

## Disqualification under the Childcare Act 2006

### Guidance for Schools

*Updated for application from 31 August 2018*

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#### **Appendix 1 – Childcare Disqualification Self-declaration Form**

## 1. Introduction

1.1 This guidance has been fully updated following publication of the revised DfE guidance, which applies from 31<sup>st</sup> August, 2018. This DfE statutory guidance details the application of:

- The Childcare Act 2006 (“the 2006 Act”)
- The Childcare (Disqualification) and Childcare (Early Years Provision Free of Charge) (Extended Entitlement) (Amendment) Regulations 2018 (“the Regulations”)

1.2 The full guidance is available here

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/719794/Disqualification\\_under\\_the\\_childcare\\_act\\_July2018.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/719794/Disqualification_under_the_childcare_act_July2018.pdf)

## 2. Application

2.1 The 2018 Regulations are made under the 2006 Act and set out the circumstances in which an individual will be disqualified from providing and managing relevant childcare under the Act. The Regulations are relevant to schools and nurseries who provide education up to and including the age of 5 and childcare to children under the age of 8 (see section 7 below).

2.2 The Regulations will not apply to Junior or Secondary schools unless there is childcare provision on site for children under the age of 8 run either by the school or by an independent provider.

2.3 The Regulations apply to all schools providing relevant childcare including maintained, academies, aided, controlled and free schools. They cover staff employed to work in or manage relevant childcare but also volunteers, casual staff, agency/supply staff, students and people undertaking work experience.

2.4 This guidance is provided to support schools with the interpretation and implementation of the Regulations. It **must** be read in conjunction with the full DfE guidance as this is not restated in full.

## 3. Requirements of the Regulations

3.1 The Regulations state that a disqualified person cannot:

- provide relevant childcare provision
- be directly concerned in the management of such provision

3.2 In addition, to come into the scope of the Regulations, provision or management of relevant childcare has to be **regular**. No definition of regular is provided within the Regulations therefore this should form part of the assessment which each school must undertake (see section 4 below).

- 3.3 It is an offence for a school to employ a disqualified person in connection with relevant childcare provision. Additionally, it if became known that such a person was employed it would have a detrimental effect on Ofsted judgements around leadership and management and safeguarding.
- 3.4 Therefore, it is important that appropriate checks regarding disqualification are undertaken as part of all selection processes for appointments to relevant childcare posts and that processes are in place to ensure any changes to an individual's status are captured and assessed.

#### **4. Determining the application of the Regulations**

- 4.1 It is for individual schools to determine who within their setting is covered by the Regulations. Each school will vary depending on their staffing arrangements and job roles and a blanket approach is unlikely to be justifiable. It will be clear for most staff whether they are or are not within the scope of the regulations. However, there may be some staff who are only occasionally deployed and are not regularly required to work in relevant childcare for whom this decision is not as clear cut.
- 4.2 For such staff, schools should exercise their judgement about which staff are within scope, evaluating and recording any risks and control measures put in place, and taking advice from their HR provider, the authority's designated officer, safeguarding lead officer or adviser when appropriate. The guidance states that a record of the assessment should be retained on the employee's personnel file and a copy supplied to the individual concerned.
- 4.3 It is important that such assessments are regularly reviewed as job roles may change and staff may be moved within the school, for example, to cover absences. It is recommended that, when a restructuring or staffing review process is undertaken or staff are moved around the school, that appropriate checks are undertaken for any member of staff moving into relevant childcare position.
- 4.4 Further guidance regarding who will come under the scope of the Regulations is provided in section 8.

#### **5. Record Keeping**

- 5.1 Schools are required to maintain a record of who is considered to be within the scope of the Regulations and the date on which the information about disqualification was provided. It is recommended that this information is included as part of the single central record.
- 5.2 Where the school has requested information from other organisations regarding individuals who are undertaking relevant childcare within the school e.g. agencies, ITT providers, the Local Authority, etc. then the school must ensure that appropriate records of these checks are recorded. Again it is recommended that these checks are recorded on the single central record,

5.3 Ofsted will check the single central record as part of the routine school inspection process, including childcare disqualification checks. All records must be stored securely and confidentially in line with data protection requirements.

