

**Headteachers and Chairs of
Governors**

Dear Colleagues,

DfE Statutory Guidance- Disqualification under the Childcare Act

The February 2015 statutory guidance on 'Disqualification under the Childcare Act 2006', which set out details of those people who would be disqualified from working with young children has been revised and the changes will come into effect from 1 September 2018.

A letter was published to alert Headteachers and Governors to the key changes of the requirements in July 2018. Some of the content is repeated here in order for this letter to form the complete updated advice from the Local Authority (LA) on the application of this legislation. This guidance is prefaced by a summary to enable speed of acquaintance with what has changed and consideration of any necessary actions. However please read the detail relevant to your school's circumstances in the rest of this guidance and/or the DfE statutory guidance.

The Staff Factsheet has also been updated, as have the Declaration Forms A and B. It is not a legal requirement for schools to utilise a staff declaration form but they are required to keep a record of the date on which the check was undertaken and the LA still advise that the forms are used, with **relevant** staff only.

Summary

The changes made by the 2018 Disqualification under the Childcare Act regulations.

- 'Disqualification by Association' regulation no longer applies to school staff.
- Foster carers, those with adopted children, and childcare workers who were themselves once the subject of a care order are now exempt from disqualification.
- The lists of orders, cautions and convictions that disqualify an individual from working in the relevant childcare have been updated.

- An offence committed overseas, which would result in disqualification if committed in the UK, disqualifies a person from working in the relevant childcare.

What Remains in Place

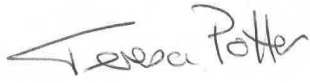
- The definition of the relevant childcare provision covered by the regulations, therefore,
- The staff covered are those working in the provision of childcare for children up to reception, those involved with childcare provision outside school hours to children up to 8 years of age and those in direct management of this provision. (section 1.1)
- Other staff may be covered – the school has to make an assessment and keep a record (section 1.2).
- Some staff are definitely not included in the regulations (section 1.3)
- Schools must inform staff and obtain information (sections 3.1 & 3.2)
- Ofsted waiver may be applied for by those meeting the disqualification criteria (section 5)

Actions for Schools – where relevant to circumstances

- Schools must make relevant staff aware of the regulations, this year in particular ensure they are aware of the changes.
- If using the Staff Factsheet, fill in the spaces in the 'Declaration' paragraph, Headteachers are also advised to talk staff through the regulations to ensure understanding.
- Provide an electronic link and hard copies of the lists of cautions, convictions and orders which disqualify an individual from working in the relevant childcare.
- Gather sufficient information from staff/volunteers to ascertain whether they may meet the disqualification criteria. Schools may use Forms A and B, which have been revised (section 3.2)
- Remind staff to declare any change in relevant circumstances immediately, not to wait until a new academic year.
- Exercise care in asking for personal information from employees (sections 3.2, 3.3 & 3.4)
- Take action where a staff member was disqualified under the previous regulations (by 'association' or other changes) as detailed in section 4
- Update any relevant school policies, other documentation, recruitment materials.
- Ensure all staff understand the school's responsibility to discuss and consider matters outside their working time which may have implications for their school role.(section 4)
- Provide information and support for any staff applying for an Ofsted waiver.(section 5)

The full LA guidance on the regulations follows. Although it is not necessary to ask existing staff to complete Form A annually, it would be appropriate to ask staff working in the relevant childcare/education to do so this year, as there have been changes to the requirements. If you have any queries please contact the Schools' HR Advisory Service through 01629 535734.

Yours faithfully

A handwritten signature in black ink that reads "Teresa Potter". The signature is written in a cursive style with a long horizontal stroke at the beginning.

