

Springwood Infant and Junior School Federation

TOGETHER WE LEARN, TOGETHER WE GROW



Overseas Criminal Record Policy

Statutory Policy

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Stay Safe,
Treat Others How You Wish to be Treated,
Try Your Best and be Proud



Hampshire County Council: Schools' Overseas Criminal Record Policy

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1.0 Introduction

This policy outlines the process for conducting criminal record checks for applicants who have lived outside of the United Kingdom (UK).

Within the UK the Disclosure & Barring Service (DBS) checking process is used. However, services and policies for overseas checking are not provided by the DBS. For those individuals that have lived outside of the UK, this obviously presents a risk to schools when assessing their suitability for employment.

The DfE guidance 'Keeping Children Safe in Education' (DfE 2016) (paragraph 114) states that 'Individuals who have lived or worked outside the UK must undergo the same checks as all other staff in schools or colleges. In addition, schools and colleges must make any further checks they think appropriate so that any relevant events that occurred outside the UK can be considered'.

Additional rules apply to non-EEA candidates applying for Tier 2 sponsorship to work in the UK. Applicants (and any adult dependants) must provide a criminal record certificate for any country (excluding the UK) where they have resided continuously or cumulatively for 12 months or more in the 10 years prior to application. This is in addition to the school's pre-employment checks including the need to conduct an overseas criminal records check in accordance with the paragraph above.

The following policy complements the HCC (non-schools) version of this policy, the EPS 'Employing Migrant Workers' guidance and the EPS pre-employment checks guidance.

2.0 Which staff are covered by this policy?

In line with the school's recruitment policy, individual's who have lived or worked outside of the UK will be subject to further appropriate pre-employment checks in accordance with this policy in order to sufficiently establish the person's suitability to be appointed.

This policy will apply to all school-based staff and volunteers who, during the preceding ten (10) years from their anticipated start date, have lived, worked or been on holiday outside of the UK in excess of three (3) months continuously in any one country.

The policy will be applied to all external staff and new volunteers joining a school within the local authority. For existing members of staff and volunteers, including those moving schools within Hampshire, see 2.1.3 below.

Although the DfE guidance above is focussed on children, please note that those working in schools with vulnerable adults (as per the Safeguarding Vulnerable Groups Act 2006 definition) will also be covered by this policy.

Example

Mr A is French and has lived in France since he was born. He has been on holiday in the past, but not for more than three months in any one country. He has a conditional offer of a teaching position at a Hampshire school to start in the new term, but has not worked for HCC, or in the UK, before.

✓ Overseas criminal history must be sought.

Example

Miss B is British. Two years ago she took a gap year and travelled to various countries, but spent no more than three months in any one country. She has now applied to work in a school as a Learning Support Assistant.

✗ No overseas criminal history check necessary as she has not been in any one country for more than three months continuously.

Example

Mr C is British. He lived in Australia for 10 years but moved back to the UK 11 years ago. He has been working as a teacher in a neighbouring local authority but has applied to a Hampshire school.

✗ No overseas criminal history check necessary as he has been back in the UK for more than 10 years.

It is strongly recommended that schools seek confirmation of overseas criminal history for non-directly employed individuals working on the school site who are eligible for a DBS check and who meet the criteria in section 2.0. For more guidance regarding non-directly employed individuals, you may wish to review guidance in the Recruitment section of the Manual of Personnel Practice.

2.1 Exceptions

2.1.1 Time spent prior to 16th birthday

Where the preceding five years cover a period of time prior to the individual's 16th birthday, a check does not need to be sought for that particular time period.

Example

Miss D is British. She was born in South Africa and moved back to the UK with her parents when she was 15, three years ago. She is now 18 and has applied to do voluntary classroom support work as part of a childcare course she is undertaking.

✘ No overseas criminal history check necessary as she moved to the UK before she was 16.

Example

Mr E is British. He was born in Canada and moved back to the UK with his parents when he was 17, three years ago. He is now 20 and has applied to do some caretaking/cleaning work but has not worked for HCC before.

