

Conducting Section 128 Checks

RELEVANCE KEY:	Maintained Schools	★
	Academies	★
Independent Schools	★	
Non-Maintained Special Schools	x	
6 th Form Colleges	x	
Pupil Referral Units	★	
★ Directly relevant	☆ Some relevance	x Not relevant

1. Introduction

The Education (Independent School Standards) Regulations 2014 which came into force on 5th January 2015 introduced a new requirement for independent schools (including academies and free schools) to undertake checks for the existence of a 'Section 128' direction when making certain management appointments. This is in addition to all other normal pre-appointment checks.

Under s.128 of the Education and Skills Act 2008, the Secretary of State may bar individuals from taking part in the management of an independent school. The power to make such directions came into force on 8th September 2014 but a mechanism for schools to undertake checks was not immediately available. It is now possible for checks to be undertaken as part of a DBS check and/or through [DfE Sign-in](#) (regardless of whether the person is a teacher or not).

Further to the 2015 changes, the 2018 and 2019 versions of the statutory guidance, *Keeping Children Safe in Education*, recommends that **maintained schools** also check if a person they propose to recruit as a governor is barred as a result of being subject to a Section 128 direction.

This guidance note explains when and how these checks should be conducted.

2. Which posts require a Section 128 check to be undertaken?

2.1 Independent Schools

The DfE describes the following postholders as 'taking part in the management of an independent school' for the purposes of the regulations:

- A management position as an employee; this will include:
 - headteachers/principals
 - any teaching positions on the senior leadership team
 - any teaching positions which carry a department headship (but not other teaching posts with additional responsibilities)
 - any support staff on the senior leadership team
- A trustee of an academy / free school trust
- A member of an academy / free school trust
- A governor or member of a proprietor body for an independent school

- A governor on any governing body that retains or has been delegated any management responsibilities.

2.2 Maintained Schools

Keeping Children Safe in Education recommends that maintained schools check if a person they propose to recruit as a governor is barred as a result of being subject to a Section 128 direction.

3. How should a check be undertaken?

There are two possible ways of conducting a check, depending on the nature of the post.

- 1) **DBS check:** where the individual is undertaking regulated activity (and therefore a barred list check will be made) the DBS check will show the existence of any S.128 direction.
- 2) **DfE Sign-in check:** a standalone check can also be performed via [DfE Sign-in](#). This route should be used for posts where the individual is not undertaking regulated activity (e.g. most governors / trustees) and therefore where the DBS check will not show the existence of a S.128 direction.

More on these two routes can be found below. To illustrate which route should be used see the following table:

Post	DBS Route	DfE Sign-in Route
Teaching post, including headteacher / principal	Yes	Yes (as part of usual check on prohibitions etc)
Non-teaching staff or governor / trustee undertaking regulated activity	Yes	No, not required – though should be used if the DBS route cannot (see s.4 below)
Governor / trustee not undertaking regulated activity	No (because a barred list check cannot be carried out for persons not in regulated activity)	Yes

4. The DBS Check Route

When using the DBS check route it is important when submitting the application for a relevant role that you clearly indicate that the role is one for which the S.128 check requirement is engaged.

Independent schools using paper applications should ensure the 'position applied for' states '**Child Workforce Independent School**'.

For online applications:

Please check with your DBS provider in relation to the process for requesting a Section 128 check. Strictly Education 4S DBS customers **should use the DfE Sign-in route instead** (see s. 5 below).

5. The DfE Sign-in Route

Details of any s.128 barring directions will be updated through the DfE Sign-in portal and these will be visible immediately. Schools can check these by logging into [DfE Sign-in](#).

Once logged in it is possible to access three separate lists with details of teachers and a few non-teachers who have a current restriction against them. The three lists are as follows:

- teachers who have failed to successfully complete their induction or probation period;
- teachers who may be the subject of a suspension or conditional order imposed by the General Teaching Council for England (prior to abolition) that is still current;
- teachers or others who have been prohibited from teaching.

For the purposes of checks for S.128 barring directions schools will only need to access the 'prohibited' list – the last of the three. Although this list is primarily designed to be of those prohibited from teaching, it will also show S.128 directions including those for non-teachers. A teacher reference number (TRN) is not required for this.

6. Do I need to undertake retrospective checks for existing staff and governors?

6.1 Academies and Independent Schools

No, you do not need to undertake checks for existing staff who were in post before 5th January 2015, even if they are internally promoted in the future into a post where the Section 128 requirement applies.

You would, however, be advised to ensure that checks have been undertaken for any individual within scope who has joined the school/trust since 5th January 2015, if there is any doubt that these checks have been undertaken. This can be done via [DfE Sign-in](#) and recording that the check has been conducted on the school's / trust's single central record.

6.2 Maintained Schools

No, you do not need to undertake retrospective checks for governors who were in post before 3rd September 2018.