

10. Section 128 direction checks for individuals taking part in the management of an independent school (required in academies only)

Who:	<ul style="list-style-type: none"> • In a single academy, all governors • In a multi academy trust, the members of the Trust Board and any governors on a local governing board where that board retains or has been delegated any management responsibilities • Headteacher and any teaching positions on the senior leadership team and any teaching position which carry a departmental headship (no other teaching posts with additional responsibilities) • Non- teaching posts which are part of the senior management team
When:	<ul style="list-style-type: none"> • Prior to appointment to relevant role.
How:	<p>Checks are carried out through the DBS service and /or NCTL Teachers' Services System</p> <ul style="list-style-type: none"> • Where you are applying for an enhanced DBS check with Childrens' Barred List for a relevant management post (all employed school staff are regarded as being in Regulated Activity for the purposes of s128 checks) using the e-DBS system select "children" in the job selection role and then "independent school" as the job title (this will ensure that both the Childrens Barred List and the S128 checks are completed). Do not select "Headteacher" or "Deputy Headteacher" or any other job title when requesting a DBS check for relevant management post <i>For any teacher in a relevant management role you will also be, separately, checking via the NCTL Teachers' Services System that they are not prohibited from teaching and this check will also show any s128 directions</i> • Where accepting a portable DBS check the stand- alone Children's Barred List that you will be requesting via the e-crb system will not include an s128 check and so the NCTL Teachers' Services system route should be used. For the purpose of this check schools only need to access the "prohibited" list on the NCTL website. Although this list is primarily for designed to be of those prohibited from teaching from teaching it will also show s128 directions including those for non-teachers (support staff on the senior leadership team and governors/trustees). A teacher reference number is not needed. • Governor/trustee not in regulated activity- use NCTL route only.
Source:	<ul style="list-style-type: none"> • Education And Skills Act 2008, Keeping Children Safe in Education 5 September 2016
Third Parties	<ul style="list-style-type: none"> • .Third parties are required to undertake the same checks as academies/free schools and provide written confirmation to the academy/free school that these checks have been completed.
SCR	<ul style="list-style-type: none"> • Should be recorded on SCR
Forms	<ul style="list-style-type: none"> • Checks made online via DBS and NCTL systems

Background

From 5 January 2015 a revised set of independent school standards came into force. These standards apply in part, to academies and free schools.

The further revisions, together with all previous amendments, have been brought together into a single set of regulations made under s.94 of the Education and Skills Act 2008.

<http://www.legislation.gov.uk/uksi/2014/3283/contents/made>

The changes in Part 4 bring the requirements for barred list checks into line with those set in place by the Protection of Freedoms Act 2012, and make it a requirement that no member of staff or proprietor works at the school in contravention of a prohibition order issued by the Secretary of State, or occupies a management position when subject to a direction barring that person from such a post (this part applies to academies and free schools)

A mechanism for carrying out checks 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 (which includes academies and free schools) was not immediately available but the DfE has now agreed procedures with the Disclosure and Barring Service (DBS) and the NCTL so that any s.128 directions made by the Secretary of State will show up on checks made on individuals with those bodies (see “How” section above).

Existing Managers

It is not necessary to check existing staff, members of Trust Board, governors for the existence of a s.128 direction. If an individual already at a school is the subject of a direction made from now onwards, that would be taken up by the department with the school concerned.

What to do if a s128 direction barring the candidate from taking part in management is shown.

The letter from the DfE team Independent Education and Boarding team in August 2015 detailing the requirement for the check indicated that up to that point no direction under s.128 had been made by the Secretary of State. If a future check reveals a direction for a candidate should not allow the candidate to take up a management and you should contact your HR consultant to discuss the situation