

DfE Statutory Guidance July 2018 – Disqualification Under the Childcare Act

Factsheet for Staff

The above legislation requires childcare disqualification checks to be carried out by all schools that provide education or childcare for children up to the age of 8.

Safeguarding Requirements

In addition to the existing pre-employment checks which schools must carry out to identify risks to children and make informed decisions about the suitability of individuals to work in schools, the Childcare Act 2006 and Childcare (Disqualification) Regulations 2009, place separate requirements on schools.

The requirements apply to you if :-

- you work with or provide early years childcare/education to children up to the age of 5, including reception age, (to 1st September, following a child's 5th birthday),
- you deliver later years childcare/education to children who have not yet attained the age of 8, outside of school hours,
- you are directly concerned with the management of the above education/childcare.

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.

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. Also the 2018 regulations bring up to date the offences for which an individual can be disqualified. Staff should check Tables A and B in the DfE document. *(See reference later in this document of where to access details of all the offences and orders covered by the legislation)*

Schools are responsible for ensuring that they have robust systems in place to check that the staff they employ are suitable to work with children. Checking staff suitability should not only be undertaken during recruitment, but should be an *ongoing process* that is embedded in regular practice.

Schools need to ask staff working in the relevant settings, and those who are directly concerned in the management of this provision, to provide the relevant information, on initial employment or when they move into a role which comes within the scope of the legislation.

Schools need to regularly remind staff to declare the relevant information, should their circumstances changes after their initial declaration.

Staff Covered- Details

- Staff who work in early years provision (including teachers and support staff working in school nursery and reception classes and any other supervised activities (including breakfast clubs, lunchtime supervision or after school care provided by the school) both during the day and outside of normal school hours.
- Staff working in later years provision for children who have not yet attained the age of 8, including before school settings e.g. breakfast clubs and after school provision. This does not include education or supervised activity during school hours or extended school hours for co-curricular learning activities, eg school choir, sports teams.
- Those with management responsibility for early or later years' provision are covered by the legislation. Schools need to use their judgement to determine who is covered, but this will include the headteacher, and may also include other members of the school's leadership team and any manager, supervisor, leader or volunteer responsible for the day-to-day management of the provision.
- For any self-employed individual deployed to work in relevant provision, the school must ensure that you are compliant with the requirements of the legislation.
- For trainees who are not salaried, the training supplier is responsible for carrying out the relevant checks but if you are a salaried trainee then it is the school's responsibility to undertake these.
- Volunteers and casual workers (eg on work experience) working on a regular basis in relevant childcare are covered by the regulations, as are volunteers directly involved in management of same.
- For Agency Staff, the school must ensure that any external agency providing staff in relevant settings carry out these checks prior to placing them in school.

Staff Who May be Covered

Schools have to consider the level and type of access other 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. 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.

Staff not covered

Staff employed who work in the following roles are not covered, i.e. staff who:

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

Declaration

A signed declaration form (Form A) has been provided for existing and new staff to confirm whether the disqualification requirements apply.

It is important that staff check the details of the disqualification requirements, so that they can determine if, and how, the requirements apply to them. Full details of what constitutes disqualification may be obtained from the Gov.uk website, search for 'Disqualification under the Childcare Act, July 2018' The school will provide a link and hard copies of the lists of convictions, cautions and orders.

Please also find attached declaration Form B which must be completed and returned by..... to....., in a sealed envelope marked personal and confidential **only if you meet any of the criteria for disqualification.**

Where you have no information to declare it is only necessary to sign Form A stating that you have received the information and understand the requirements these regulations place on you to make a declaration, where appropriate.

It is important that staff are reminded, at least on an annual basis, that, should their personal circumstances in relation to the Disqualification criteria change at any time, the Headteacher must be informed immediately.

Disqualification by Association

Existing staff will remember that the regulations previously included a provision relating to other people within a staff member's household. This regulation has been removed with respect to school staff and only remains in place for individuals like child minders. Any staff member who made a declaration under this provision of the previous regulations now needs to make a new declaration omitting any reference to third parties, not employed by the school.

Schools still have to ensure that their policies are clear about the expectations they place on staff, including where their relationships and associations both within and outside of the workplace (including online) may have implications for the safeguarding of children in school. Therefore it may be appropriate to discuss matters outside of work, which may have implications for the safeguarding of children in the workplace.

Positive Declarations

If the school does become aware of information which may lead to the disqualification of an employee, this must be reported to Ofsted as soon as possible.

