

Refugee Council

policy response



Refugee Council response to the Revised Guidance on Safeguarding Children and Safer Recruitment in Education Consultation

June 2010

About the Refugee Council

The Refugee Council is a human rights charity, independent of government, which works to ensure that refugees are given the protection they need, that they are treated with respect and understanding, and that they have the same rights, opportunities and responsibilities as other members of our society.

We achieve this mission by:

- supporting refugees and working with them as they build a new life
- speaking up for refugees and ensuring that refugees themselves have a strong voice in all areas of UK life
- building links with people from across our society to increase mutual understanding of refugees making the case for a fair and just asylum system
- taking a leading role in helping to build up a vibrant, sustainable and successful refugee sector in the UK and internationally

This response has been informed significantly by the experience of Refugees into Teaching (RiT), an England-wide project led by the Refugee Council and funded by the Training and Development Agency for schools (TDA). RiT provides information advice and guidance to refugees who wish to become qualified teachers or work in other support staff roles in state primary or secondary schools in England. RiT currently has over 900 people registered on the national refugee teachers' database.

Introduction and summary of Refugee Council's response

The Refugee Council welcomes the proposed practice of not requiring education employers to conduct additional enhanced CRB checks if an applicant is Independent Safeguarding Authority (ISA) registered. However, we consider that the Guidance needs to adopt a clearer position on recruiting overseas staff, in particular refugees. Allowing an entitlement to request an enhanced CRB Disclosure without guidance as to when this is reasonable may result in an over-cautious approach for non-traditional applicants including refugees by education employers. In general, we would recommend that the Guidance avoids using language that may imply refugees pose a higher risk or are more problematic in establishing suitability to work with children and vulnerable adults. Instead, the Guidance should provide a clear definition of a refugee¹ and a positive statement of the entitlements to work and training that come through being granted this status.

Our responses to this consultation are limited to those questions relevant to refugees and asylum seekers, in line with our remit.

1 b) Are there any other definitions that you believe should be included here?

Yes. We would recommend including definitions of a refugee and asylum seeker in this section. This will help to clarify their position as migrants separate from the points based system and highlight their entitlements to work and training.

Asylum seeker: A person who has left their country of origin, has applied for recognition as a refugee in another country, and is awaiting a decision on their asylum claim during which time they are able to volunteer and, under certain circumstances, may be granted permission to work.

Refugee: A person who, following their claim for asylum in the UK, has met the criteria laid out in Article 1 of the 1951 United Nations Convention relating to the status of refugees. Refugees have no restriction on the type of work or training that they can do in the UK, whilst their leave remains.

In addition, the section should also include asylum seekers refused asylum but granted Discretionary Leave to Remain or Humanitarian Protection.

5 d) Is there a need for further CRB checks once a person has registered with the ISA and is subject to continuous monitoring?

No. We do not consider it necessary to require additional CRB checks once a person is ISA registered. However, we are concerned that allowing employer discretion on whether to require a further CRB check may lead to refugees already registered with the ISA having to obtain a further Enhanced disclosure as a result of employer prejudice or lack of information about their entitlements and situation. Our concern is that employers may err on the side of caution for applicants such as refugees who are likely to have gaps in their employment history, both overseas and in the UK, along with professional experience from countries outside of the EU. We would recommend that if an employer insists on an additional CRB disclosure for an ISA registered applicant, then they should be responsible for the costs and not the prospective employee or volunteer.

¹ The definition of a refugee should include asylum seekers, asylum seekers granted refugee status under the 1951 United Nations Convention relating to the status of refugees and asylum seekers refused asylum but granted Discretionary Leave to Remain or Humanitarian Protection. Examples can be found in the Terms and Abbreviations section of UKBA's Comprehensive Guidance for Employers on Preventing Illegal Working.

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5 f) Do you think it is still good recruitment practice to ask candidates to declare their criminal record even if they are no longer required to undertake CRB checks once they are registered with the ISA?

