



IMPORTANT ADVICE: CHILDCARE DISQUALIFICATION GUIDANCE FOR SCHOOLS

Background

The Department for Education (DfE) has published "[Keeping Children Safe in Education - Childcare Disqualification Requirements](#)" as a supplement to the Keeping Children Safe in Education statutory guidance to help schools and academies understand the requirements placed on them by childcare legislation.

The statutory framework for the early years' foundation stage, which sets out the disqualification requirements, became statutory for schools and academies from 1 September 2014¹. The implications of this are that schools are now expected to undertake additional "disqualification checks" on existing members of staff and when recruiting new members of staff. **These disqualification checks need to be carried out on all relevant staff in schools and academies who work with children aged 8 or under.**

These requirements are designed to safeguard and protect the youngest and potentially the most vulnerable pupils in schools. **Implementing them requires urgent action on the part of Headteachers.**

Who is affected?

- staff who work in early years provision (including teachers and support staff working in school nursery and Foundation 2 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.

All staff who have contact with children aged 8 or under must consider the Regulations and ensure compliance with them. Schools may choose to ask staff to complete and sign and return the attached declaration form. For clarity, it is recommended that the declaration form is provided to all staff as it contains all the relevant information to assist staff in considering whether they have a declaration to make.

Volunteers are not covered by statute but, in order that a consistent standard of safeguarding checking applies to all those working in relevant settings, it is recommended they are checked in the same way as employees.

¹ Childcare Act 2006 (the Act) and the Childcare (Disqualification) Regulations 2009 (the Regulations)

Although these changes primarily affect infant, junior and primary schools, it is important all secondary schools take time to consider the guidance and undertake the necessary checks on relevant staff (including managers) where any services are provided in which under 8s may be in attendance e.g. childcare facilities, before or after school clubs.

Who is Disqualified?

The Act and the Regulations identify the circumstances in which a person is automatically disqualified from registration for early years or later years provision, i.e., if a member of staff or volunteer:

- has been convicted of an offence against a child by a court. This also includes any person who has accepted a caution, reprimand or warning from the police for certain violent and sexual criminal offences against children and adults
- has had registration refused, or cancelled, in relation to childcare or children's homes or have been disqualified from private fostering
- lives in the same household² as another person who is disqualified from registration for early years provision (**disqualification 'by association'**)

Or

- there are grounds relating to the care of children, including where an order is made in respect of a child under the person's care

Further details can be found at:

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

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 any establishment which is attended by children aged 8 or under.

Declaration

All relevant staff and volunteers in relevant settings must be asked to inform the Headteacher (or in the case of the Headteacher, the Chair of Governors) if they need to make a declaration **as soon as possible**. Leicester City Council recommends a short deadline for the return of the information, and believe that a **one week** turnaround is reasonable. Schools may choose to ask the employee to complete the declaration form. **Employees should be informed**

² By "household" we mean **all** those living in the same house and includes family, lodgers, house / flat sharers and household employees who live at the property

that a failure to provide the information within the required timeframe will be taken as a declaration that there is no information to disclose.

To enable staff and volunteers to accurately complete the declaration, schools should make the Schedules to the Childcare (Disqualification) Regulations (which detail the disqualification orders, offences etc) available for staff with each form for reference (for example, by printing them or emailing the hyperlinks below).

The links are:

- [Schedule 1 - Orders etc relating to the care of children](#)
- [Schedule 2 – Repealed Statutory Offences](#)
- [Schedule 3 – Specified Offences](#)

If there are particular difficulties, it may be appropriate for staff to take some time out during their working hours for them to complete the declaration. This will need to be agreed in advance with the Headteacher.

The declaration process is a statutory requirement. If a member of staff fails to provide the information, this could ultimately be regarded as a disciplinary (gross misconduct) matter which may result in dismissal. In the case of volunteers, non completion of the declaration could mean that they can no longer work at the school.

Headteachers and Principals must also provide the information relating to themselves to the Chair of Governors (and the equivalents in academies and other types of schools), who is required to take the appropriate action.

Schools are advised to repeat the declaration process for all relevant existing staff and volunteers on an annual basis, for example, at the beginning of the Autumn term.

Recruitment of New Staff

All advertisements for recruiting new members of staff must include notification that they will need to disclose information not only about themselves but also their household. A statement such as the following could be used:

"Applicants will be required to undertake pre-employment checks which will include a declaration that neither they, nor anyone who lives in the same household, is a disqualified person under the Childcare (Disqualification) Regulations 2009 as well as other necessary checks."

New Members of Staff

All employees and volunteers in relevant settings will be required to complete the declaration pro-forma **prior** to commencing work.

In addition, DBS certificates for new employees and volunteers should be checked by the school with reference to list of relevant offences in the Act ([Schedule 2](#) & [Schedule 3](#)).