✓ Overseas criminal history must be sought for the time in Canada, from his 16th birthday until he moved to the UK.

2.1.2 Forces staff and their families

Forces staff and their families are subject to the Service Discipline Acts, and offences committed whilst overseas in this capacity will be recorded in the same way as for other UK citizens, and available to the DBS for disclosure. Therefore an overseas police check is not required for those who resided abroad as part of their own or their family's service with the armed forces.

Example

Mrs F is British. She lived in Germany for two years with her husband who was stationed there as part of the armed forces. They moved back to the UK six months ago. She has applied to be a midday Supervisory Assistant.

✘ No overseas criminal history check necessary as she lived outside of the UK as part of a forces family.

2.1.3 Existing members of staff and volunteers

For existing members of staff and volunteers who have been with the school and/or the local authority for several years, obtaining overseas police checks retrospectively may be of limited value compared with the current information about them obtained from other sources during their time with the school, for example induction, performance management, references, DBS check, etc. In all such cases, a risk assessment should be undertaken to determine how much of a risk is posed by staff members continuing to work without an overseas police check. A suggested risk assessment template is available in Appendix 1. If the school is satisfied, following a risk assessment, that the current information it holds on an individual demonstrates evidence of their suitability to work with children, obtaining an overseas police check is not necessary.

Example

Mr G is Spanish. He came to the UK seven years ago to work at a Hampshire school as an ICT Technician.

✘ No overseas criminal history check necessary as, although he resided outside of the UK within the last ten years, he has been employed within a Hampshire school for several years

and the school has undertaken a risk assessment and is satisfied about his suitability based on the current information it holds on him.

3.0 What will be accepted as confirmation of an individual's overseas criminal records history?

Where a candidate is covered by the criteria outlined above, an official statement confirming that they do not have any historical or criminal record proceedings pending should be obtained for each country where they have spent in excess of three consecutive months, during the preceding ten years. This is often called a Certificate of Good Conduct or Police Clearance Statement or Certificate.

4.0 How can an individual obtain this official statement?

Advice published by the Home Office on the criminal record information which may be obtained from overseas police forces can be accessed at:

www.gov.uk/government/publications/criminal-records-checks-for-overseas-applicants.

5.0 Who is responsible for obtaining the information?

It is the responsibility of the applicant to:

- obtain the official statement from the police or judicial authorities, government departments or their Home Embassy in the country or countries concerned.
- provide a translation of the documentation, if required, and pay for any costs incurred in relation to the translation.

6.0 Who is responsible for funding any costs associated with obtaining the information?

All costs associated with the application of an official statement and of any cost of certificates and any translations, are the responsibility of the applicant.

However, schools have discretion to contribute to any costs incurred by the applicant, and would be encouraged to do so where possible.

Certificates and other original documents obtained remain the property of the individual, but should be copied by the school and retained on the individual's personnel file. Details of an overseas check should also be entered on the school's Single Central Record.

7.0 Portability

Schools can accept previously obtained overseas police checks, where they are satisfied that the documentation is not fraudulent, i.e. taking reasonable steps to be satisfied that the document presented is genuine.

In checking the authenticity of a document, schools should check that any personal details (e.g. name, date of birth, etc) are consistent with the individual's identity evidence. Schools

should also check that the document(s) provided do not obviously look like they have been deliberately tampered with or forged.

Example

Mrs H is South African. She came to the UK with her husband a year ago and an overseas police check was taken up at the time of her appointment as a volunteer at an Infant school in Hampshire that her children attend. She is now moving to volunteer at the Junior school.

✖ A new overseas criminal history check does not need to be carried out. The Junior school needs to view the original document and retain details on file (see section 11.0).

8.0 Can a candidate start employment with a school prior to the overseas police check(s) being received?

The process of obtaining an overseas police check forms part of the standard pre-employment checking process and best practice is that an individual should not start work at a school until all the relevant pre-employment checks have been received satisfactorily, including an overseas police check, where appropriate.