Teresa Potter
Senior HR Consultant

Disqualification under the Childcare Act 2006, revised Statutory Guidance 2018

1.1 Staff Covered by the Requirements

Schools are prohibited from employing a disqualified person in connection with childcare/education provision, as detailed below:

- Early Years' provision – staff who provide any care for a child up to and including reception age. This includes nursery and reception classes and/or any supervised activity (such as breakfast clubs, lunchtime supervision and after school care provided by the school) both during the normal school day and outside of school hours for children from birth until 1 September following their 5th birthday (i.e. including reception year); and
- Later years' provision, for children under 8 – staff who are employed to work in childcare provision provided by the school outside of the normal school day for children who are above reception age but who have not attained the age of 8. This does **not** include education or supervised activity for children above reception age during school hours (including extended school hours for co-curricular learning activities, such as school choir, sports teams) but it does include before school settings such as breakfast clubs and after school provision.
- Staff directly concerned in the management of the above types of provision.
- The school must ensure that persons who are self-employed and are deployed by the school to work in relevant provision (e.g. music teacher) are compliant with the requirements of the legislation.
- Responsibility lies with the Local Authority (LA) to ensure any of their staff deployed to work in relevant provision are compliant with the requirements.
- Likewise, schools should secure confirmation from any agency supplying staff to work in relevant provision that they have informed those staff that they will be committing an offence if they are disqualified under the 2018 regulations.
- The same requirements apply where training suppliers are placing trainees/students in school. Where the trainee is salaried, it is the responsibility of the school to comply with the legislation. Where the trainee is not on a salaried programme, it is the responsibility of the training provider to conduct the relevant checks.
- Volunteers and casual workers (including work experience) who regularly work in relevant childcare (supervised or not) and those directly concerned with the management of such childcare provision are within the scope of the legislation.

1.2 Staff Who May be Covered

Staff not employed to directly provide childcare are not covered by the regulations. Staff who are only occasionally deployed, and not regularly required, to work in the relevant childcare will not automatically be in scope. Schools have to consider the level and type of access staff such as administrators, cleaners, caretakers and other teaching/childcare staff have to children under 8, in order to make a decision on the inclusion of staff in the check. They need to evaluate and record any risks and control measures put in place and may wish to take advice from their HR provider or the

authority's safeguarding team. **A record of the assessment should be retained on the employee's personnel file and a copy supplied to the individual concerned.**

Clearly, midday supervisors will be covered by the requirements.

Governors and proprietors are not covered by the requirements, unless they volunteer to work in relevant childcare on a regular basis or are directly concerned with the day to day management. The main guidance on safeguarding arrangements for governors and the responsibilities of the Governing Body are detailed in 'Keeping Children Safe in Education' (DfE).

1.3 Staff not covered

Staff employed who work in the following roles are not covered. That is:

- Staff who only provide education, childcare or supervised activity during school hours to children above reception age; or
- Staff who only provide childcare or supervised activities out of school hours for children who are aged 8 or over; and
- Staff who have no involvement in the management of relevant provision.

Those involved in any form of healthcare, including school nurses, speech and language therapists and educational psychologists are not covered by the legislation.

2. Disqualification Criteria

Schools will note that the key change in the 2018 regulations is that the potential for staff to be disqualified from working in the relevant childcare 'by association' no longer applies to school settings. Previously some staff were disqualified as a result of the offences committed by members of their household. A summary of the criteria follows, where there is a query about the exact offences/orders included or it appears that a member of staff/volunteer may meet the criteria, the full details of specific orders and offences are set out in Tables A and B of the 2018 regulations. (Disqualification under the Childcare Act 2006 July 2018, DfE). A change has been made to the previous arrangements to exempt foster carers, those with adopted children and childcare workers, who themselves were once the subject of a care order, from disqualification.

In addition to inclusion on the Children's Barred List, the other disqualification criteria for employees and volunteers in schools contained in this legislation are:-

- being found to have committed, certain violent and sexual criminal offences against children and adults,
- certain orders relating to the care of children (including where an order is made in respect of a child under the individual's care),
- having registration refused or cancelled in relation to childcare or children's homes, or being prohibited from private fostering,
- being found to have committed an offence overseas, which would constitute an offence resulting in Disqualification under the 2018 regulations, if committed in the UK.

