think that a s. 128 bar might have been appropriate.

Estimation of the total benefits to business would involve understanding whether independent schools are better off under the new regulations. Barring staff that are guilty of fraud or financial mismanagement from the school management might save the schools money, especially if the concerned people committed fraud against the school they work for. Benefits to the society are more clear-cut, in that they relate to the welfare of the students. Students will certainly benefit from studying in an environment where no extremist messages are spread and/or where the school manager is not engaged in financial or legal malpractice.

Given that familiarisation and recurring costs, although small, are probably not going to be offset by any savings from fraud or financial mismanagement prevented, we classified these regulations as an IN under OITO methodology.

a. Familiarisation Costs

Within each independent school, the following members of the staff will likely spend some time to read the regulations, consider whether they are in compliance and discuss them at meetings:

1. A senior school leader (head, deputy or assistant head teacher);
2. One member of the administrative staff;
3. The governors.

We expect these costs to be one-off because they will only have an impact on existing schools, which will need to understand the new regulations. All new schools that are established in future years will have to understand and comply with all the regulations that are in force anyway so the change in regulation will not have any additional impact on such schools.

Assumptions

The hourly unit costs for each occupation were calculated in the following manner:

- Given that there is no data on salaries and working hours in independent schools, we assumed that salaries and working hours in LA maintained schools and academies are a good *proxy for salaries and working hours* in independent schools. Given that the set of skills required to work in the private sector is fairly similar to the set of skills required to work for a publicly-funded school, we can assume that the two labour markets are comparable and that the salaries and the working hours in equilibrium are similar.
- The *average hourly gross salary of a Senior School Leader* is derived from the average annual gross salary of full-time heads, deputy and assistant heads, reported in the “November 2013 School Workforce Census”². The “School Teacher’s Pay and Conditions Document 2013 and Guidance on School Teachers’ Pay and Conditions”³ states that teachers are required to work for

² November 2013 School Workforce Census. Available at:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/302019/SSF11_2014_FinalTables.xls [accessed 23 April 2014].

³ School Teacher’s Pay and Conditions Document 2013 and Guidance on School Teachers’ Pay and Conditions. Available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/271275/130806_2013_stpcd_master_final.pdf [accessed 7 April 2014].

1,265 hours every year. To derive the average hourly gross salary of the Senior School Leader, we used the average annual gross salary across all types of school and then divided the figure obtained by 1,265 working hours.

- The *average hourly gross salary for the member of the Administrative Staff* is derived from the “Labour Market Statistics Dataset”^{4 5}. The average weekly earnings were divided by average weekly hours per worker in the “Administrative and Support Services” sector.
- The *average hourly gross salary for the Governors* is derived from the median gross hourly earnings of full-time employees reported in the ONS “Annual Survey of Hours and Earnings, 2013 Provisional Results”⁶. Given that we have reasons to believe that governors are likely to have higher skills than the average British worker, we assume that the average hourly wage of a governor is 25% higher than the average national wage, and therefore, equal to £ 16.29.
- We applied an *on-cost uplift* to average hourly gross wages of 1.2213, in line with HM Treasury guidance⁷ to incorporate both salary and non-wage labour costs in the calculations. This is an internal DfE estimate. The figure consists for 14.1 percent of employer pension contributions and the remaining 6 percent is an estimate of the average national insurance contributions, based on current teacher salaries.
- We assumed that the *average governing size* is 21, based on the evidence available⁸.

The resource costs across the affected occupations are:

Occupation	Hourly Gross Wage	Unit Cost per Hour (Wage and On-Cost)	Number of Staff Involved per School	Total Cost per Hour (Wage and On-Cost)
Senior School Leader	£ 44.35	£ 54.16	1	£ 54.16
Administrative Staff	£ 11.96	£ 14.61	1	£ 14.61
Governors	£ 16.29	£ 19.89	21	£ 417.73

Estimated Costs

We have estimated familiarisation costs under three different scenarios to look at how sensitive they are to the assumptions made: in the low scenario, the time required to become familiar with the new regulations is 15 minutes; in the central scenario it is equal to 30 minutes and in the high scenario it amounts to 1 hour. We believe that these scenarios are sensible: we took into consideration both the time needed to read the regulations and to discuss their implications during a meeting.

The estimates for the familiarisation costs are laid out in the table below:

Scenario	Estimated Time Needed for Familiarisation with the Regulation	Final Cost per School ^a	Final Cost for All Schools
Low	15 minutes	£ 121.62	£ 293,967
Central	30 minutes	£ 243.25	£ 587,934
High	1 hour	£ 486.50	£ 1,175,869

Note: ^a The final cost per school is calculated by adding the total costs of occupation per hour across all three occupations and then by multiplying the result by the estimated number of hours needed for familiarisation.

