

C: Suitable people - Disqualification

What do I need to know?

- Legal Framework
 - [DBS code of practice](#)
 - [Childcare Act 2006](#)
 - [Protection of Freedoms Act 2012](#)
 - [Police Act 1997](#)
 - [The Police Act 1997 \(Criminal Records\) \(Registration\) Regulations 2006](#)
 - [Safeguarding Vulnerable Groups Act 2006](#)
 - [Disqualification under the Childcare Act 2006](#)
 - [The Childcare \(Disqualification\) Regulations 2009](#)
 - [Childcare \(Disqualification\) Regulations 2009](#)
 - [Rehabilitation of Offenders Act 1974](#)
 - [Data Protection Act 2018](#)
 - [Regulation \(EU\) 2016/679 of the European Parliament and of the Council](#)
 - [Human Rights Act 1998](#)
- [Statutory framework for the early years foundation stage](#): page 24 - 25, paragraphs 3.14 – 3.18.
- If the member of staff has been removed from regulated activity eg Ofsted regulated childcare (either through instruction or their own choosing) because they pose a risk of harm or have harmed a child or vulnerable adult you **must make a referral to DBS**.
- An employer **commits an offence** if they employ a person who is disqualified, except if they can prove that they did not know and had no reasonable grounds for believing that the person they employed was disqualified (Disqualification Under the Childcare Act p6 section 3)

Suitable people - Disqualification (pages 12-13 of audit)	Things to consider and discuss:
<p>Are you aware that, <i>under Section 75 of the Childcare Act 2006</i>, you or a childcare worker may become disqualified from registration?</p> <p><i>If you are a school, are you aware you are required to have regard to the disqualification guidance published by the Department for Education, which is available at:</i> www.gov.uk/government/publications/disqualification-under-the-childcare-act-2006 Other providers may also find it helpful to refer to this guidance.</p> <p>Do you ensure that in the event of disqualification, you do not continue as an early years provider – nor be directly concerned in the management of such provision?</p> <p>Do you ensure where a person is disqualified, that you do not employ that person in connection with early years provision?</p> <p>As an employer, do you ensure you take the appropriate action to ensure the safety of children, where you become aware of relevant information that may lead to the disqualification of an employee?</p>	<ul style="list-style-type: none"> • What procedures are in place to regularly monitor the ongoing staff suitability? • How and when do you make all staff aware of your provisions' code of conduct? Are they aware from the beginning of their employment and when do you revisit this? • What would cause yourself or a member of staff to become disqualified from registration? How do you share this information and with whom? • Have you accessed and read this guidance document? Are there any actions to implement from this? • Is the 'Disqualification under the Childcare Act 2006' guidance on display or easily accessible for all staff? How do you know staff are aware of this document? • How do you know which staff are/are not covered by this legislation? • How do you ensure that you are compliant with all relevant legislation relating to disqualification? • What measures do you have in place to ensure that you do not employ a disqualified person in connection with your early years provision? • How do you ensure staff are aware that they should inform managers if there are any convictions, cautions, court orders, reprimands or warnings that may affect their suitability to work with children at recruitment or during their employment? • What procedures will you follow to ensure the safety of children should you become aware of a person's unsuitability?

