



## **Guidance Document**

### **Background**

Section 128 of the Education and Skills Act 2008 prohibits unsuitable staff and proprietors from “taking part in the management of an independent School.” For the purposes of this legislation, Academies and Free Schools are included in the definition of an “Independent School” therefore checks are required to confirm that a relevant person is not prohibited under the terms of this legislation.

These revised standards came into force at 5<sup>th</sup> January 2015, however, the mechanism for undertaking ‘section 128 barred direction checks’ for relevant staff and individuals was not available until the summer of 2015

The purposes of a section 128 direction are to bar relevant individuals from the management of a School for a range of convictions and cautions and also for “relevant conduct”. In simplistic terms individuals could be barred for offences such as fraud, embezzlement and deception, also for professional misconduct (which would not necessarily show up on a DBS Certificate). A section 128 check will strengthen the protection and safeguarding of children and young people from contact with people who are unsuitable because their behaviour presents an unacceptable example to them e.g. relevant extremist behaviour.

Ultimately the Secretary of State has discretion to decide who should be subject to a section 128 barring direction.

### **Scope - Who does this apply to?**

In academy trusts, including multi-academy trusts and free schools, members, trustees and those serving on local governing bodies and committees are required to have an enhanced DBS Certificate.

The requirement for section 128 checks covers individuals “taking part in the management of an independent school” which consequently covers:

- Membership of an Academy’s proprietor body (which includes Governors if the Governor’s Body is the proprietor body for an Academy);
- A Headteacher;
- All teaching and non-teaching positions on a Senior Leadership Team;
- Teaching positions which are deemed to be Heads of Department.

Section 128 checks are not required for current staff and members of a proprietor body of an Academy who were in position in the Academy prior to 5<sup>th</sup> January 2015. Section 128 checks only need to be undertaken for relevant new staff members and members of a proprietor body of an Academy appointed after that date.

### **Schools Converting to Academies**

Schools converting to academies should carry out section 128 for applicable staff and Governors at the point of conversion.



## **HOW TO PROCESS A SECTION 128 CHECK**

Section 128 Checks can be undertaken either through Teacher Services or via a Disclosure and Barring Service (DBS) Check

### **Teacher Services**

The National College for Teaching and Leadership (NCTL) has extended the coverage of Teacher Services (previously known as Employer Access Online and which is accessed via Secure Access) to include section 128 checks. Therefore, in addition to checking that a new teacher is not subject to a teaching prohibition order, Teacher Services can also be used to confirm that applicants to management positions are not barred from taking part in the management of an independent school.

### **Disclosure and Barring Service (DBS)**

All relevant non-teaching staff who are part of the SLT, e.g. School Business Managers who were appointed after 5 January 2015 should be checked via the DBS.

### **Support Staff Checks at the Point of Academy Transfer**

Either a new DBS Check will be required to be processed by the Academy or the Academy can check whether a person is on the list on the NCTL database. The NCTL database holds a list of sanctions/prohibitions of every person who has been given a prohibition regardless of whether they hold QTS or not. Therefore, schools can check to see people on the NCTL system who do not have a teacher reference number but may have a sanction by using the 5 pre-populated searches as shown on the right hand side of the screenshot below.

If Schools would like to access to undertake the check the link to the NCTL website can be found here: <https://sa.education.gov.uk/ui/help>

Users must read and comply with the application guidance before accessing the service

**Department for Education**

**Organisation code -**

**Find a teacher**

TRN 1234567	Date of birth dd/mm/yyyy	<b>Clear fields</b>	<b>Search</b>
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**Show all your teachers**

**Showing All your teachers (0)**

The symbol  indicates an active sanction or restriction

**Printer friendly**

**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**

TRN	Surname	Forename	Middle name(s)	QTS date
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**NB the existence of a s.128 direction will show only if a barred list check is made.**

## **PROHIBITION FROM MANAGEMENT OF INDEPENDENT SCHOOLS (INCLUDING ACADEMIES AND FREE SCHOOLS):**

### **SECTION 128 BARRING DIRECTION CHECK**

#### **Record Keeping:**

The Single Central Record (SCR) must show evidence that a section 128 check has been carried out and must include details of the date the check was carried out together with the details of the person undertaking the check.

#### **Schools' Choice Transaction Team**

For new starters the transaction team will confirm to schools in writing that a section 128 check has been carried out.

#### **To note:**

Staff moving into a management role within an academy should either have a new DBS check or a check should be carried out with teacher's services to ensure there are no s.128 directions.