

**Childcare Disqualification Requirements**

**Guidance for Schools & Academies**

September 2022

# Childcare Disqualification Requirements

In July 2018 (effective from 31st August 2018) the DFE published new guidance for Schools and Academies regarding the application of the ‘Disqualification under the Childcare Act 2006’ regulations. The updated document is entitled: The Childcare (Disqualification) and Childcare (Early Years Provision Free of Charge) (Extended Entitlement) (Amendment) Regulations 2018.

This replaces the last (and current version until 30th August 2018) and outlines schools and academies statutory obligations under the Childcare Act 2006. The 2018 Regulations are made under Section 75 of the Childcare Act 2006. They set out the circumstances in which an individual will be disqualified for the purposes of Section 75 of the act.

A person who is disqualified may not:

* Provide relevant childcare provision; or
* Be directly concerned with the management of such provision

Schools are prohibited from employing a disqualified person in connection with relevant childcare provision as follows:

# Who Is Covered By The Regulations?

The rules in relation to disqualification apply to the following:

* Staff working directly with children under 5 years of age within the Early Years Foundation Stage
* Those providing ‘wrap around’ care (after school and breakfast clubs) with children up to 8 years of age.
* Those directly concerned with the management of such provision

The legislation applies to agency staff, or third party organisations, volunteers and casual staff and those on work experience as well as staff employed by a school. Where staff are engaged via an agency the obligation to have fulfilled the requirements of the legislation is on the agency that employs them. Schools must obtain confirmation that agencies have done so.

|  |  |  |
| --- | --- | --- |
|  | **During School Hours** | **Outside School Hours\*** |
| **Reception age or younger** | Covered | Covered |
| **Older than Reception age until age 8** | Not Covered | Covered |
| **8 years or older** | Not Covered | Not Covered |

*\*Outside school hours does not include school clubs e.g. Choir or sports team, but does include breakfast clubs or after-school provision.*

Staff such as caretakers, cleaners, drivers, transport escorts, catering and office staff, who are not employed to directly provide childcare, are NOT covered by the legislation. With regards to self- employed persons (e.g. Music teacher or sports coach) the School must ensure that they are compliant with the requirements of the legislation in this guidance.

For trainees or students placed in schools by training suppliers (i.e. trainee is not salaried/ employed by the school) it is the responsibility of the training provider to conduct the relevant checks for trainees they are placing in schools.)

Anybody involved in any form of health care provision for a child, including school nurses, and local authority staff, such as speech and language therapists and education psychologists are NOT covered by the legislation.

School governors and proprietors are NOT covered by the legislation unless they directly manage work or volunteer in a relevant provision and on a regular basis.

# Who Meets The Criteria For Disqualification?

An employee will be disqualified if: -

1. They have been cautioned for, or convicted of certain violent or sexual offences against adults and any offences against children
2. They are the subject of an Order, direction or similar in respect of childcare, including orders made in respect of their own children
3. They have had registration refused or cancelled in relation to childcare of children’s homes or have been disqualified from private fostering

# Previous Practice

Under the 2018 regulations Schools and Academies are no longer required to establish whether a member of staff in the settings above, is **disqualified by association** i.e. that

‘*they live in the same household as anyone to whom one of the above three criteria apply’.*

Accordingly, schools should not ask their staff questions about the cautions or convictions of someone living or working in their household.

However, the amended regulations do say it is important for schools to follow safer recruitment procedures and ensure their policies are clear about the expectations they place on staff, including where their relationships and associations bothwithin and outside of the workplace (including on line) may have implications for the safeguarding of children.

A full list of the relevant convictions and cautions which can lead to disqualification can be found in the Disqualification under the Childcare Act 2006 statutory guidance which can be found At Table A:

<https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/719794/Disqualification_under_the_childcare_act_July2018.pdf>

# What should Schools Be Doing Regarding Existing Staff?

Schools are responsible for ensuring that anyone who falls within the relevant categories of staff described above are made aware of the legislation. The approach taken within Kent, which has considered legal advice, is based on what is reasonable to comply with the Disqualification Regulations to keep children safe without causing undue anxiety for those involved in the process.

We advise that Schools should make staff aware of the disqualification guidance by:

* Referring to the disqualification guidance in the school safeguarding policy; code of conduct or another document
* Drawing the guidance to the attention of their staff including (a) who is covered (b) the criteria for disqualification & (c) staff responsibilities for disclosing information
* Getting staff to sign a declaration as a record of attendance – see Appendix 2
* Recording these checks i.e. date of the briefing session on the Single Central Record or maintaining a separate record.

