Appendix 3

CES Guidance

CES Model Application Forms and GDPR Compliance

The CES Model Application Forms have recently been reviewed to ensure compliance with the General Data Protection Regulation (EU) 2016/679 and the Data Protection Act 2018.

The following documents have been produced / amended:

1. Model Application forms – Senior Leadership, Teacher, Support Staff, Lay Chaplain;
2. Model Rehabilitation of Offenders Act 1974 – Disclosure Form;
3. Model Consent to Obtain References Form;
4. CES Model Application Forms and Supplementary Forms Notes to Applicants;
5. CES Guidance – Note on Recruitment of Staff for Governing Bodies;
6. CES Guidance - Employment References Frequently Asked Questions;
7. Model Recruitment Monitoring Form;
8. Model Disqualification Policy for Staff;
9. Model Invitation to Interview Letter; and
10. CES Guidance – Disqualification Checks for Schools and Academies.

This guidance note provides information about the changes that have been made and explains the legal basis for the changes.

Overriding Principle under the GDPR

The overriding principle under the GDPR is that personal data must be:

- processed lawfully, fairly and in a transparent manner;
- collected for a specified, explicit and legitimate purpose; and
- adequate, relevant and limited to what is necessary.

Lawful Basis

For each piece of information collected during the application process it is necessary to identify the appropriate lawful basis for processing the data. The most appropriate lawful basis for the collection of data during a recruitment process is legitimate interests but in the case of the CES Model application forms we are relying on consent.

The rationale for relying on consent is that we ask for information relating to an applicant's religious denomination / faith and this information is special category data. There are particular conditions applying to the processing of special category data and the most appropriate condition in this case is consent.

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Specified, explicit and legitimate purpose

The application form clearly states that the information is required in order to process the application for employment. It is important that the information is not used for any other purpose.

Limited to what is necessary

Only the minimum amount of information needed should be collected and there must be a rational link between the information collected and the purpose for which is was collected.

The application forms have been reviewed with this in mind, and some questions have been removed. For example, national insurance numbers are not needed in order to process applications, although having this information will be necessary when an offer of employment is accepted. DBS numbers are also not required at the point of application, although they will be needed once an offer of employment has been accepted. Schools may therefore need to ask for information going forward that they have relied on the application form for in the past.

Model Rehabilitation of Offenders Act 1974 – Disclosure Form

Schools have historically asked all applicants to complete a Rehabilitation of Offenders Act form. Following the implementation of the GDPR and the Data Protection Act 2018 questions have been raised regarding whether it is appropriate to ask for such self-declarations and, if it is, when in the recruitment process it would be appropriate to make such a request.

There is no conclusive guidance either from the Information Commissioner's office or the Department for Education and the CES will keep the advice contained in this document under review should any such guidance be produced.

Our advice is that the disclosure form can be used but it is not appropriate to ask for it at the application stage. We would advise asking applicants to complete the form and bring it with them in a sealed envelope when they attend for interview (this it set out in the application form). The envelope can then be handed over with a view to the contents being reviewed only in the event of the school wishing to make an offer of employment.

Reviewing the information at the point of offer will provide schools with an opportunity to ask questions relating to the context of any declared offence just prior to an offer of employment being made (for example during any telephone call made to make the offer). It is important to appreciate that the contents of a self-declaration form may not always be accurate and a DBS check will still be required, but self-declaration does provide the prospective employee with an opportunity to provide contextual information and answer questions. This opportunity does not necessarily arise with DBS checks (and could therefore lead to applications being rejected), and this is why we believe there is a benefit to applicants in following this process.

There has been some discussion which concludes that self-declaration either should not be requested at all, or if it is to be requested, that it should only be requested after a DBS check has been carried out. Whilst the arguments for this approach may have some merit we have the following concerns:

- schools need to be able to make conditional job offers with as much information as it is reasonable to have in front of them. If it is necessary to wait until a DBS check has been completed and this check then raises concerns which cannot be resolved, this may lead to issues with recruitment as other candidates may have already accepted positions. We appreciate that individuals may not always self-declare accurately but we believe the self-declaration process to be worthwhile;

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- individuals need to be able to provide context to any convictions and providing a self-declaration facilitates these conversations;
- the use of self-declaration forms may act as a deterrent. There is no consistent approach to the issue and timing of self-declaration forms across schools at the current time, therefore it would seem prudent to us not to take self-declaration out of the recruitment process at this stage. We will be monitoring the position and will update this advice if it is necessary to do so.

Consent to Obtain References Form

All applicants are asked to sign a Consent to Obtain References Form. This form will enable schools to take up references with the individuals listed in the application form. In accordance with Keeping Children Safe in Education (2018) all schools should obtain and scrutinise references prior to interview and should ensure that information provided by referees is consistent with the information provided on the application form.

Model Recruitment Monitoring Information Form

The Model Recruitment Monitoring and Information Form has been updated in order to ensure that it is GDPR compliant. It is important to note that the monitoring form is only one of the ways in which schools can monitor their compliance with the Equality Act 2010.

There are many other characteristics that could be listed on this form and we are aware of schools being advised that the monitoring form is in some way non-compliant. It is not necessary to include a comprehensive list of characteristics on a monitoring form and schools should continue to use the CES form as drafted.

Further information

For further information in relation to the GDPR the Information Commissioner's website contains useful guidance:

www.ico.org.uk

You can also refer to the relevant Acas guidance:

http://www.acas.org.uk/index.aspx?articleid=3717

You may also find this article useful:

http://recruit.unlock.org.uk/should-schools-ask-applicants-to-self-disclose-criminal-records/