## 6. Disqualification Criteria

6.1 The criteria for disqualification under the 2006 Act and the 2018 Regulations include those set out in the list below:

- a. inclusion on the Disclosure and Barring Service (DBS) Children's Barred List;
- b. being found to have committed certain violent and sexual criminal offences against children and adults;
- c. certain orders made in relation to the care of children;
- d. refusal or cancellation of registration relating to childcare, or children's homes, or being prohibited from private fostering;
- e. living in the same household where another person who is disqualified lives or is employed (disqualification 'by association'). **This provision now only applies where childcare is provided in domestic settings;** or
- f. being found to have committed an offence overseas, which would constitute an offence regarding disqualification under the 2018 Regulations if it had been done in any part of the United Kingdom.

6.2 Having been 'found to have committed' an offence which is included in the Regulations (a 'relevant offence') includes:

- a. being convicted of a relevant offence;
- b. on or after 6 April 2007, being given a caution for a relevant offence; or
- c. on or after 8 April 2013, given a youth caution for a relevant offence.

6.3 The above is only a summary of the criteria that lead to disqualification. Further details about the specific orders and offences, which will lead to disqualification, are set out in the 2018 Regulations.

6.4 Additionally any offence resulting in the death of or bodily injury of a child is considered a relevant offence under the legislation even if it is not included in the list of offences.

## 7. Relevant Childcare Provision

7.1 Those engaged to work in early years and later years provision are considered to be working in relevant childcare. Generally, all provision within early years would come under the Regulations, whereas, in later years provision the nature of the activity and the time of day it is undertaken determines whether it is relevant childcare. These terms are detailed below:

### ***Early Years Provision***

7.2 Includes those employed or engaged to provide early years childcare (from birth to the 1<sup>st</sup> September following the 5<sup>th</sup> Birthday i.e. including Reception). Such

provision includes education in Nursery and Reception and/or any supervised activity both during the school day and outside school hours

### **Later Years Provision**

7.3 Applies to those working with children above Reception age but under the age of 8. It applies to childcare provision outside of the normal school day including before and after school provision for example, breakfast clubs, after school clubs, youth clubs, wraparound care, etc. The Regulations do not apply to extended co-curricular learning activities such as the school choir or sports teams.

7.4 The application of the Regulations are summarised in the table below:

	early years provision (birth to 1 <sup>st</sup> Sept following 5 <sup>th</sup> Birthday)	later years provision (above Reception age but under 8)
Before school provision e.g. breakfast club, wraparound care	✓	✓
During school day including lunchtime and breaks	✓	X
Before or after school co-curricular provision e.g. school choir, sport teams	✓	X
After school provision e.g. after school club, wraparound, youth club	✓	✓

## **8. Scope of the Regulations**

8.1 The table below summarises the application of the Regulation to those working within the school community. This information is provided for guidance and schools must make their own determination regarding the application of the Regulations in their setting taking into account the duties carried out by each member of staff.

<b>Position</b>	<b>Regulations apply</b>	<b>Notes</b>
Headteacher	Yes	Responsible for day-to-day management of relevant childcare provision
Other senior leaders	Possibly	Depends if they are providing relevant childcare or responsible for day-to-day management of such provision
Other managers, supervisors, leaders	Possibly	Depends if they are providing relevant childcare or responsible for day-to-day management of such provision
Employees providing relevant childcare	Yes	

Employees not providing relevant childcare	No	May work occasionally in relevant childcare without coming into scope of the regulations
Volunteers	Yes	If working regularly in relevant childcare
Casual staff	Yes	If working regularly in relevant childcare
Caretakers	No	Unless directly provide relevant childcare
Cleaners	No	Unless directly provide relevant childcare
Drivers	No	Unless directly provide relevant childcare
Transport escorts	No	Unless directly provide relevant childcare
Office staff	No	Unless directly provide relevant childcare
Governors & proprietors	No	Unless also working as regular volunteer in relevant childcare
School nurse	No	Healthcare provision not covered by the Regulations
Speech and language therapists	No	Healthcare provision not covered by the Regulations
Education psychologists	No	Healthcare provision not covered by the Regulations
Other health care provision e.g. physio, OT	No	Healthcare provision not covered by the Regulations
Agency staff in relevant childcare	Yes	School to confirm check undertaken by agency
Third-party staff engaged in relevant childcare	Yes	School to confirm check undertaken by third-party employer
Self-employed contractors	Yes	School to ensure compliance with the Regulations
Student teachers working in relevant childcare (not employed)	Yes	School to confirm check undertaken by ITT provider
LA employed staff working in relevant childcare	Yes	School to confirm check undertaken by LA

8.2 In relation to staff employed by childcare providers (i.e. not employed by the school or local authority) who hire or rent school facilities or premises (for example a private, voluntary or independent childcare provider), schools should ensure that such providers have appropriate policies and procedures in place in regard to safeguarding children, including under the 2018 Regulations.

