

To proprietors of independent schools

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www.education.gov.uk/contactus/dfe

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REVISED VERSION – Please discard previous version issued on 11 August 2015

Dear Proprietor

1. Teaching Prohibition orders

2. Prohibition from management of independent schools: checking for directions

Introduction

1. You will already be accustomed to making arrangements for certain checks to be carried out when new members of staff and proprietor bodies are appointed, as required by the independent school standards ('the standards')¹.

2. The standard relating to checks for staff is only met provided that no-one works at the school in contravention of a teacher prohibition order issued by the Teaching Regulation Agency² on behalf of the Secretary of State. This effectively means that schools need to make checks for such orders when appointing into teaching positions. If a school has not previously done so they should also check that no existing members of teaching staff are subject to such orders, which began to be made from April 2012.

3. The standard relating to checks is also only met provided that no-one works at the school in contravention of a direction made by the Secretary of State under s.128 of the Education and Skills Act 2008 barring an individual from taking part in the management of an independent school. This effectively means that schools need to make checks for such directions when appointing into management positions, either from outside the school or by internal promotion. See paragraph 7 for information about the position of existing staff in management positions.

¹ The Education (Independent School Standards) Regulations 2014 (SI 2014/3283)

² Formerly the National College for Teaching and Leadership

4. When a Disclosure and Barring Service check, which includes children's barred list information is made for any member of staff, details of any s.128 direction made by the Secretary of State will also be disclosed as part of that check. As DBS barred list checks can only be made if an individual is engaging in regulated activity, s.128 direction checks for all "management in independent schools" roles can also be made using the TRA's Secure Access Portal via the [Teacher Services' web page](#).

What constitutes taking part in the management of an independent school?

5. Individuals taking part in 'management' are likely to include individuals who are members of proprietor bodies (including governors if the governing body is the proprietor body for the school), and such staff positions as: head teacher, any teaching positions on the senior leadership team, and any teaching positions which carry a department headship. *Whether other individuals such as teachers with additional responsibilities could be prohibited from 'taking part in management' depends on the facts of each case - so schools may wish to check them anyway.* For non-teaching staff, posts which are part of the senior leadership team are likely to be regarded as 'management' for the purposes of checking for the existence of a barring direction. However, whether non-teaching staff are 'taking part in management' depends on the facts of each case. All employed school staff who work regularly in the school during school hours may be regarded as being in 'regulated activity' for the purposes of these checks.

How should checks be made?

6. This is for the school to decide, but as a guide:

- If a person is being appointed to a teaching post, including head teacher, schools should use Secure Access Portal to check for both s.128 directions and teacher prohibition orders. It will in any case be necessary to carry out a DBS barred list check for such persons and any s.128 direction which exists will also be included as part of the information resulting from that, but will only be relevant if the post in question is a management position as defined in paragraph 5 above.
- If a person to be appointed will be engaging in regulated activity in a non-teaching staff position, or as a member of the proprietor body, s.128 checks will be obtained as part of the DBS enhanced certificate/barred list check but will only be relevant to the latter, unless the non-teaching post is a management post as defined in paragraph 5;
- If a person to be appointed to a non-teaching position or as a member of the proprietor body will not be engaging in regulated activity, schools should use Secure Access Portal to check for s.128 directions only.

7. Except where a person is being promoted internally to a management post, it is not necessary to carry out checks for s.128 directions for existing staff or members of the proprietor bodies. If an individual already at a school is the subject of a s.128 direction, that

would be taken up by the department with the school concerned. If an individual barred under s.128 occupies a management position at an independent school, then that may be grounds for removal of the school from the register of independent schools (s.119 of the Act), leading to closure.

DBS

8. It is important that when submitting an application for a DBS barred list check for a role which also requires a s.128 check, that you clearly indicate within box 61 of the DBS application form, Position Applied for: '**Child Workforce Independent School**'. This ensures that DBS will confirm if a s.128 direction has been made.

TRA

9. Independent schools are able to undertake checks for s.128 directions and teacher prohibition orders using the TRA's [Secure Access](#) Portal. If an independent school does not have access to the portal or its account has expired because it has not been used in the last 100 days, it can complete a Secure Access Service Request Form using the link below. Online guidance is available to support the user. Those with "Approver" level status can add up to seven additional members of staff to undertake / support the checking process

https://form.education.gov.uk/fillform.php?self=1&form_id=AH8ogiDeAfD&noLoginPrompt=1

10. Once logged into Secure Access for TRA checks, in addition to checking individual teacher records using a person's date of birth and teacher reference number, it is possible to access five separate lists which display details of those individuals who have current prohibitions, restrictions, or sanctions against them in relation to teaching in England. The 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;
- teachers sanctioned in other EEA member states;
- section 128 barring directions.

11. For the purposes of checking for s.128 directions – schools will only need to access the 'Section 128 barring directions' list – the last of the five listed above. This lists all s.128 directions, including those for non-teachers.

12. Employers are able to use view the complete list of those prohibited from carrying out teaching work. It is not necessary for employers to have access to a teacher reference numbers (TRNs) for this function.

General

13. This letter also applies to academies and free schools, since they are, in legal terms, independent schools.

14. Enquiries about access to DBS or TRA systems should be made to those bodies in the usual way.

15. Any enquiries about barring directions and section 128 should be sent to registration.enquiries@education.gov.uk

Yours sincerely

A handwritten signature in black ink, appearing to read 'S Bishop', is displayed within a rectangular box.

Stephen Bishop

Independent Education and Boarding Team