

Childcare Disqualification Requirements – Guidance for applicants

In November 2014, we received supplementary advice to the “Keeping Children Safe” Statutory Guidance from the DfE detailing a new requirement for childcare disqualification checks to be carried out on relevant staff working in schools and academies.

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/362919/Keeping_children_safe_in_education_childcare_disqualification_requirements_-_supplementary_advice.pdf

These checks arise from the Childcare (Disqualification) Regulations 2009, which in turn arose out of the Education Act 2006. We have been unable to ascertain from the DfE why they have only just been communicated as applicable in the school sector.

The Regulations prohibit anyone who is disqualified themselves under the Regulations, or who lives in the same household as a disqualified person, from working in a relevant setting, including in schools/ academies.

What are relevant staff and relevant setting?

The following categories of staff in nursery, primary or secondary school settings are covered by the Childcare (Disqualification) Regulations 2009.

- staff who work in early years provision (including teachers and support staff working in academy nurseries and reception classes);
- staff working in later years provision for children who have not attained the age of 8 including before school settings, such as breakfast clubs, and after school provision;
- staff who are directly concerned in the management of such early or later years provision.

The Regulations refer to employing a person “in connection with” these provisions and we therefore conclude that:

- In Infant and Nursery Schools - All staff will be covered
- Primary/Junior Schools - All staff are covered as it is unlikely in such settings that staff are always exclusively working with those over the age of 8.
- Staff includes **volunteers**.

Who is disqualified?

A person is disqualified if any of the following apply:

- they have been cautioned for, or convicted of certain violent or sexual criminal offences against adults and any offences against children;
- they are the subject of an Order, direction or similar in respect of childcare, including orders made in respect of their own children’ that have had registration refused or cancelled in relation to childcare of children’s homes or have been disqualified from private fostering;
- they live in the same household where another person who is disqualified lives or works (disqualification ‘by association’).

This means that the householder has an order, restriction, conviction, caution etc. set out in the Legislation. It is accepted that staff may not necessarily know this information – the declaration requires them to answer “to the best of their knowledge”

Full details of what constitutes “disqualification” are in the Schedules to the Regulations

<http://www.legislation.gov.uk/ukxi/2009/1547/contents/made>.

Disqualified Workers

Focus Trust will support academies in dealing with cases where a disqualified person is identified. A disqualified person can apply to OFSTED for a waiver.

<http://www.ofsted.gov.uk/resources/applying-waive-disqualification-early-years-and-childcareproviders>

OFSTED may grant a full or partial waiver, including a waiver that would allow an individual to work in a relevant academy setting. Whilst a waiver application is under consideration the individual must not continue to work in those educational settings. The staff member will be required to carry out school duties off site- this will be arranged with the Principal.

Where a waiver is not granted, the employee will need to be dismissed.

Frequently Asked Questions

1. Why has this advice only just been issued when the Regulations have been in force since 2009 ?

The DfE have not provided a satisfactory answer to this - they simply said The Department was asked to clarify what the position was for schools and it became clear that some supplementary advice to sit alongside the Keeping children safe in education Guidance would be helpful for schools."

2. Given the fact that these Regulations have been in force since 2009, has the DfE taken advice about the employment law risk of effecting a dismissal on the basis of these Regulations now, in respect of someone who has been employed for a number of years ?

The DfE said: These regulations have been in force for a number of years and we would expect that schools will take appropriate action where individuals may be caught by the requirement, or where they are made aware that someone working at the school should be disqualified. ECC has taken legal advice which confirms that the Regulations must be enforced and HR will support schools with action arising from any positive declarations.

3. For existing staff, is the advice that a self-declaration is sufficient or is any declaration expected to be verified wherever possible, for example by viewing a current DBS check or obtaining a new one, and are employers expected to verify the absence of any Orders or restrictions

There is no requirement to check DBS certificates for existing staff and there is no evident process for verifying if someone has a childcare order or other restriction against them. It seems that self-declarations are acceptable. For new staff, the employee should sign a declaration and the DBS certificate should be checked against the list of offences in the Schedules. Of course, other offences may also lead to non-employment under normal DBS assessment processes.

4. How can we do checks on “householders”

The DfE's response: It is not the employer's role to carry out a check on individuals other than those they employ, however employers should have effective systems in place to ensure that staff are suitable to work in childcare. Employees who work in the specified early and later years provision should be asked to provide the necessary information about any person who lives in the same household as them.

5. How do these Regulations sit with the Data Protection Act, particularly in respect to sensitive personal data relating to someone not employed in the school (i.e. a householder) and the school passing information to OFSTED,?

The DfE simply indicates that information must be processed in accordance with the Data Protection Act. The Childcare (Disqualification) Regulations require employers to pass information to OFSTED and such statutory duties are allowed under the Data Protection Act. Clearly schools must handle and store all information in school carefully, in accordance with normal Data Protection rules.

6. The DfE guidance refers to “staff who work in the relevant provision” - does this include all staff employed e.g. including the caretaker or only those directly involved in care and supervision?

If the latter, in a Primary School, does this include the Year 6 teacher/LSA who may not teach under 8s but may at any time be involved in their care or supervision (e.g. trips, playground duty etc.).

The DfE says: The Childcare Act stipulates that a disqualified person should not be employed in connection with early or later years childcare and that they should not be directly concerned in the management of that provision. A person who sometimes works in the relevant childcare provision would be included in this definition; however, Focus Trust believes that this applies to all school staff and volunteers until such time as the DfE review the direction.

7. What about contractors and agency staff ?

Employers are responsible for ensuring that persons caring for children are suitable to work with children. In the case of workers that are supplied by an agency or third party organisation, schools should ensure that the agency or organisation has carried out the relevant checks.

8. How long will it take to process an application for a disqualification waiver ?

The DfE says: It is a matter for Ofsted who have the responsibility for granting a waiver or not. The time it will take to process a waiver application will undoubtedly vary from case-to-case; whilst many should be straightforward, others will unfortunately be more complex and take time to resolve.

Please complete and return with your application form

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|--|--|-------------|--|
| Name | | Post | |
| Academy | | | |
| Please circle one option for every question | | | |
| Section 1 – Orders or other restrictions | | | |
| Have any orders or other determinations related to childcare 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 the Schedule 1 of the Regulations? Available from the school office or at the link below: http://www.legislation.gov.uk/uksi/2009/1547/schedule/1/made | | YES / NO | |
| Are you barred from working with Children (Disclosure and Barring (DBS))? | | YES / NO | |
| Are you prohibited from Teaching? | | YES / NO | |
| Section 2 – Specified and Statutory Offences | | | |
| 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? Available from the school office or at the links below: http://www.legislation.gov.uk/uksi/2009/1547/schedule/2/made http://www.legislation.gov.uk/uksi/2009/1547/schedule/3/made | | 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 – Disqualification by association | | | |
| To the best of your knowledge, is anyone in your household* disqualified from working with children under the Regulations? *household – includes family, lodgers, house-sharers, household employees | | YES / NO | |

| | | | |
|---|--|------|--|
| This means does anyone in your household have an Order or Restriction against them as set out in Section 1 or have they been cautioned, reprimanded, given a warning for or convicted of any offence in Section 2. | | | |
| Section 4 – Provision of Information | | | |
| If you have answered YES to any of the questions above you should provide details the below in respect of yourself, or where relevant the member of your household. You may supply this information separately if you so wish, but you must do so without delay. | | | |
| Details of the order, restriction, conviction caution etc. | | | |
| The date(s) of these | | | |
| The relevant court(s) or body(ies) | | | |
| You should 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 Principal 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 | | | |
| Print Name | | Date | |