## 9. Disqualification by Association

9.1 Under the guidance issued in 2018, schools are no longer required to establish whether a member of staff providing or employed to work in relevant childcare is

disqualified by association. From 31<sup>st</sup> August, 2018, disqualification by association is only relevant where childcare is provided in domestic settings (e.g. where childminding is provided in the home). Accordingly, schools may not ask their staff questions about cautions or convictions of someone living or working in their household.

- 9.2 Therefore, schools who have previously collected and recorded information regarding disqualification by association will need to review their historic data and remove any information which they hold from their files. Any information which is no longer required or which the school no longer has the right to collect and retain, should either be destroyed or returned to the employee from whom it was collected.
- 9.3 Where employees have previously been granted an Ofsted waiver as a result of the disqualification by association requirement, this is no longer required. However, schools may wish to review any arrangements which were put in place to safeguard children as a result of a waiver and continue these if they are considered appropriate based on an assessment of risk.
- 9.4 As the revised guidance takes effect from 31<sup>st</sup> August, 2018, it is now not appropriate to ask questions regarding disqualification by association of any member of staff taking up a relevant childcare post from that date.

## **10. Culture of Safeguarding**

- 10.1 Whilst the disqualification by association provisions no longer apply, schools need to continue to be 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.
- 10.2 In support of this, schools should take an opportunity, for example through performance management or other staff discussions, to create the right culture and environment so that staff feel comfortable, where it is appropriate, to discuss matters outside of work, which may have implications for the safeguarding of children in the workplace. These discussions can help schools safeguard their employees' welfare and contribute to their duty of care towards their staff.
- 10.3 These discussions can also help schools manage children's safety, providing them with information that will help them consider whether there are measures that need to be put in place to safeguard children (e.g. by putting arrangements in place to stop or restrict a person coming into school where a potential risk to children has been identified).

## **11. Undertaking disqualification checks**

- 11.1 The main time when disqualification checks will be undertaken is when new staff are recruited to join the school.

- 11.2 Applicants who are short-listed for a post involving relevant childcare should be asked to complete a self-declaration form regarding any orders, restrictions and offences which would disqualify the applicant from working in relevant childcare. This will allow early consideration of any declarations and discussion with the applicant. The school could decide not to proceed with the application on the basis that the employee is disqualified or, proceed and, if they become the preferred candidate a conditional offer made and a waiver applied for. If the waiver is not granted, the conditional offer can be withdrawn. Only staff working in relevant childcare can be asked to complete a self-declaration form.
- 11.3 For new employees an up-to-date enhanced DBS certificate will help schools establish whether the offences committed by that individual are relevant offences.
- 11.4 A template self-declaration form is available at appendix 1.
- 11.5 As stated in section 4.3 above, it may be necessary to undertake disqualification checks on staff who have moved within the school into a relevant childcare position. In such circumstances, staff can be asked to complete the self-declaration form.

## **12. Communicating with Staff**

- 12.1 Schools are responsible for ensuring that staff working within relevant childcare are aware of the legislation and their ongoing obligations to inform the school should their situation change. Schools are free to decide how to bring these requirements to the attention of their staff. For new staff the ongoing obligation should be discussed as part of the induction process. For existing staff, schools may for example choose to include a section in the school's safeguarding policy or another policy document e.g. code of conduct. It is good practice to regularly remind staff of their obligation to share relevant information with the school e.g. via e-mail or through staff briefing or PD sessions.
- 12.2 It can be a difficult period, especially for an existing member of staff, whose situation has changed and who may, as a result, become disqualified. Support should be offered to employees in such situations, including access to the employee assistance programme. Staff should be advised to contact their union/professional association, and should be allowed to be accompanied by their representative or a work colleague at any formal meetings related to this matter.

## **13. Application for an Ofsted waiver from disqualification**

- 13.1 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. In such circumstances the individual may be able to apply to Ofsted for a waiver (though Ofsted cannot grant a waiver to an individual who is on the Children's Barred List). It is for the individual employee to make the application to Ofsted as the school cannot apply on their behalf.



