

## Childcare Disqualification Requirements – Guidance for Schools

Version: 3 (Issued 28 January 2015) SA09g

This guidance will regularly be updated when further information becomes clearer from either the Department of Education, OFSTED and in response to queries from Schools.

The Department of Education (DfE) has published supplementary [advice](#) to the “Keeping Children Safe” Statutory Guidance. This details a new additional requirement for childcare disqualification checks to be carried out on relevant staff working in schools and academies.

**The Childcare (Disqualification) Regulations 2009** 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 settings, including in schools.

### What are relevant staff and relevant settings?

The following categories of staff in nursery, primary or secondary school settings are covered:

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

- **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.
- **Secondary Schools** – will need to undertake checks on relevant staff (including managers) where any services are provided where under 8s may be in attendance e.g. childcare facilities, before or after school clubs
- **Volunteers** are not covered by statute but it is recommended they are checked in the same way as employees

### 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*”

For full details of what constitutes “disqualification” refer to the Schedules to the Regulations

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

### Communication with Trade Unions

The Council’s HR team will be discussing this requirement with the Trade Unions so that they are aware of this advice.

## Key Actions for Schools

There are four key actions required for all relevant staff:

<p>Schools to request that all relevant staff complete declaration</p>	<p><u>All*</u> relevant staff in relevant settings must be asked to complete a declaration <b>as soon as possible</b>, affirming that they are not disqualified. A deadline of one week would be acceptable. A declaration form is attached.</p> <p><i>(*Schools must also send a form to staff not currently at work due to sickness, maternity leave etc)</i></p> <p>Schools should print the Schedules to the Regulations (which detail the disqualification orders, offences etc) and make these available for staff (either with each form or in a central place) for reference. The links are:  <a href="http://www.legislation.gov.uk/ukxi/2009/1547/schedule/1/made">http://www.legislation.gov.uk/ukxi/2009/1547/schedule/1/made</a>  <a href="http://www.legislation.gov.uk/ukxi/2009/1547/schedule/2/made">http://www.legislation.gov.uk/ukxi/2009/1547/schedule/2/made</a>  <a href="http://www.legislation.gov.uk/ukxi/2009/1547/schedule/3/made">http://www.legislation.gov.uk/ukxi/2009/1547/schedule/3/made</a></p> <p>Schools should monitor the return of completed forms (reminding staff that the declarations must be completed even if there is nothing to declare).</p> <p>Initially it will be appropriate to remind staff to return this form but if this does not succeed, advice should be sought from the School's HR Provider. The declaration process is a statutory requirement and it is the School's responsibility to ensure the requirement is met. It may be necessary to take action to remove them from work if they fail to complete the declaration.</p>
<p>Staff who may be disqualified</p>	<p>Schools should immediately contact their HR Provider if they</p> <ul style="list-style-type: none"> <li>• know of anyone in their employment who is or may be disqualified</li> <li>• receive a positive declaration from any member of staff</li> </ul> <p>Anyone who is disqualified will need to be immediately removed from the relevant setting (probably through suspension in the case of employees) and OFSTED must be notified at the latest within 14 days.</p> <p><b>Disqualified Workers</b>  The School's HR Provider should provide support in dealing with cases where a disqualified person is identified.</p> <p>A disqualified person can apply to OFSTED for a waiver.  <a href="http://www.ofsted.gov.uk/resources/applying-waive-disqualification-early-years-and-childcareproviders">http://www.ofsted.gov.uk/resources/applying-waive-disqualification-early-years-and-childcareproviders</a>  OFSTED may grant a full or partial waiver, including a waiver that would allow an individual to work in a relevant school setting. <u>Whilst a waiver application is under consideration the individual must not continue to work</u> in these settings. Where a waiver is not granted, the employee will need to be dismissed unless redeployment options are available.</p>
<p>Shortlisted Candidates</p>	<p>From this point onwards:  Short-listed candidates must be required to:</p> <ul style="list-style-type: none"> <li>• complete the declaration</li> </ul> <p>Schools must:</p> <ul style="list-style-type: none"> <li>• cross check the declaration with the DBS certificates with reference to list of relevant offences in the Act (Schedules 2&amp;3).</li> </ul>

	(The pre-employment procedure and recruitment and selection policies/new starter documentation and are being updated).
External Agencies	Schools must ensure that any external agency providing relevant staff in relevant settings carry out these checks <u>prior</u> to placing them in the school.