Yes. However, we would recommend that the Guidance outlines criteria for when it is reasonable for an employer to consider a criminal offence as relevant to the position. A CRB enhanced disclosure can show immigration offences which refugees may have been forced to commit in order to claim asylum in the UK, including those for which there is a defence in law under Article 31 of the 1951 United Nations Convention relating to the status of refugees. We also know of refugees who, before they were granted status, were prosecuted for working illegally although they were unaware that their permission to work had expired. The Guidance to schools and training providers needs to have clear information on the types of offences that may affect refugees in particular but which are not relevant to working with children and vulnerable adults (i.e. when it is reasonable for an employer to request an additional CRB check beyond what the Safeguarding Guidance states must be carried out).

5 g) Should the Government remove the requirement for new appointees working in schools and FE colleges (where they are regularly caring for, training, supervising or being solely in charge of persons aged under 18) to undergo an enhanced-CRB check because the individual is already ISA registered?

Yes. See 5 d)

5 h) Should the Government remove the recommendation in guidance for new volunteers working in schools to undergo an enhanced-CRB check because the individual is already ISA registered?

Yes. As 5 d).

12 Do you find Appendix 5 helpful?

No, not as currently drafted as the Appendix does not cover employer checks for employees or applicants who have submitted applications for further leave or clarify the distinction between refugees and other foreign nationals requiring permission to work. We would recommend that Appendix 5 contains the following:

Further leave to remain

- recognition that staff, applicants or volunteers who have submitted in time applications for further leave to remain continue in their current leave while a decision is made by the UKBA on their application
- the steps an employer should take to establish a statutory defence or excuse.

The points-based system

It should be noted that, as non-EEA teachers, refugees who are overseas trained teachers, or who have QTS, do not require permission to work under the points-based system. We recommend that this section, as elsewhere in the Guidance, states that refugees do not need sponsorship and neither are schools required to satisfy the Resident Labour Market Test before recruiting refugee applicants. This will help to clarify this complex area for employers and ensure that refugees are not disadvantaged as a result of their refugee status.

The Refugee Council and Equality and Human Rights Commission (EHRC) have produced a short guide for employers with information from UKBA on the steps an employer needs to take.² Refugees into Teaching is developing a version of the guide for education employers and we would welcome discussion on the Department's endorsement.

13 Do you find Appendix 6 helpful?

Not sure. We would recommend that the section *How does an employer decide whether a person's criminal record is relevant* includes details of certain immigration offences refugees may have committed as a result of claiming asylum in the UK. As in 5 f), the Guidance to schools and training providers needs to have clear information on the types of offences that may affect refugees in particular but which are not relevant to working with children and vulnerable adults. We would be happy to work with the Department in drawing up this list.

15 a) Do you find Appendix 8 helpful?

See 15 c).

15 c) Are there case studies you would like included here? If yes please suggest some scenarios.

Yes.

We would recommend that a case study is used to provide examples of what 'additional references' a head teacher may reasonably request for overseas applicants and staff unable to access overseas criminal records checks or to obtain relevant information (see 19 d) below).

We would also recommend that a case study is used to demonstrate that certain convictions are not relevant to a person's suitability to work with children and vulnerable adults. This is in line with our response in 5 f) and should include immigration offences, including those for which there is a defence in law under Article 31 of the 1951 United Nations Convention relating to the status of refugees, but of which some refugees are nonetheless convicted.

² Refugee Council and Equality and Human Rights Commission *Employing refugees: a guide for employers – documents providing evidence of entitlement to work* (February 2010)
http://www.refugeecouncil.org.uk/practice/employersguides/employing_refugees.htm

General questions on the guidance document

19 a) Does this guidance contradict any other guidance that you are aware of? If yes please specify.

Yes.

Identity checks

The advice on identity checks throughout the guidance needs to be consistent. For example, 3.40 uses 'i.e.' to outline acceptable documents. Refugees are unlikely to have national passports but are instead issued with bespoke UKBA documentation. As a result, refugees may not be able to produce the documents outlined in this section (i.e. Group 1 documents for CRB) as proof of identity; employers will be unable to satisfy the guidance on identity checks for refugee applicants.

