

2nd December 2020

Safer Recruitment Updates Brexit guidance & changes to DBS filtering rules.

Brexit Guidance

The UK leaves the EU on 31 December 2020. Which means that schools and colleges must have regard to the following changes:

1. From 1 January 2021 professional regulators in the European Economic Area (EEA) (EU, Iceland, Liechtenstein and Norway) will no longer share information about sanctions imposed on EEA teachers with the Teaching Regulation Agency (TRA).
2. From 1 January 2021 the Teaching Regulation Agency will no longer maintain a list of EEA teachers with sanctions.
3. Schools must continue to carry out safer recruitment checks on all applicants.
4. For applicants that have lived or worked outside of the UK for 3 months or more in the past 5 years, schools must make any further checks they think appropriate so that relevant events that occurred outside the UK can be considered, including obtaining an enhanced DBS certificate with barred list information (even if the teacher has never been to the UK). There is no exhaustive list in regards to what further checks may look like, however, teachers may be able to provide proof of their past conduct as a teacher, issued by the professional regulating authority in the country in which they worked. Where available, such evidence can be considered alongside other information obtained through other pre-appointment checks to help assess their suitability and risk assessed if necessary.
5. Where a school or college cannot get information about a sanction, from a best practice perspective a reference from the employing school should be obtained even if it's not the last two employers and even if it's an additional reference.

<https://www.gov.uk/guidance/changes-to-checks-for-eu-sanctions-on-eea-teachers-from-1-january-2021>

Overseas Nationals arriving from overseas including those from the EEA and Switzerland from 1 January 2021.

The UK will introduce a points-based immigration system from 1 January 2021 which will change how you employ teachers who are not UK or Irish nationals. All overseas nationals arriving in the UK from 1 January 2021, including those from the European Economic Area (EEA) and Switzerland, will come under the UK's points-based immigration system. Irish citizens will continue to be able to enter, work and study in the UK as they do now. Teachers from outside the EEA and Switzerland may already need a visa to work in the UK. They can check if they need a visa (<https://www.gov.uk/check-uk-visa>) under the current immigration system.

If you have any employees that are an EU, EEA or Swiss citizen, it is important to inform them that they and their family can apply to the EU Settlement Scheme to continue living in the UK after 30 June 2021.

It is free to apply to the scheme and employees can [apply now](#) if they meet the criteria. The deadline for applying is 30 June 2021.

Changes to DBS filtering rules.

Since May 2013, some cautions and convictions are automatically 'filtered' from standard and enhanced DBS certificates and job applicants are legally entitled to withhold filtered cautions and convictions from employers.

In January 2019, the Supreme Court ruled that two aspects of the filtering regime – the multiple convictions and childhood cautions – was disproportionate and in breach of Article 8 of the European Convention on Human Rights.

On the 28th November 2020 the rules around protected and filtered offences changed, standard and enhanced DBS certificates will no longer automatically disclose:

- youth cautions, reprimands and warnings
- all spent convictions where the individual has more than one conviction (unless disclosed under the other rules).

The Home Office policy and DBS Code of Practice requires employers to explain the effect of the 2013 exceptions to the rehabilitation of Offenders Act to applicants. To this end the Education Safeguarding Team recommend that schools and colleges use the attached flowcharts that have been kindly put together by Claire Scaife (HR Director and accredited National Safer Recruitment Trainer) to ensure that all shortlisted applicants are fully informed of the updated changes and their rights/responsibilities to provide a signed statement that any declaration around self-disclosure of criminal history is accurate and complete prior to interview. From a best practice perspective the flowcharts can be uploaded onto the recruitment page of your organizations website in order to demonstrate full compliance to Home Office Policy and the DBS Code of Practice.

Please note: It is unlawful for employers to ask applicants to disclose filtered or protected offences or to take them into consideration even if disclosed knowingly by an applicant.



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