



Department
for Education

Educational and Children's Social Care Professionals

ECSC - Grounds for rejection or mandatory exclusion

Revised December 2020

NOTE: this has been included for ease of reference and you will need to confirm that none of these grounds apply when completing the electronic application process.

Your application will be rejected if there is evidence of convictions relating to specific criminal offences including bribery, corruption, conspiracy, terrorism, fraud and money laundering, or if you have been the subject of a binding legal decision which found a breach of legal obligations to pay tax or social security obligations (except where this is disproportionate e.g. only minor amounts involved).

If you answer “yes” to question 2 on the non-payment of taxes or social security contributions, and have not paid or entered into a binding arrangement to pay the full amount, you may still avoid exclusion if only minor tax or social security contributions are unpaid or if you have not yet had time to fulfil your obligations since learning of the exact amount due. If your organisation is in that position, please provide details using a separate document. You may contact DfE for advice via Jaggaer before completing this form.

Question 1 - Within the past five years, has your organisation, its Directors or partners or any other person who has powers of representation, decision or control been convicted of any of the following offences?

(a) conspiracy within the meaning of section 1 or 1A of the Criminal Law Act 1977 or article 9 or 9A of the Criminal Attempts and Conspiracy (Northern Ireland) Order 1983 where that conspiracy relates to participation in a criminal organisation as defined in Article 2 of Council Framework Decision 2008/841/JHA on the fight against organised crime;

(b) corruption within the meaning of section 1(2) of the Public Bodies Corrupt Practices Act 1889 or section 1 of the Prevention of Corruption Act 1906;

(c) the common law offence of bribery;

(d) bribery within the meaning of sections 1, 2 or 6 of the Bribery Act 2010; or section 113 of the Representation of the People Act 1983;

(e) any of the following offences, where the offence relates to fraud affecting the European Communities' financial interests as defined by Article 1 of the Convention on the protection of the financial interests of the European Communities:

(i) the offence of cheating the Revenue;

(ii) the offence of conspiracy to defraud;

(iii) fraud or theft within the meaning of the Theft Act 1968, the Theft Act (Northern Ireland) 1969, the Theft Act 1978 or the Theft (Northern Ireland) Order 1978;

(iv) fraudulent trading within the meaning of section 458 of the Companies Act 1985, article 451 of the Companies (Northern Ireland) Order 1986 or section 993 of the Companies Act 2006;

(v) fraudulent evasion within the meaning of section 170 of the Customs and Excise

Management Act 1979 or section 72 of the Value Added Tax Act 1994;

(vi) an offence in connection with taxation in the European Union within the meaning of section 71 of the Criminal Justice Act 1993;

- (vii) destroying, defacing or concealing of documents or procuring the execution of a valuable security within the meaning of section 20 of the Theft Act 1968 or section 19 of the Theft Act (Northern Ireland) 1969;
 - (viii) fraud within the meaning of section 2, 3 or 4 of the Fraud Act 2006; or
 - (ix) the possession of articles for use in frauds within the meaning of section 6 of the Fraud Act 2006, or the making, adapting, supplying or offering to supply articles for use in frauds within the meaning of section 7 of that Act;
- (f) any offence listed—
- (i) in section 41 of the Counter Terrorism Act 2008; or
 - (ii) in Schedule 2 to that Act where the court has determined that there is a terrorist connection;
- (g) any offence under sections 44 to 46 of the Serious Crime Act 2007 which relate to an offence covered by subparagraph (f);
- (h) money laundering within the meaning of sections 340(11) and 415 of the Proceeds of Crime Act 2002;
- (i) an offence in connection with the proceeds of criminal conduct within the meaning of section 93A, 93B or 93C of the Criminal Justice Act 1988 or article 45, 46 or 47 of the Proceeds of Crime (Northern Ireland) Order 1996;
- (j) an offence under section 4 of the Asylum and Immigration (Treatment of Claimants etc.) Act 2004;
- (k) an offence under section 59A of the Sexual Offences Act 2003;
- (l) an offence under section 71 of the Coroners and Justice Act 2009
- (m) an offence in connection with the proceeds of drug trafficking within the meaning of section 49, 50 or 51 of the Drug Trafficking Act 1994; or

(n) any other offence within the meaning of Article 57(1) of the Public Contracts Directive—

- (i) as defined by the law of any jurisdiction outside England and Wales and Northern Ireland; or
- (ii) created, after the day on which these Regulations were made, in the law of England and Wales or Northern Ireland.