3. Implications for Schools

Schools must not knowingly employ a person who is disqualified under the 2018 regulations in connection with relevant childcare provision. In gathering the necessary

information in order to make these decisions, schools must act proportionately, to minimise wherever possible intrusion into the private lives of staff. Schools must ensure they handle data fairly and lawfully and take care not to breach the Data Protection Act 2018(DPA), General Data Protection Regulations 2016/679 Rehabilitation of Offenders Act 1974 (ROA), Rehabilitation of Offenders Act 1974 (Exceptions) Order as amended in 2013 and Human Rights Act 1998.

3.1 Schools must make the relevant categories of staff aware of the regulations (see Staff Factsheet). Schools must make these staff aware of the information that will be required and how it will be used to make a decision on disqualification. Schools can choose how to bring these requirements to staff attention. The authority has provided a staff factsheet (updated version attached) which schools may choose to use and/or they may prefer to include a section in the safeguarding policy. In addition, schools should draw their attention to the information provided by Ofsted.

3.2 Schools have to make arrangements to gather sufficient information about whether a staff member is disqualified. It is not a requirement to use a self-declaration form to do this. However the authority has provided model documents for schools' use. Form A is to be completed by all relevant staff to declare that they have been informed of the legislation requirements and Form B is to be completed by those staff who believe that they may meet the disqualification criteria. This is a way of ensuring all the necessary information is requested and that no additional, irrelevant questions are included. It is intended that Form A and the staff factsheet be issued to all staff within scope of the regulations with Form B attached. It is important that schools act proportionately in implementing the regulations so **the forms should not be issued to staff who are not within the scope of the regulations.**

It should be noted that the staff factsheet includes a direction to the DfE guidance and also indicates that a hardcopy will be available in school. Staff will need this if they are considering whether a declaration is necessary, as the list of offences is included. Please ensure that this is available.

Schools must be very careful where using a self- declaration form from another source. The questions must be limited to those which are relevant under the legislation:

- cautions and convictions for a relevant offence,
- whether the individual has received one of the listed orders.

Schools must **avoid** asking for:

- information that is not relevant, so as not to breach data protection legislation,
- medical records,
- details about convictions of household members
- copies of a person's criminal record.

Schools must not ask staff/volunteers to make requests for their criminal records in connection with employment, this would be an offence and the Information Commissioner's Office will be seeking to initiate prosecutions against organisations who commit this offence.

3.3 Schools need to inform staff that, when responding to the questions, they do not need to provide details about any protected cautions or protected convictions. Certain minor cautions and convictions are 'protected', which means they are not subject to disclosure to employers and they are 'filtered' from standard and enhanced DBS certificates. Guidance provided at <https://www.gov.uk/government/collections/dbs-filtering-guidance> by the DBS will help schools and or staff understand the old minor cautions and convictions that do not need to be disclosed.

Schools will need to record which staff are employed to work or manage in the relevant childcare provision and the date on which disqualification checks were completed. In most cases this would mean that the staff member has been informed of the requirements and the request to make a declaration, if appropriate (Form A and Factsheet). For a staff member who has made a declaration this date would be replaced with the date when the result of a Waiver application is received. A general recording document like the Single Central Record should not show the details of an individual's check as the record may be viewed by other staff. Schools should ensure that that in maintaining records they comply with the requirements of the Data Protection Act 2018 (<http://www.legislation.gov.uk/ukpga/2018/12/contents/enacted>), this is the UK's implementation of the General Data Protection Regulation (GDPR). This Act does prevent the gathering of information where the failure to do so would result in a child being placed at risk of harm.

When processing personal information it should be used fairly, lawfully and kept secure. It should be kept to a minimum, be accurate and kept up-to-date and stored for the minimum period necessary, restricted only to those who need it and for the purpose it was gathered (i.e. safeguarding). Additionally schools will need to review any historic data collected and destroy any information which is no longer required. This is particularly important at this time because any Disqualification by Association information should no longer be collected or held and other updates have been made to the disqualification criteria.