- 13.2 Whilst a waiver application is under consideration schools will need to decide whether it is appropriate to redeploy staff elsewhere in the school, or make adjustments to their role to avoid them working in relevant childcare e.g. with older pupils within the school or temporary placement in a different setting. **The member of staff cannot continue to work in relevant childcare whilst the waiver is under consideration even on a supervised or risk assessed basis.**
- 13.3 Where alternative arrangements cannot be made, or it is not appropriate to do so, the school will need to consider whether to grant paid leave or similar, or as a last resort suspend the member of staff, while the waiver application is under consideration.
- 13.4 Where an individual decides not to apply for a waiver, or a waiver is declined, schools will have to consider and make decisions about whether the individual could be permanently redeployed, the appropriateness of redeployment, or whether steps should be taken to legitimately terminate their employment. It is strongly recommended that HR advice is sought when suspension or termination of employment are being considered.
- 13.5 Ofsted provides a guidance document which details the waiver application process which schools should provide to relevant staff. This guidance and waiver application form are available on the following webpage:  
<https://www.gov.uk/government/publications/applying-to-waive-disqualification-early-years-and-childcare-providers>

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**Childcare Disqualification Self-declaration Form**

The post for which you have applied involves regularly providing relevant childcare to children under 8 years of age. As part of our pre-employment safeguarding vetting checks you are required to provide the information requested on this form to enable a determination to be made regarding your suitability for employment in this role. This forms part of our overall commitment to safeguarding.

The legislative provisions which allow us to request this information from you are as follows:

- The Childcare Act 2006
- The Childcare (Disqualification) and Childcare (Early Years Provision Free of Charge) (Extended Entitlement) (Amendment) Regulations 2018 (“the 2018 Regulations”)
- Rehabilitation of Offenders Act 1974
- Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (as amended in 2013)
- Keeping Children Safe in Education

Please note you are only required to declare any cautions issued as below:

**Cautions** – issued on or after 6 April 2007.  
**Youth cautions** – issued on or after 8 April, 2013

Please return this form in a sealed envelope, to.....

**Please note that failure to complete this form or disqualification from employment by virtue of the 2018 Regulations may result in your offer of employment being withdrawn.**

Name:	
Post title:	
School:	
Proposed start date:	

Please circle one option for every question

<b>Section 1 – Orders or other restrictions</b>	
Have any orders or other determinations related to childcare been made in respect of any child in your care?	YES/NO
Have any orders or other determinations been made which prevent you from being registered in relation to childcare, children’s homes or fostering?	YES/NO
Are there any other relevant orders, restrictions or prohibitions in respect of you as set out in the 2018 Regulations? Available at the link below: <a href="https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/719794/Disqualification_under_the_childcare_act_July2018.pdf">https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/719794/Disqualification_under_the_childcare_act_July2018.pdf</a>	YES/NO
Are you banned from working with children by the Disclosure and Barring Service (DBS)?	YES/NO
<i>Teaching staff only</i>	
Are you prohibited from teaching by the Teaching Regulation Agency (TRA)?	YES/NO
<b>Section 2 – Specified and Statutory Offences</b>	
Have you ever been cautioned, reprimanded, given a warning , given a youth caution or been convicted of:	
Any offence against or involving a child (a child is any person under the age of 18)?	YES/NO
Any violent or sexual offences against an adult?	YES/NO
Any offence under the Sexual Offences Act?	YES/NO
Any other relevant offences as set out in the 2018 Regulations? <a href="https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/719794/Disqualification_under_the_childcare_act_July2018.pdf">https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/719794/Disqualification_under_the_childcare_act_July2018.pdf</a>	YES/NO
Any offence resulting in the death of or bodily injury of a child?	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 details below. Give details of the order, caution, reprimand, warning or conviction, including dates and relevant court(s)/body(ies).

You must also provide a copy of the relevant order, caution, conviction etc. In relation to cautions/convictions a DBS certificate may be provided.

### Section 4 – Declaration

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

- I understand my responsibilities to safeguard children.
- I understand that I must notify my Headteacher immediately of anything now, or in the future, which affects, or might affect, my suitability to work in the school, including any cautions, warnings, convictions, orders or other determinations made that would render me disqualified from working with children under the Childcare Act 2006, replacement or similar legislation. Failure to notify is considered a serious matter and is considered gross misconduct under the Disciplinary processes and could result in summary dismissal.

**Signed:**

**Date:**

**Print Full Name:**