Failure to do so is a breach of the Regulations. Individuals who are so identified may apply to Ofsted for a waiver to allow them to continue working with children. The staff member must make the application, not the school. Details about how to make an application for a waiver, and a copy of the form, can be found online in the Ofsted fact sheet: *Applying to waive disqualification: early years and childcare providers*. Ofsted will require the following information if available or known:

- details of any order, determination, caution, conviction, or other ground for disqualification from registration under the 2018 Regulations;
- the date of the order, determination, caution, conviction, or the date when the other ground for disqualification arose;

- the body or court which made the order, determination, caution or conviction, and the sentence/disposal (if any) imposed; and
- a certified copy of the relevant order (in relation to an order, caution or conviction). The school will not request DBS certificates from third parties, or copies of a person's criminal record obtained directly from the police, prison service, probation service or courts. Ofsted consider each application on its own merits and a full or partial waiver may be granted, depending on the circumstances. (Any individual on the Children's Barred List cannot be granted a waiver)

Once it has been identified that an employee fulfills the disqualification criteria, they are not permitted to work in the provision for children under the age of 8 or be directly concerned in the management of that provision. While Ofsted is considering a waiver request, the individual must not continue to work in these settings.

Depending on the context of the school concerned and the nature of the reason for disqualification, the individual will need to be redeployed, adjustments made to their role or may need to be suspended.

It is likely that an investigation would need to be carried out and, subject to the particular circumstances of the case, proceedings could be commenced to decide if the staff member's employment can continue. Where a waiver is not granted, or the individual decides not to apply for a waiver, the school would need to consider the options available. Permanent redeployment within the organization may be considered but it may lead to a hearing to consider the allegation that the member is disqualified from working with young children which may be a reason to terminate the contract of employment.

Staff who have concerns about the requirements of the legislation are encourage to discuss with their professional association or union, where they hold membership.

Form A

Staff member..... **Volunteer**.....

Department/Category of staff/volunteer

Employee/ Volunteer Declaration - existing and new employees.

Disqualification under the Child Care Act

This legislation requires schools which provide care for pupils under the age of 8, to ensure that staff and volunteers working in these settings are not disqualified from doing so under the Childcare (Disqualification) Regulations as published in the DfE statutory Guidance 2018

You must therefore read the Factsheet provided carefully and sign the declaration below.

I confirm that I have received the Staff Factsheet concerning the grounds for the disqualification of people from working in settings providing education/childcare for children under the age of 8 and access to details of the relevant convictions, cautions and orders made.

I understand the requirements this places on me to complete the full declaration form (Form B), with details of the relevant convictions, cautions or orders where made with reference to me.

I understand that I must inform the Headteacher (Chair of Governors in the case of the Headteacher) of any relevant change in my personal circumstances, relevant to the requirements of this legislation, immediately.

Signed..... Date.....

Received.....(Headteacher)

Employee & Volunteer Disqualification Declaration

To only be completed where the staff member/volunteer believes they may have a conviction, caution or order made against them which may disqualify them from working with children under 8 years of age.

Name.....

Post/role:

Please note that you do not need to provide details about any convictions that are not relevant to the childcare disqualification legislation

Circle one option for every question

Section 1 – Orders or other restrictions

[Available from the school office or by electronic link to the DfE document below:

Have any orders or other determinations related to childcare, as detailed in the 2018 DfE Statutory Guidance on Disqualification under the Childcare Act been made in respect of you?

YES / NO

Have any orders or other determinations related to childcare been made in respect of a child in your care ?

YES / NO

Have any orders or other determinations been made which prevents you from being registered in relation to child care, children’s homes or fostering ?

YES / NO

Are there any other relevant orders, restrictions or prohibitions in respect of you as set out in Table B of the DfE Statutory Guidance?

YES / NO

Are you barred from working with children (Disclosure & Barring Regs, DBS)?

YES / NO

Are you prohibited from teaching?

YES / NO

Section 2 – Specified and Statutory Offences

Available from the school office or by electronic link to the DfE document referenced above.

Have you ever been cautioned, reprimanded, given a warning for or convicted of:
Any offence against or involving a child? (a child is a person under the age of 18) ?

YES / NO

Any violent or sexual offence against an adult ? YES / NO

Any offence under the Sexual Offences Act ? YES / NO

Any other relevant offence ? YES / NO

Have you ever been cautioned, reprimanded, given a warning for or convicted of any similar
offence in another country ? YES / NO

Section 3 – Provision of Information

If you have answered YES to any of the questions above you should provide the details below.

You may supply this information separately if you so wish, but you must do so without delay.

Details of the order, restriction, conviction, caution, including dates

The relevant court(s) or body(ies)

Section 5 - Declaration

In signing this form, I confirm that the information provided is true to the best of my knowledge and that:

1. I understand my responsibilities to safeguard children.

Controlled upon completion

2. I understand that I must notify my Headteacher immediately of anything that affects my suitability including any cautions, warnings, convictions, orders or other determinations made in respect of me or a member of my household that would render me disqualified from working with children.

Signed: _____ Date: _____

Applications can be made to Ofsted for a waiver to disqualification, please see the Ofsted fact sheet: *Applying to waive disqualification: early years and childcare providers*.

Please see the headteacher for further discussion and support with this process. You may also wish to contact your trade union or professional association, where relevant.