The total familiarisation costs for independent schools (which are entirely borne by the private sector) vary according to our assumptions under three different scenarios. The estimates suggest that familiarisation costs will be small and likely to be between around £300,000 and £1,200,000 in total.

⁴ Labour Market Statistics Dataset. Available at: <http://www.ons.gov.uk/ons/rel/lms/labour-market-statistics/march-2014/table-earn03.xls> [accessed 7 April 2014].

⁵ Labour Market Statistics Dataset. Available at: <http://www.ons.gov.uk/ons/rel/lms/labour-market-statistics/march-2014/table-hour03.xls> [accessed 7 April 2014].

⁶ Annual Survey of Hours and Earnings, 2013 Provisional Results. Available at: http://www.ons.gov.uk/ons/dcp171778_335027.pdf [accessed 7 April 2014].

⁷ HM Treasury (2011), “The Green Book: Appraisal and Evaluation in Central Government”. Available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/220541/green_book_complete.pdf [accessed 7 April 2014].

⁸ N. Carmichael and E. Wild (2011), “Who Governs the Governors? School Governance in the Twenty First Century”. Available at: http://www.wildsearch.org/docs/files/team/Neil_Carmichael/governs_governors.pdf [accessed 7 April 2014].

b. Recruitment/Replacement Costs

Within each independent school where a senior manager is barred we have made the assumption that that person will be replaced. We have made the assumption that the following members of the staff will be involved in all stages of the recruitment.

1. Two senior school leaders (head, deputy or assistant head teacher);
2. One member of the administrative staff; and
3. One governor.

We have estimated recruitment costs under three different scenarios to look at how sensitive they are to the assumptions made: we have used low, central and high scenarios to reflect the different costs that could be applied to each task. We believe that these scenarios are sensible: we took into consideration small scale recruitments that only advertise online and generate only a few applicants, larger recruitments with broader advertising and advertising that pays the top price for its adverts and generates a greater number of applicants.

Assumptions

We have used the same assumptions as above in familiarisation costs when working out hourly wage costs.

There is any number of possibilities when considering advertising costs. We have used a low, central and high figure derived from advertising with TES⁹.

- Low - 'Gold' Online only;
- Central - 'Gold' Online and Half Page Premium;
- High - 'Gold' Online and Full Page Premium.

Estimated costs

(1) Drafting the Job Advert

Costs will include hourly wage plus on costs for two senior managers, a governor and an administrative member of staff to draft the job advert. The hourly occupation costs for each member of staff are laid out in the table below:

Occupation	Unit Cost of Occupation per Hour (Wage and On-Cost)
Senior School Leader	£ 54.16
Administrative Staff	£ 14.61
Governors	£ 19.89

The total cost of occupation per hour of carrying out a specific task is calculated in the following manner:

$$\text{Total Cost of Occupation per Hour} = (2 * \text{Unit Cost per Hour for Senior School Leaders}) + \text{Unit Cost per Hour for Administrative Staff} + \text{Unit Cost per Hour for Governors} \\ = (2 * 54.16) + 14.61 + 19.89 = \text{£}142.82$$

The final cost of drafting a job advert for each school that needs to replace a member of the staff is calculated under the three different scenarios:

Scenario	Estimated Time Needed for Drafting the Job Advert	Final Cost of Drafting the Job Advert per School ^b
Low	1 hour	£ 142.82
Central	2 hours	£ 285.65
High	3 hours	£ 428.47

Note: ^b The final cost of drafting the job advert per school is calculated by multiplying the total costs of occupation per hour by the estimated number of hours needed for drafting the job advert.

⁹ Price catalogue available on TES website: <http://www.tes.co.uk/article.aspx?storyCode=6000015&navcode=102>

(2) Advertising the Job

Costs are based on online and print advertising costs in TES:

Scenario	Online Costs	Print Costs	Total Advertising Cost
Low	£ 1,190	N/A	£ 1,190
Central	£ 1,190	£ 6,776	£ 7,966
High	£ 1,190	£ 13,552	£ 14,742

(3) The Sift

Costs will again include hourly wage plus on costs for two senior managers, a governor and an administrative member of staff. The final cost of the sift for each school is calculated under the three different scenarios:

Scenario	Estimated Time to Sift Candidates for Interview	Final Cost of the Sift per School ^c
Low	2 hours	£ 285.65
Central	4 hours	£ 571.29
High	6 hours	£ 856.94

Note: ^c The final cost of the sift per school is calculated by multiplying the total costs of occupation per hour by the estimated number of hours needed for carrying out the sift.