The process of managing risk – Disqualification Regulations 2009 Flow Chart in Appendix 1 should provide a quick and simple overview of the issues to consider and the process to follow to ensure that schools and settings are adopting robust vetting checks, complying with the requirements and keeping children safe.

# What Should Schools Be Doing When Appointing New Staff?

All new appointments who are covered under the regulation, including volunteers should be briefed in the same way as existing staff to ensure that they are provided with accurate information relating to the disqualification provisions and informed of their responsibility with regards to disclosure. This should be carried out as part of the pre-employment and induction process.

The guidance states that it is not necessary for Schools to ask staff to complete a self-declaration form to obtain information about whether a staff member is disqualified. Where Schools decide to adopt this approach, the questions posed should be relevant and limited to the requirements of the legislation. However, care should be taken with a generic form for all employees as certain staff will be exempt from the legislation.

It is important that schools avoid asking for information that is not relevant, to ensure they are not in breach of data protection (including GDPR). However, this does not prevent an employer from asking questions relating to the suitability of the individual employed on safeguarding grounds. **Under data protection laws schools must no longer ask for details about convictions of household members.**

See Appendix 3 for a template induction briefing session declaration. NB DBS certificates should continue to be checked as usual and ratified with any disclosures declared on the Application Form.

# What Should Schools Be Doing With Regard to Existing Staff?

The regulations outline that 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. Schools that choose to add information pertaining to disqualification into their policies (e.g. safeguarding, Code of conduct) should alert all staff to the addition, for example via a staff bulletin or an email.

# What Should Schools Do When An Employee Is Disqualified?

Where schools receive information and are satisfied that an individual is working in a relevant setting falls within one of the disqualification criteria in the 2018 regulation, they must inform the individual of this and explain the implications, including whether they can apply to OFSTED for a waiver of disqualification.

If it is believed that an employee is disqualified the first step should be to contact your HR consultant or LADO and explain the circumstances.

Schools should explain to the individual the details about how to make an application for a waiver, and a copy of the form can be found in the OFSTED fact sheet: *Applying to waive disqualification: early years and childcare providers.*

A school must not continue to employ an individual who is disqualified in connection with early or later years childcare provision, or should a disqualified individual provide or be directly concerned in the management of such provision unless they have received a waiver from OFSTED. This does not imply that individuals are prevented from working in a school in another setting.

The guidance states that whilst a waiver is being considered, schools may redeploy staff away from relevant age groups or adjust their role. When making such decision, schools should consider the risk of harm to children concerned and their obligations under the 2006 Act, the EYFS, KCSIE guidance and any other relevant safeguarding guidance.

Where a school is unable to redeploy the member of staff or adjust their role, they should put the employee on special paid leave or suspend the person whilst the waiver is considered.

In cases where the member of staff decides not to apply for a waiver or where a waiver is declined, the school will have to decide whether the person could be permanently redeployed, the appropriateness of redeployment, or whether steps should be taken to legitimately terminate their employment.

# Record Keeping

Schools should record the date on which information about disqualification was provided. Schools should ensure that in maintaining records, they comply with the requirements of the Data Protection Act 2018 and GDPR.

Personal information it should be processed and 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 to those only who need it and for the purpose it was gathered (i.e. safeguarding).

In addition, schools will need to review historical data collected and destroy any information which is no longer required.

Personal data, including any details of the criminal records should not be held without the consent of 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 an OFSTED waiver has been granted.

Schools may choose to keep details of their checks as part of the single central record or retain a separate record. OFSTED and independent schools’ inspectorates will check this as part of their school inspection process however these inspections do not extend to assessing compliance with GDPR or Data Protection Act.

# Duty To Disclose Where Employees Are Not Covered By The Childcare Disqualification Regulations

It should be remembered that the Disqualification regulations do not apply to all Employees and are relatively narrow in their scope. It is important that schools set clear expectations about the wider circumstances where relevant information should be disclosed to the Headteacher.

All Employees have a duty to immediately disclose to the Headteacher prior to the start of their employment, at the start of their employment or during the course of their employment, any change in their circumstances or any information which may affect or is likely to affect the suitability of the Employee to undertake their job role or work with children/ young people or in a School setting.

It is recommended that these expectations should be detailed in the school’s Code of Conduct or Staff Handbook. If may also be helpful to require staff to complete a signed declaration to confirm that they understand their obligations and will comply with any expectations set out these documents. Please refer to the HR Connect Model Code of Conduct for suggested disclosure wording.