Positive Declaration

If a member of staff has responded **yes (either verbally or in writing)** to any of the questions within the declaration they must, as far as they can, provide the following information as a matter of urgency:

- The details of any order, determination, conviction, or other ground for disqualification from registration under the Childcare (Disqualification) Regulations 2009;
- The date of the order, determination or conviction, or the date when the other ground for disqualification arose;
- Information about the body or court which made the order, determination or conviction, and the sentence (if any) imposed; and
- A certified copy of the relevant order (in relation to an order or conviction).

It is recommended that the attached form is used in all cases as both a means of communicating information and as a record of outcomes. In any event the information as to a request for disclosure and its outcome should be recorded in the Single Central Record – see later.

On receipt of this information, the Headteacher must review it and ensure they take the following steps straight away, ie:

- If applicable, check whether the conviction, caution, order etc is included on the Schedules to the Childcare (Disqualification) Regulations. If it is included, the person is disqualified;
- Anyone who is disqualified (including by association) will need to be immediately removed from the relevant setting - contact the school's HR Advisor immediately;
- Notify OFSTED (this **MUST** be done within 14 days);
- Record the action taken on the pro-forma.

HR will support schools in dealing with cases where a disqualified person is identified.

Whilst a waiver application is being considered the Employee **cannot** continue to work in a relevant setting. This may need careful consideration and it may well not be possible, even on a short term and carefully controlled basis, to work on that site during this period. It is likely that in many, if not most, cases the employee will need to be suspended without prejudice. In such a case, the employer does not have any discretion. The disqualification is automatic even if the employer believes that the person does not pose a risk to children. Any employer who continues to employ the person will be breaking the law and could be held responsible for this. In addition, such a

breach would affect the employer's own registration with OFSTED and would impact on the findings of inspections.

It is an offence for a person who is disqualified to continue working with children and therefore such a person must not:

- provide, or be directly concerned in the management of, any registered child-minding or childcare service on either the Early Years or Childcare Register
- register, manage, have a financial interest in or be employed at a children's home

OFSTED Waiver

A disqualified person can apply to OFSTED to waive their disqualification. Please note that Ofsted does not have the power to waive disqualification in certain circumstances, ie:

- If an individual is included on the list of those barred from working with children;
- If an individual has committed an offence against a child within the meaning of section 26(1) of the Criminal Justice and Courts Services Act 2000 **and** the Court has ordered that they are disqualified from working with children (under sections 28(4) and 29 of the same act);
- For an individual who works on early years and/or childcare premises but who is not employed by the organisation running the provision.

If the above circumstances do not apply, the disqualified person will need to complete a disqualification waiver form and provide this to OFSTED. This form is obtained by emailing disqualification@ofsted.gov.uk or telephoning the OFSTED helpline on **0300 123 1231**. Only the disqualified person can apply for a waiver. The expectation would be that a disqualified person contacts OFSTED at the earliest opportunity, and completes the disqualification waiver form within 7 days of receipt. For schools who buy in to the Local Authority's HR Service, this information is set out in writing to the employee in the letter confirming that they have been suspended.

Employers can, if they wish, support the waiver application.

Further information can be found on the OFSTED website at: <http://www.ofsted.gov.uk/resources/applying-waive-disqualification-early-years-and-childcareproviders>

OFSTED Outcome

OFSTED may grant a full or partial waiver (i.e., a waiver that would allow an employee to work in one type of employment or in particular premises)

OFSTED will confirm the outcome to the employee in writing. The employee should be asked to notify the school of the outcome, and provide the written

confirmation of this, as soon as possible following receipt (and certainly within 7 days of receipt).

Following receipt of OFSTED's decision the employee will be invited to a meeting to discuss what options are available.

Volunteers

Although not required by statute, all existing and new volunteers will be required to provide the disqualification declaration information. This is deemed to be proportionate to the safeguarding risks associated with such a role.

Please note that OFSTED will not consider a waiver application in respect of a volunteer (as the Regulations do not apply to volunteers). This means that, should a volunteer respond 'yes' to one of the questions on the declaration, schools will need to make a decision about whether to allow them to continue volunteering. Making this decision will require a risk assessment which takes account of the information provided on the declaration, the nature of the activities the volunteer undertakes and the level of supervision in place.

Implications of the Data Protection Act 1998

Schools have a statutory duty to obtain the relevant information. These obligations are imposed by legislation.

Members of staff may be concerned that information regarding their household has been requested. Employees can be assured that all information will be treated confidentially insofar as possible. The DfE 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.

Any information relating to the declaration check which has been received will be retained on the Employee's personal file; the information will be sealed in an envelope to maintain confidentiality.

The following information will also be recorded on the Single Central Record:

- i. Whether a positive or a negative declaration has been made
- ii. Whether the declaration form has been completed
- iii. Date information provided/form completed
- iv. Who reviewed the information/form
- v. Date reviewed
- vi. Outcome (e.g. no further action or waiver applied for and OFSTED notified).

Guidance – Flow Chart

