

Independent Schools, Academies and Free Schools

Section 128 provisions

There is a requirement to undertake an additional check for those in management roles at Independent schools, Academies and Free schools, to ensure they are not prohibited under Section 128 provisions.

What is a Section 128 direction?

A Section 128 direction prohibits or restricts a person from taking part in the management of an Independent school, Academy or Free school. This includes Governors, Directors and Trustees.

Who am I required to check?

Members of proprietary bodies, including Governors, Trustees and Directors, as well as the Headteacher must be checked.

As the term 'management' is not defined in the legislation, it is a decision for the school to determine whether a post requires this check. A school may be asked to justify a decision not to carry out a check, if an issue arises. The following positions may be considered as involved in the Management of the school:

- Any teaching positions on the senior leadership team
- Any teaching positions that carry a department headship
- Any non-teaching staff who are part of the senior leadership team

When did checking for Section 128 directions become a requirement?

The revised standards require that checks be made for the existence of directions made by the Secretary of State under s.128 of the Education and Skills Act 2008 barring individuals from taking part in the management of an independent school. The power to make such directions came into force on 8 September 2014, but a mechanism for carrying out checks was not immediately available.

The Department for Education guidance indicated that these checks should be carried out for relevant roles with effect from 11th August 2015.

How do I check for a Section 128 direction?

There are two methods:

- As part of an enhanced DBS check; or
- Separately using the NCTL Teacher Services secure access

If a section 128 direction is made through a DBS application, you must include on the DBS application form, within the position applied for the words, '*Management of Independent School*'. The DBS would then be able to confirm, on the DBS certificate, if a section 128 direction has been made.

If a DBS application form is submitted without this wording and a Section 128 check is required, a separate check can be made using the NCTL Teacher Services secure access.

Find a teacher

<small>TRN</small>	<small>Date of birth</small>		
<input style="width: 90%;" type="text" value="1234567"/>	<input style="width: 90%;" type="text" value="dd/mm/yyyy"/>	Clear fields	<input type="button" value="Search"/>

- ▶ Teachers who have failed induction or probation
- ▶ General Teaching Council for England (GTCE) sanctions
- ▶ Teachers and others prohibited from the profession
- ▶ Teachers sanctioned in other EEA member states
- ▶ Section 128 barring directions

For qualified teachers, the prohibition check that you have undertaken will show all relevant sanctions, including any Section 128 directions.

Does the Section 128 check need to be recorded on the Single Central Record?

Yes, the date that the check was completed should be recorded on your Single Central Record. If you haven't already done so, please add a new column to your SCR to indicate that this check has been carried out.

Note: If the check for a section 128 direction has been made via the DBS check, then the date of issue of the DBS certificate should be used.

If I can't access the NCTL Teacher services secure access, how do I check the Section 128 prohibition list?

You should have access to the NCTL Secure Access to check Teacher QTS when you appoint Teachers in your school. However, if you cannot access it, please visit https://form.education.gov.uk/ffillform.php?self=1&form_id=AH8ogiDeAfD&noLoginPrompt=1 to obtain secure access, or alternatively contact your HR support