(4) The Interviews

Costs will include hourly wage plus on costs for two senior managers, a governor and an administrative member of staff. The final cost of the interviews for each school is calculated under the three different scenarios:

Scenario	Estimated Time to Sift Candidates for Interview	Final Cost of the Interviews per School ^d
Low	4 hours	£ 571.29
Central	8 hours	£ 1,142.58
High	12 hours	£ 1,713.87

Note: ^d The final cost of the interviews per school is calculated by multiplying the total costs of occupation per hour by the estimated number of hours needed for the interviews.

Total Costs

The total cost of occupation is calculated by adding up the final costs laid out above for the three different scenarios:

Scenario	Cost of Drafting the Job Advert	Cost of the Sift	Cost of the Interviews	Total Cost of Occupation
Low	£ 142.82	£ 285.65	£ 571.29	£ 999.76
Central	£ 285.65	£ 571.29	£ 1,142.58	£ 1,999.52
High	£ 428.47	£ 856.94	£ 1,713.87	£ 2,999.28

The total recruitment costs (per school) are calculated by summing up total costs of occupation and total advertising costs, and are shown in the table below:

Scenario	Total Cost of Occupation (per school)	Total Advertising Cost (per school)	Total Recruitment Cost (per school)
Low	£ 999.76	£ 1,190	£ 2,189.76
Central	£ 1,999.52	£ 7,966	£ 9,965.52
High	£ 2,999.28	£ 14,742	£ 17,741.28

The total recruitment costs for independent schools (which are entirely borne by the private sector) vary according to our assumptions under three different scenarios. The estimates suggest that recruitment costs will be very small and likely to be between around £ 2,190 and £ 17,741 per school.

Bars per Year

As a result of the new legislation, we believe the number of persons that can be barred from the management of independent schools to be between zero and five each year. Given the uncertainty around this estimate, we elaborated three further scenarios:

- In the low scenario, 1 person is barred each year;
- In the central scenario, 3 persons are barred each year;
- In the high scenarios, 5 bars are raised each year.

Total annual recruitment costs are calculated by multiplying the expected number of bars for each year by the estimated total recruitment costs per school, as shown in the chart in the following page.

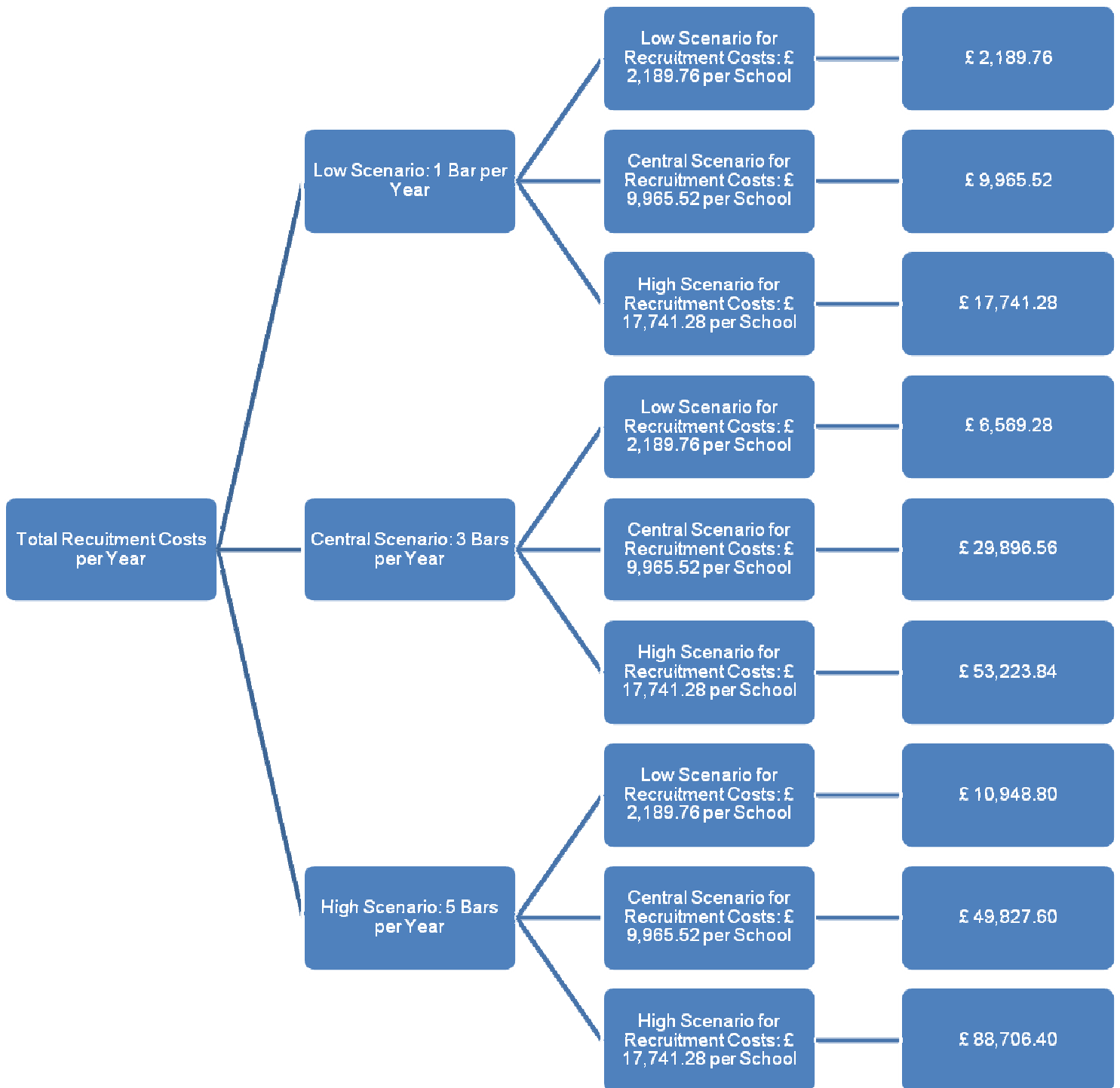
Taking the central figure of £ 9965.52 and applying this to three bars per year, we come to a figure of £ 29,896.56 recruitment costs per year as a result of schools replacing staff that have been barred.