3.4 Personal data, including any details of the criminal record should not be held without consent from the individual. In instances where an individual does not consent. Schools should only record the date the declaration was made, details of any additional safeguarding restrictions, and whether or not an Ofsted waiver has been granted. Guidance on data protection issues for employers carrying out criminal records checks is provided in the ICO's employment practices code of practice published at <https://ico.org.uk/media/for-organisations/documents/1064/the-employment-practices-code.pdf>.

Schools may choose to keep details of their checks as part of the single central record, or they may retain a separate record. Ofsted and the Independent School Inspectorates will check this as part of their routine school inspections. Schools must ensure that their procedures make the requirements of the legislation clear and should explain to new and existing staff working in relevant childcare that they should inform the school if their circumstances change.

3.5 The LA strongly advises that the result of any Ofsted waiver application is retained on the personnel file and the detailed records of convictions/cautions or orders are destroyed. (Details may need to be kept longer in exceptional circumstances, where the conviction is undergoing appeal.) The information retained should be kept in 2

tamper proof envelopes in the personnel file, marked private and confidential for the attention of the headteacher only. The file should be kept in a locked drawer.

4. Implications of the Disapplication of Disqualification by Association to School Staff.

In addition to:

- removal of all relevant material from files, updating of record
- completion of new Form A by individual concerned,
- removal of any restriction placed on the staff member as a result of previous 'Disqualification by Association' requirements,
- making necessary changes to any relevant school policies and recruitment procedures,

schools need to review their safeguarding policies. A new version of keeping Children Safe in Education also comes into force in September 2018. Schools still need to be clear with staff and volunteers about the expectations they place on them. This includes issues where the relationships of staff both within and outside the workplace, including online, may have implications for the safeguarding of children in school.

Clearly it is crucial for schools to have established the right culture and relationships to enable and support staff in feeling comfortable to discuss matters affecting their life outside of work, which may have implications for their role in school, particularly where this might raise a safeguarding concern. One to one discussions conducted within a culture of mutual trust and respect, with a shared understanding that children's safety and welfare is paramount, can support staff to share relevant information. These discussions can help schools to support staff where necessary and consider where particular measures are needed to safeguard children. This might, for instance, include restricting the access to school of an individual associated with a staff member. The statutory guidance states that schools should consider providing training to governors and staff with management responsibilities in this area.

5. Ofsted Waiver Process

Where schools receive information and are satisfied that an individual working in a relevant setting falls within one of the disqualification criteria in the 2018 regulations, they must inform the individual of this and explain the implications of disqualification to them, including whether they can apply to Ofsted for a waiver of disqualification (a waiver cannot be granted for anyone who is on the Children's Barred List). The school should make clear to the individual what information will need to be shared with Ofsted and why. Schools are advised to contact their HR service or LA safeguarding officer for guidance when communicating these matters to staff.

Schools should explain that further details and an application form can be found in the Ofsted factsheet 'Applying to waive disqualification: early years and childcare providers.' There is more detail in the DfE document concerning the Ofsted Waiver process, which schools should access when circumstances require.

The Staff Factsheet includes a list of the information individuals will need to provide.

While a waiver application is under consideration schools will need to decide whether the member of staff should be redeployed elsewhere in the school or to make

adjustments to their role in order not to work in the relevant childcare. The staff member could still work with children aged 6 and 7 within normal school hours. Where alternative arrangements cannot be made, or it is not appropriate, the school should contact their HR provider to discuss their options.

An individual who is disqualified in connection with early years childcare/education or later years childcare, including a direct management role, must not be employed in relevant provision unless they have received a waiver from Ofsted which covers the role to be undertaken.

Such individuals are not prevented from working in a school in another setting. Taking into account:-

- the risk of harm to children,
- schools' obligations under the 2006 Act, EYFS, KCSiE guidance and
- any other relevant safeguarding guidance,

schools will need to decide whether it is appropriate to redeploy staff elsewhere within the school. Academy trusts may also be able to consider making alternative arrangements, including a role in another school.

Where an individual decides not to apply for a waiver or a waiver is declined, schools will have to consider whether permanent redeployment is possible and appropriate or whether steps should be taken to legitimately terminate their employment. Once again, it is strongly advised that schools consult with their HR provider.