### Additional Actions for Schools

<b>Staff “Contract”</b>
<p>Whilst new staff will now be signing a declaration at short listing stage, it would be prudent to ensure that employee remain very clear about their obligations. It is therefore advised that any additional clause is included in contracts.</p> <p>If NCC is your recruitment provider this will be done automatically.</p> <p><i>The Governing Body/Authority reserves the right to undertake an Enhanced DBS check for an eligible post or to undertake other statutory checks which may be required for a role.</i></p> <p><i>This appointment is exempt from the Rehabilitation of Offenders Act 1974 and subject to an enhanced DBS disclosure in accordance with the requirements of the Disclosure and Barring Service and the Police Act 1997.</i></p> <p><i>You must declare all convictions (including convictions with Absolute Discharge), cautions or bind-overs you may have, even if they would otherwise be regarded as ‘spent’ under this Act.</i></p> <p><i>In addition you must also disclose such information (including cautions, warnings, convictions, orders or other determinations made in respect of yourself or a member of your household that would render you disqualified from working with children under the Childcare (Disqualification) Regulations 2009.</i></p> <p><i>During employment, failure to disclose the above information for yourself or member of your household could result in dismissal or disciplinary action by the Governing Body/Local Authority and possible referral to the Police, and /or other statutory bodies.</i></p> <p><i>If you are a recruiting manager, you will have responsibility for ensuring that posts that are eligible for DBS disclosure or other statutory checks have undergone the appropriate checks and registration.</i></p>
<b>Record keeping and Storage of Declarations (Staff and Volunteers)</b>
<p><b>Storage</b></p> <p>The DfE advises that Schools must handle and store all information in school carefully, in accordance with normal Data Protection regulations.</p> <p>It is recommended that disclosure declaration forms should be placed on the personal file. (Files should only be accessed by those staff required to do so)</p> <p><b>Single Central Record</b></p> <p>In addition, whilst there is no statutory requirement that the disclosure form should be recorded on the Single Central Record (SCR), it would appear that OFSTED inspectors are expecting it to appear on the SCR.</p>

### Regularity of Checks

There is no statutory requirement for declaration forms to be completed on a regular basis, however it is recommended that as part of the School's approach to safeguarding that they take the opportunity to regularly remind staff and volunteers of their obligation to make Headteachers aware of any new information that is relevant.

### Support for Employees – Employee Assist

(Added 23.1.15 v2)

All staff who work in NCC maintained schools (including VA and Foundation) who are affected by these changes and who would like some external support, may contact Employee Assist. Contact and details are provided in the pdf leaflets below. (This is irrespective of whether the School buys the Council HR services).

Academies may already have made their own alternative arrangements but are welcome to contact Employee Assist to arrange support for an employee.



Academy employee  
assist leaflet2015.pdf



employee assist  
leaflet 2012.pdf

### RELEVANT WEBLINKS (Added 23.1.15 v2)

#### OFSTED List of Relevant Offences

<http://www.education-advisors.com/wp-content/uploads/2014/12/Ofsted-disqualifications.pdf>

## Frequently Asked Questions

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

The DfE have 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 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.

### 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 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/Junior 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 (eg 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, decisions need to be taken by schools on a case by case basis subject to their individual circumstances.

**7. 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.

**8. What about Contractors and Agency Staff** (Added 23.1.15 v2)

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 prior to them being placed in a school setting.

**9. Date of Cautions** (Added 23.1.15 v2)

If an employee declares that they have accepted a relevant caution prior to 6 April 2007 they will not be deemed to be disqualified.

This is because the relevant provisions in the Childcare Act 2006 came into force on this date and it was deemed unfair to bring in a provision which would have retrospective effect for those who had voluntarily accepted a caution and were therefore unaware of the impact. This means that any relevant cautions accepted from 6 April 2007 will deem to meet the disqualification criteria even though DfE guidance was only issued in late 2014. Therefore the employee will still be required to obtain a waiver from OFSTED.

*Please note the declaration form has been amended to make this clear.*

**10. What constitutes childcare outside of the normal school day?** (Added 23.1.15 v2)

Child care includes breakfast clubs, homework clubs, nursery and crèche provision provide by the school.

Where activities are run by other providers on school premises but not managed by the school (e.g. lettings, football clubs), these are not child care provision.

**11. Who does OFSTED inform when they agree to waive a disqualification?**

(Added 23.1.15 v2)

OFSTED will contact the individual directly. They will not respond to any request from Headteachers/schools. You need to explain this to employees and ask them to contact you as soon as they hear back from OFSTED.

**12. Are volunteers covered by this guidance?**

(Added 23.1.15 v2)

Yes

**13. What if I continue to employ a disqualified person?** (Added 28.1.15 v3)

Any employer who continues to employ a disqualified person will be breaking the law and could be held responsible for this. In addition, such a breach would affect the school's own registration with OFSTED and would impact on the findings of inspections.

**Please note we are still awaiting clarification on some specific queries and will add to the FAQs as soon as clarification is provided. We understand that the DfE may be issuing some further guidance in early February 2015 (Amended v3 28.1.15)**