There may be circumstances, however, where the overseas police check has not been received by the time the individual is due to start work. If this is the case, the Headteacher will need to risk assess the situation and make a decision as to whether to allow the individual to begin work in the school. This will involve seeing whether any work can be done outside of the school site, the level of contact the role involves, whether they can be supervised when they are on site, and the status of the other pre-employment checks. A template risk assessment is available in Appendix 1.

Having completed the risk assessment, the Headteacher has a number of options available to them:

- a) the Headteacher can retract the offer of employment based on the overseas police check not being available
- b) the Headteacher is not prepared to allow the candidate to commence their employment without receipt of the overseas police check(s) so the start date is postponed
- c) the Headteacher agrees that the candidate is able to start without the overseas police check(s) being received subject to all other pre-employment checks being in place

If option (b) or (c) above is chosen as the appropriate action by the Headteacher, then the individual, with support from the school, should continue to pursue the overseas police check(s). The risk assessment must be retained on file.

9.0 What happens when the overseas police check is received?**9.1 Negative ('clear') disclosures**

Where an overseas police check shows that there is no known criminal history for the individual, the school must record this on the Pre-employment Checklist and on their Single Central Record (see the Recruitment section in the Manual of Personnel Practice).

9.2 Positive disclosures

Where an overseas police check shows that there is criminal information known about the individual, the Headteacher should follow the usual DBS guidance in respect of positive disclosures (see the Recruitment section in the Manual of Personnel Practice).

10.0 What if a school cannot obtain an overseas police check?

The ease of obtaining an overseas police check differs from country to country. In some cases it will prove impossible for an applicant or employee to obtain the required statement, particularly where the country is experiencing political difficulties. The accuracy of the information received may also be questionable.

Therefore, when deciding how to proceed at the various stages outlined in section 8.0, the Headteacher should consider what action has been taken to try and obtain the check, and any wider information such as whether obtaining police checks from a specific country is difficult or not, and whether similar difficulties have been encountered by other candidates applying to the same country.

In addition, Headteachers must take extra care in taking up references and carrying out other background checks.

It is particularly important that decisions taken on the suitability of individuals to join the childcare workforce are consistent and risks are managed.

11.0 Retention of overseas police checks

Evidence connected with an individual's overseas clearance (i.e. certificates, statements and/or completed risk assessments) should be recorded on the individual's pre-employment checklist and the school's Single Central Record; and held on the individual's personnel file.

12.0 Further Support

If you have any queries regarding this policy, please contact:

Policy & Reward Team, Education Personnel Services

02380 383500 or eps.consultants@hants.gov.uk

In addition to the websites above, other useful sources of information include:

- Manual of Personnel Practice – Recruitment Section (Migrant workers, overseas trained teachers, pre-employment checks, Single Central Record, etc).

<https://www.hants.gov.uk/educationandlearning/education-personnel-services/manual/recruitment/pre-employment-checks/references>

- 'Keeping Children Safe in Education' guidance (DfE 2016)

www.gov.uk/government/publications/keeping-children-safe-in-education

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Appendix I: Risk Assessment - allowing an individual to start work in a school without an overseas police check

Name of the individual to whom the risk assessment refers:					
Name and position of staff member completing risk assessment:			Date of risk assessment:		
Provide a high level of overview of the role and its key responsibilities: Consider: - Frequency test - if the work takes place once a week or more - Intensity test - if the work takes place on 4 days or more in one month, or overnight.					
What are the potential risks allowing an individual without DBS check?	Who might be affected?	What actions can be taken to minimise any potential risks?	Risk Level (High / Medium / Low)	List of all other pre-employment checks completed	What further action is necessary, by whom & by when
<i>Example</i> Significant un-supervised access to children and the individual in location of school premises that allows contact with children over a prolonged period of time	<i>Example</i> Pupils	<i>Example</i> Work at home or another location until overseas check received Receipt of a clear DBS check and good references Ease of obtaining overseas information and validity of info	<i>Example</i> High	<i>Example</i> References Qualifications DBS	<i>Example</i> Candidate not recommended to start employment without overseas police checks To be reviewed by Headteacher in six weeks' time