

The Department for Education
Bishopsgate House
Feethams
Darlington, DL1 5QE

26 March 2021

Via Email

Dear Mr Bell,

We are writing to you following the Department for Education's decision to remove access for agencies to check the barred list system as set out in your letter to agencies dated 19 March. The REC would urge the Department to reconsider and reverse this decision to continue to allow agencies to perform barred list checks.

Agency use of barred list checks

The decision to remove access to sole barred list checks for agencies will have ramifications for the supply of supply teachers to schools. Given the importance that the government has placed in ensuring schools remain open, the introduction of an additional hurdle into supplying teachers makes no sense.

Under the current system, recruitment agencies can supply a teacher into a school where an enhanced DBS check is pending, provided that they have done a barred list check. Given the time it can take to perform a full DBS check, this system allows for teachers to be supplied into schools at short notice. With the coronavirus pandemic ongoing, and the new testing regime in place, it seems counter-intuitive to remove the ability for agencies to quickly and safely supply teachers to schools to cover last minute absences. By removing this check, schools may find themselves in a position where they are unable to find cover for a teacher who is absent at short notice, leaving them understaffed and unable to provide a high level of education to their pupils.

As well as this, removing this check will place even more burden on schools. Requiring them to perform this kind of essential admin is increasing the workload on already over-worked staff. This is exactly the type of administrative burden that prompts schools to use agencies to find their supply staff in the first place.

Agencies doing these checks are of great benefit to the education sector and removing their access to them will hamper the ability of schools to efficiently and safely source supply teachers.

Implications for compliance

If the DfE is adamant that access to these checks no longer sits with agencies then at an absolute minimum, the removal of access to the barred list needs to be delayed until full and detailed guidance has been issued to school on how and why they now need to do these checks. For many schools the expectation is that an agency will do the check, and schools will be unprepared to do these checks without warning of this change.

This change will also impact the ability for agencies to fulfil their legal obligations under the Conduct of Employment Agencies and Employment Businesses Regulation 2003. Under these regulations, agencies have to ensure the suitability of any candidates before they give their details to a client. In a scenario where an agency is not able to access the barred list they will not be able to confirm the suitability of a teacher before supplying them. If the expectation is that the school will do this check and then confirm the findings of the check to the agency, then there is additional guidance needed about how this works from a data sharing and data protection perspective. Agencies are being left without protection, and the grey area this introduces into the recruitment process increases the chances of children being exposed to unsuitable teachers.

Memorandum of Understanding

There is also an issue with the short notice at which this decision has been issued to agencies, without prior notification being given to the REC. Clause 4.3 (c) of the Memorandum of Understanding (MOU) in place between Department for Education, Crown Commercial Service and the Recruitment and Employment Confederation requires Department for Education to notify accredited bodies in a timely manner of any changes to industry standards.

Clause 4.3 (d) goes on to require Department for Education to:

"Notify Accreditation Bodies immediately of any proposed changes to the Keeping Children Safe in Education guidance and any other relevant guidance or relevant legislation sponsored by Department for Education."

The failure to inform the REC of this development is a breach of these obligations and goes entirely against the spirit of the document, the underlying aim of which is to drive improved recruitment practices across the education sector.

The School Staffing (England) Regulations 2009

Separately to the MOU we have concerns about the impact of the move on compliance with the School Staffing (England) Regulations 2009. The regulations require schools to ensure that no person supplied by an employment business is allowed to begin work at the school unless it has received confirmation from the employment business that it has made the requisite checks in relation to the individual. The checks required to be undertaken before supplying an individual include a check to establish that the person is not barred from regulated activity relating to children.

The removal of access to the barred list from employment businesses, leaves both schools and employment businesses wide open to potential breach of their statutory obligations.

The current timeline for changes to be enforced is 31st March, in 3 working days. The REC would like to meet with the DfE as soon as possible to discuss these issues in more depth, and to provide any additional information that you may need.

Yours sincerely,



Shazia Ejaz

Director of Communications, REC