	<ul style="list-style-type: none"> • What action would you take to ensure the safety of children if you became aware of relevant information that may lead to disqualification? • Are you aware of how to inform the DBS, Ofsted and the LADO of any information which may lead to disqualification? How would you ensure this is done within the timeframe?
<p>If you are a childminder, childminder assistant or childcare practitioner on domestic premises are you aware you may also be disqualified because you live in the same household as another person who is disqualified or because you live in the same household where a disqualified person is employed?</p> <p>If you are a childminder, childminder assistant or childcare practitioner that is disqualified are you aware that you may, in some circumstances, be able to obtain a 'waiver' from Ofsted?</p>	<ul style="list-style-type: none"> • What do you understand by 'disqualification by association'? • How do you ensure that your childminding assistants understand what 'disqualification by association' means and how do they keep you informed of any changes? • Is it made clear when childminders or assistants sign a declaration of suitability that this includes disqualification by association? How? • As a childminder, childminder assistant or childcare provider on domestic premises, what robust procedures do you have in place for asking your staff questions about convictions, cautions, court orders, reprimands or warnings of someone living or working in their household in order to establish whether the member of staff should be disqualified by association? • Do you know how you might go about applying for a waiver? How would you do this? • In which circumstances might you be entitled to obtain a waiver from Ofsted?
<p>Do you ensure as a registered provider that you notify Ofsted or the agency with which you (the childminder) are registered of any significant event that is likely to affect the suitability of any person who is in regular contact with children on the premises where childcare is provided?</p> <p>Are you aware the disqualification of an employee could be an instance of a significant event?</p>	<ul style="list-style-type: none"> • What would you consider to be a significant event which is likely to affect the suitability of any person who is in regular contact with children on the premises where childcare is provided? • What procedures do you have in place to check the ongoing suitability of staff and to alert you to any circumstances that could result in disqualification? • How, when and what must you notify to Ofsted or the childminder agency with which you are registered of any significant event that is likely to affect the suitability of any person who is in regular contact with children on the premises where childcare is provided?

<p>Do you ensure that you (the registered provider) give Ofsted or the childminder agency with which you are registered, the following information about yourself or about any person who lives in the same household as you, or who is employed in the household:</p> <ul style="list-style-type: none"> • details of any order, determination, conviction, or other ground for disqualification from registration under regulations made under section 75 of the Childcare Act 2006? • the date of the order, determination or conviction, or the date when the other ground for disqualification arose? • the body or court which made the order, determination or conviction, and the sentence (if any) imposed? • a certified copy of the relevant order (in relation to an order or conviction)? 	<ul style="list-style-type: none"> • Do you know how to inform Ofsted or the childminders agency with which you are registered of the relevant information? • How do you ensure you keep this information up to date? • Are you aware that if a member of staff has been removed from regulated activity e.g. Ofsted regulated childcare (either through instruction or their own choosing) because they pose a risk of harm or have harmed a child or vulnerable adult you must make a referral to DBS? • Are you aware that an employer commits an offence if they employ a person who is disqualified, except if they can prove that they did not know and had no reasonable grounds for believing that the person they employed was disqualified?
<p>Do you ensure the information is provided to Ofsted, or the childminder agency with which you are registered, as soon as reasonably practicable, but at the latest within 14 days of the date the you became aware of the information or ought reasonably to have become aware of it if you had made reasonable enquiries?</p>	<ul style="list-style-type: none"> • Do you have policies & procedures to follow if you become aware of any significant event or information that is likely to affect the suitability of any person who is in regular contact with children on the premises where childcare is provided ? What are these procedures? How do you know this is implemented? • Who would carry out your duty to notify Ofsted or the childminder agency with which you are registered? • How will you ensure this is done as soon as is reasonably practicable, but in any event within 14 days of the incident (Ofsted) and 24 hours (LADO) ? • Are you familiar with the current procedures on how to notify Ofsted or the childminder agency with which you are registered?

Useful links and further help:

[Disclosure and Barring Service](#)

[Keeping children safe in education](#)

[Working together to safeguard children](#)

[Saferrecruitmentconsortium.org](#) - Guidance for safer working practice for those working with children and young people in education settings

[Recruitment and Selection](#)

[NSPCC Safer Recruitment advice](#)

[Advisory, conciliation and arbitration service \(ACAS\)](#)

[Applying for a Waiver](#)

[ICO - Information Commissioner's Office](#)

[Applying to waive disqualification: early years and childcare providers](#)

[List of offences that will never be filtered from a DBS certificate](#)

[DBS filtering guide](#)

[DBS barring referral guidance](#)

[Early years provider non-compliance: action by Ofsted](#)

Department for Education: email mailbox.disqualification@education.gov.uk/phone 01325 340 409

Ofsted – waiver application process: email disqualification@ofsted.gov.uk

[Derbyshire SchoolsNet - Early Years Quality Team](#)

[Derbyshire Early Years Service - Eventbrite](#)

Email: CS.EYS@derbyshire.gov.uk