The Equivalent Annual Net Cost to Business (EANCB) in 2009 prices is calculated over the standard 10 year appraisal period and taking into consideration:

1. One off familiarisation costs, under three different scenarios:
 - a. Low scenario: £ 293,967;
 - b. Central scenario: £ 587,934;
 - c. High scenario: £ 1,175,869.
2. Annual total recruitment costs estimated under the three different combinations of scenarios:
 - a. Low – low scenario: £ 2,189.76;
 - b. Central – central scenario: £ 29,896.56;
 - c. High – high scenario: £ 88,706.40.

Based on our calculations, EANCB equates to £ 82,090.03.

Note: Total recruitment costs per year calculated under different scenarios.



There are 2,417 independent schools in England. Of these, 1,802 (74.6 percent) are small and medium enterprises (SMEs) that hire fewer than 50 FTE employees. We thus believe that small and micro independent schools should not be exempted from the regulation because the vast majority of such schools are SMEs. Moreover, we think that quality of education and safeguarding is fundamental and, as such, it matters regardless of the size of the school concerned.

Given the seriousness of the topic at hand, we also believe that it would be inappropriate to award a partial exemption to small and medium schools, to grant them an extended transition period, or to make compliance voluntary.

Finally, we believe that the impact of the regulations is likely to be very small for two reasons: first, the power established by the regulations will be used in few cases, and second, even if the management is required to leave, the vast majority of the schools do not have a sole proprietor.

- **Wider impacts**

The impact on the vast majority of existing independent schools will be extremely limited. Familiarisation costs as set out above will be the only cost for the vast majority of independent schools.

The impact on new independent schools will be zero. Where as in the past they would have had to familiarise themselves with s.142 barring regulations in the future they will have to familiarise themselves with s. 128. As mentioned early, powers already exist with regards to identifying and dealing with unsuitable proprietors and managers when setting up new independent schools, these regulations do not impact or change those powers.

Only those existing independent schools that have a proprietor or a member of staff in a management position who receive a barring order from the Secretary of State will be directly affected by the regulations. As we set out above we believe the number of bars will be very low and as such the number of schools affected will be very low.

Section 149 of the Equality Act 2010 requires Secretary of State to have due regard to the need to:

- (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under that Act;
- (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and
- (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

Our equalities assessment, under the Public Sector Equality Duty (PSED) of the Equality Act, suggests that the extremism element of the regulations could impact disproportionately on individuals involved or seeking to become involved in the management of independent Islamic schools, and therefore on a group with a protected characteristic, in this case Muslims. However, we need to be clear here that we envisage that only a very small number of individuals would be affected. In our opinion any potential negative impact on community relations and any potential deterrent to running an independent school is more than offset by the fact we believe the regulations will help protect Muslim children (and, indirectly, all citizens) from the dangers of extremism.

The PSED does not mandate any particular action. It is permissible to find an adverse impact and proceed with a policy as long as it does not amount to unlawful discrimination. In this case, any adverse effect is balanced against the positive effect of protecting Muslims (and those of other faiths) from extremist views.

- **Summary and preferred option**

The preferred option is to make regulations under s.128 of the Education and Skills Act 2008 to enable barring direction to be made, and also make regulations to treat the few existing bars made under earlier legislation as if they were made under s.128. S. 142 of the Education Act 2002 will be fully repealed.

We published our consultation response in July 2014. It can be found on the GOV.UK website.

The regulations were laid before Parliament on 8th July 2014 and came into force on 1st September 2014.