We would recommend that 3.40 and 4.13 include the following documents: the Immigration Status Document, the Asylum Registration Card (ARC) and the Convention Travel Document, Stateless Person's Document and Certificate of Identity. It should also be noted that the ISD is endorsed to show that the holder has permission to work and the ARC will state 'employment permitted' or 'work allowed' if the holder has been granted permission to work.

Appendix 5: Volunteers and permission to work

The section on asylum seekers and volunteering is consistent with UKBA's Comprehensive Guidance for Employers on Preventing Illegal Working. However, we would recommend that it explicitly states that asylum seekers are able to volunteer with schools and other public sector organisations that meet one or more of these criteria (i.e. a registered charity, a voluntary organisation or a body that raises funds for either of these types of organisation).³ We would also recommend that the DfE works with UKBA to establish guidance that supports volunteering for asylum seekers within all areas of education in the public sector.

19 d) Do you have any further comments you wish to make on the draft guidance?

Yes.

- The guidance around employment history and accounting for gaps in employment should recognise that refugees may not fit the traditional work patterns of either UK/EEA or overseas trained teachers. This is as a result of being forced to leave their country and the length of time waiting for a decision on their asylum claim in the UK, a period during which few receive entitlement to work. We would recommend that the Guidance takes a more supportive approach to refugees in outlining the reasons why applicants may have non traditional work patterns and documents. It should not be assumed that education employers and training providers have this knowledge. **(3.23 and 3.33)**

³ This is consistent with the UKBA's Illegal Working Unit which has confirmed that '[w]e specify that asylum seekers can volunteer for a registered charity, voluntary organisation, or body that raises funds for either. As you will appreciate, this a wide definition and encompasses establishments in the public sector, including many schools and hospitals, so we do not view this as unnecessarily restrictive. The answer is intended to be read as a list, so the person may volunteer for a registered charity, *or* a voluntary organisation (which isn't necessarily a registered charity), *or* a body that raises funds for either (again, the body does not necessarily have to be a registered charity).' Correspondence from Cathy Gardner, Policy Advisor, UKBA Illegal Working Unit (21 October 2008).

- We would recommend that these sections on overseas staff recruitment and CRB checks are clarified to note that, if already ISA registered, these applicants are not required to provide any additional Enhanced Disclosure. **(3.52 and 4.110)**
- We would recommend that the Guidance states more clearly why refugees will be unable to obtain criminal checks from overseas. We do not consider that the tone of the guidance which requires employers to take 'extra care' for refugee applicants is helpful and are concerned that the tone may encourage employers to overlook refugee applicants. At the very least, there needs to be clearer information running throughout the Guidance as to why refugees may not be able to provide the traditional evidence expected from applicants in general and for overseas applicants in particular. **(4.117)**
- We would recommend that the additional checks required of employers for overseas applicants and staff unable to access overseas criminal records checks or to obtain relevant information are outlined more clearly. Refugees into Teaching obtained clarification from the Department as to what may be included in these additional checks: *these additional references in the first instance should be from employers or professional bodies. However, they can also be sought from faith-based and community associations, or from organisations where the applicant has volunteered.*⁴ We would recommend that this be included in the revised Guidance. **(4.110 and 4.117)**
- Once a refugee has been in the UK for more than five years, we do not think that schools should be obliged to request additional evidence. **(4.110 and 4.117)**
- We have found a variety of practice amongst local authorities as to the length of time a person needs to be in the UK before being able to work in a school. One local authority has stipulated a full five years. We would recommend that the Guidance states that such a policy is not recommended and may even be illegal under Article 39 of the EC Treaty.

The Refugee Council and Refugees into Teaching believe that the above recommendations will better support refugees to work and volunteer in schools. Our experience is that many refugees have skills and experience which can enrich a school's learning environment and better support personalised learning. We would be happy to work with Department for Education officials in revisions to the Guidance and on other related issues.

⁴ Correspondence with Joanne Harker, Children's Safeguards Policy Unit, Child Protection Division, Department for Children, Schools and Families

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