Question 2 - Non-payment of taxes

Has it been established by a judicial or administrative decision having final and binding effect in accordance with the legal provisions of any part of the United Kingdom or the legal provisions of the country in which your organisation is established (if outside the UK), that your organisation is in breach of obligations related to the payment of tax or social security contributions?

If you have answer Yes to this question, please use a separate appendix to provide further details. Please also use this appendix to confirm whether you have paid, or have entered into a binding arrangement with a view to paying, including, where applicable, any accrued interest and/or fines?

Grounds for discretionary exclusion

The DfE may reject your Application if you answer 'Yes' in any of the following situations set out in paragraphs (a) to (j);

Question 3 - Within the past three years, please indicate if any of the following situations have applied, or currently apply, to your organisation.

(a) your organisation has violated applicable obligations referred to in regulation 56 (2) of the Public Contracts Regulations 2015 in the fields of environmental, social and labour law established by EU law, national law, collective agreements or by the international environmental, social and labour law provisions listed in Annex X to the Public Contracts Directive as amended from time to time;

(b) your organisation is bankrupt or is the subject of insolvency or winding-up proceedings, where your assets are being administered by a liquidator or by the court, where it is in an arrangement with creditors, where its business activities are suspended or it is in any analogous situation arising from a similar procedure under the laws and regulations of any State;

(c) your organisation is guilty of grave professional misconduct, which renders its integrity questionable;

(d) your organisation has entered into agreements with other economic operators aimed at distorting competition;

(e) your organisation has a conflict of interest within the meaning of regulation 24 of the Public Contracts Regulations 2015 that cannot be effectively remedied by other, less intrusive, measures;

(f) the prior involvement of your organisation in the preparation of the procurement procedure has resulted in a distortion of competition, as referred to in regulation 41, that cannot be remedied by other, less intrusive, measures;

(g) your organisation has shown significant or persistent deficiencies in the performance of a substantive requirement under a prior public contract, a prior contract with a contracting entity, or a prior concession contract, which led to early termination of that prior contract, damages or other comparable sanctions;

(h) your organisation—

(i) has been guilty of serious misrepresentation in supplying the information required for the verification of the absence of grounds for exclusion or the fulfilment of the selection criteria; or

(ii) has withheld such information or is not able to submit supporting documents required under regulation 59 of the Public Contracts Regulations 2015; or

(i) your organisation has undertaken to

(i) unduly influence the decision-making process of the DfE, or

(ii) obtain confidential information that may confer upon your organisation undue advantages in the procurement procedure; or

(j) your organisation has negligently provided misleading information that may have a material influence on decisions concerning exclusion, selection or award. ‘Self-cleaning’

Any Potential Supplier who answers ‘Yes’ to questions 1, 2 or 3 may not be rejected if they can provide sufficient evidence that they have taken remedial action such that they “self-clean” the situation referred to in that question. The Potential Supplier must demonstrate it has taken such remedial action to the satisfaction of the DfE in each case.

If such evidence is considered by the DfE (whose decision will be final) as sufficient, the Potential Supplier’s Application may not be rejected.

In order for the evidence referred to above to be sufficient, the Potential Supplier shall, as a minimum, prove that it has;

- (i) paid or undertaken to pay compensation in respect of any damage caused by the criminal offence or misconduct;
- (ii) clarified the facts and circumstances in a comprehensive manner by actively collaborating with the investigating authorities; and
- (iii) taken concrete technical, organisational and personnel measures that are appropriate to prevent further criminal offences or misconduct.

The measures taken by the Potential Supplier shall be evaluated taking into account the gravity and particular circumstances of the criminal offence or misconduct.

Where the measures are considered by the DfE to be insufficient, the Potential Supplier shall be given a statement of the reasons for that decision.

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