 **Further Guidance**

* For further guidance please refer to: <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/719794/Disqualification_under_the_childcare_act_July2018.pdf>;
* For help on how the childcare disqualification arrangements should be applied:

[Disqualification under the Childcare Act 2006 - GOV.UK (www.gov.uk)](https://www.gov.uk/government/publications/disqualification-under-the-childcare-act-2006/disqualification-under-the-childcare-act-2006)

mailbox.disqualification@education.gov.uk; or 01325 340 409

* For enquiries about the waiver application process:

 disqualification@ofsted.gov.uk

**Appendix 1: Flow-Chart (Process of managing risk)**

**If member of staff is dismissed or resigns pending a management investigation a referral to DBS will be necessary.**

**LADO to be notified of outcome and outcome form to be completed and copy given to member of staff.**

**Consult with LADO and HR if matter likely to proceed to a disciplinary process. Need to access Ofsted evidence and clarify roles and responsibilities.**

**Ofsted consider risk factors and respond formally. This will either approve staff being reinstated or identify need to consider further action by the employer.**

**HT to advise individual staff member how to apply to Ofsted for a waiver.**

**The LADO should be consulted about immediate risk assessment and can provide a risk assessment tool and discuss possible ways of redeploying staff where appropriate. If this is not possible then authorised absence/suspension may be necessary in the short term pending a waiver. Any staff member who falls into the disqualification criteria MUST be notified by the school to Ofsted.**

**HT consults with HR on policy or process. Specific concerns about an individual should be referred to the LADO. Any staff who disclose relevant safeguarding information as a result of staff meeting discussion (but fall outside of disqualification criteria) should still be notified to the LADO for suitability consultation.**

**Headteacher discusses Disqualification Regulations formally in a full staff meeting/briefing session, record discussion and get staff to sign record of briefing attendance to provide an audit trail. If any staff meet the disqualification criteria, they should speak to the HT immediately in confidence.**

 Appendix 2

‘Disqualification’ Briefing Session Declaration

As part of the Schools duty to safeguard pupils, we are required to gather sufficient and accurate information about whether any member of staff in a ‘relevant’ childcare setting is disqualified.

In signing the declaration below I can confirm that:

* I was in attendance at the Disqualification briefing session provided on [insert date].
* I understand my responsibilities to safeguard children in accordance with the Childcare Act 2006 and Childcare (Disqualification) Regulations 2009; and The Childcare (Disqualification) and Childcare (Early Years Provision Free of Charge)(Extended Entitlement)(Amendment) Regulations 2018.
* Where the Disqualification regulations apply to me in my role/s at [insert school] I am aware of my duty to make my employer aware of circumstances where I believe I meet the disqualification criteria.
* Where the Disqualification regulations apply to me in my role/s at [insert school] I accept that failure to disclose could result in disciplinary action which could lead to my dismissal

|  |  |  |  |
| --- | --- | --- | --- |
| NAME | JOB TITLE | SIGNATURE | DATE |
|  |  |  |  |
|  |  |  |  |
| INSERT ROWS AS REQUIRED |  |  |  |

**Appendix 3**

**‘Disqualification’ Induction Briefing Session**

As part of the Schools duty to safeguard pupils, we are required to gather sufficient and accurate information about whether any member of staff in a ‘relevant’ childcare setting is disqualified.

*(NB FULL DETAILS OF THE CRITERIA TO BE EXPLAINED to new employees as part of induction to which the Disqualification Regulations apply)*

|  |  |
| --- | --- |
| **Name:** |  |
| **Job Title:** |  |
| **Place of Work:** |  |
| **Line Manager:** |  |

In signing this declaration I can confirm that:

* I was in attendance at the ‘Disqualification briefing session’ provided on [insert date]
* I understand my responsibilities to safeguard children in accordance with the Childcare Act 2006 and Childcare (Disqualification) Regulations 2009; and The Childcare (Disqualification) and Childcare (Early Years Provision Free of Charge)(Extended Entitlement)(Amendment) Regulations 2018.
* Where the Disqualification regulations apply to me in my role/s at [insert school] I am aware of my duty to make my employer aware of circumstances where I believe I meet the disqualification criteria.
* Where the Disqualification regulations apply to me in my role/s at [insert school] I accept that failure to disclose could result in disciplinary action which could lead to my dismissal.

Signed: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_