



Northern Education Trust

Childcare Disqualification Requirements – Guidance for Schools November 2014 (updated October 2015)

In October 2014, the Department for Education published supplementary advice to the Keeping Children Safe in Education statutory guidance (April 2014) to help schools understand the requirements placed on them by childcare legislation. Further statutory guidance 'Disqualification under the Childcare Act 2006' was produced by the DFE in February 2015; and the April 2014 Keeping Children Safe in Education statutory guidance was replaced with updated guidance in both March 2015 and then July 2015.

Further pre-employment checks are required for those working in early years childcare or later years childcare for children who have not attained the age of eight. These checks arise from the Childcare (Disqualification) Regulations 2009, which arose out of the Education Act 2006.

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 schools.

Who is disqualified?

The criteria for disqualification under the 2006 Act and 2009 Regulations include those set out in the list below:

- Inclusion on the Disclosure and Barring Service (DBS) Children's Barred List
- Being cautioned for, or convicted of certain violent or sexual criminal offences against adults and children;
- They are the subject of an Order, direction or similar in respect of childcare, including orders made in respect of their own children;
- Have had registration refused or cancelled in relation to childcare or children's homes or have been prohibited from private fostering;
- Living in the same household where another person who is disqualified lives or is employed (disqualification 'by association'). This means that the householder has an order, restriction, conviction, caution etc. set out in the Legislation;
- Being found to have committed an offence overseas which would constitute an offence regarding disqualification under the 2009 Regulations if it had been done in any part of the UK.

It should be noted that a caution for an offence by a police officer after admitting that offence, which is before 6 April 2007 is not subject to disqualification. A caution includes a reprimand or warning within the meaning of section 65 of the Crime and Disorder Act 1998.

Full details of what constitutes "disqualification" are in the Schedules to the Regulations <http://www.legislation.gov.uk/ukxi/2009/1547/contents/made>.

What are relevant staff and relevant settings?

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

- Early years provision – staff who provide any care for a child up to and including reception age. This includes education in nursery and reception classes and/or any supervised activity (such as breakfast clubs, lunchtime supervision and after school care provided by the school) both during and outside of school hours for children in the early years age range; and
- Later years provision (for children under 8) – staff who are employed to work in childcare provided by the school outside of school hours for children who are above reception age but who have not attained the age of 8. This does not include education or supervised activity for children above reception age during school hours (including extended school hours for co-curricular learning activities, such as the school's choir or sports teams) but it does include before school settings, such as breakfast clubs, and after school provision.

This means that staff employed who work in the following roles are not covered, i.e. staff who:

- Only provide education, childcare or supervised activity during school hours to children above reception age; or
- Only provide childcare or supervised activities out of school hours for children who are aged 8 and over; and
- Have no involvement in the management of relevant 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.

Where local authority staff are deployed to work in relevant settings in schools (for example, peripatetic music teachers or special needs teachers) it is the responsibility of the local authority to ensure that such staff are compliant with the requirements of the legislation explained in this guidance.

Where schools use staff from an agency or third-party organisation, to work in relevant childcare in schools, they must obtain confirmation that the agency or organisation providing the staff has informed them that will be committing an offence if they are deployed to work in relevant childcare, or are directly concerned in the management of such provision, if they are disqualified under the 2009 regulations.

Anybody involved in any form of health care provision for a child, including school nurses, and LA staff, such as speech and language therapists and education psychologists, are specifically excluded from the statutory definition of childcare, and are therefore not covered by the legislation.

Where the school employs a contractor who is self-employed to work in relevant childcare provision, the school must ensure they are compliant with the requirements of the legislation.

Where training suppliers are placing trainees or students at the school the school must obtain confirmation from the provider that they comply with the legislation.

What should you do now?

You should have already taken the necessary action to ensure the academy is compliant with the legislation. For any new staff or volunteers working in the relevant settings, the following action must be taken during the pre-employment checking process:

All new appointments (including new volunteers) in relevant settings must be asked to complete a declaration affirming that they are not disqualified. A declaration form is attached. Please ensure that any new staff member or volunteer is signposted to the Schedules to the Regulations (which detail the disqualification orders, offences etc.)

The links are here:

<http://www.legislation.gov.uk/ukxi/2009/1547/schedule/1/made>

<http://www.legislation.gov.uk/ukxi/2009/1547/schedule/2/made>

<http://www.legislation.gov.uk/ukxi/2009/1547/schedule/3/made>

For any new staff member or volunteer who may have difficulty accessing the internet, please provide printed copies of the regulations.

1. You should contact HR immediately if you
 - know of any new staff member or volunteer who is or may be disqualified

- receive a positive declaration from any member of staff or volunteer

The declaration process for new staff or volunteers should be dealt with as part of the pre-employment recruitment process (the same process as DBS clearance). Where a disclosure is made prior to employment commencing a risk assessment will need to be undertaken to determine whether the individual can commence work at the agreed time. Depending on the nature of the disclosure the following options could apply:

- employee starts work but is subject to supervision until the application for the waiver is granted
- employee starts work but is 'redeployed' into alternative work (see below)
- employee remains at home and the start date of employment is deferred pending the outcome of the waiver application
- in serious cases, the offer of employment may be withdrawn

If the volunteer or staff member has already started work; or if an existing staff member or volunteer has a new disclosure and they are disqualified they will need to be immediately removed from the relevant setting and OFSTED must be notified within 14 days (using disqualification@ofsted.gov.uk) The individual should be informed that this will happen and the implications of disqualification should be explained to the individual, including whether they can apply to Ofsted for a waiver of disqualification (for example, Ofsted cannot grant a waiver to an individual who is on the Children's Barred List).

2. DBS certificates should be checked with reference to the list of relevant offences in the Act (Schedules 2&3).

Removing staff from the relevant setting

If it is necessary to remove a member of staff from the relevant setting all alternatives should be reasonably considered whilst the employee applies for a waiver to OFSTED (if appropriate). Suspension should only be used as a last resort.

Based on an assessment of the possible risk of harm to children, the following alternatives should be considered before suspending a member of staff:

- Redeployment within the academy so that the individual does not have direct contact with children in the relevant setting;
- Adjustments to the role to avoid them working in the relevant childcare setting;
- Redeployment temporarily to another Northern Education Trust academy;
- Working from home on project work directed by the principal;
- Paid leave.

The member of staff should be involved in these discussions (subject to the risk assessment) so that they fully understand and are clear about any new work pattern/location. It would also be good practice to allow the employee the opportunity to be accompanied by a work colleague or union representative during the discussions.

Disqualified Workers

A disqualified person can apply to OFSTED for a waiver. <http://www.ofsted.gov.uk/resources/applying-waive-disqualification-early-years-and-childcare-providers>

OFSTED may grant a full or partial waiver, including a waiver that would allow an individual to work in a relevant school setting. Whilst a waiver application is under consideration the individual must not continue to work in these settings. Ofsted will liaise directly with the individual regarding the process and may make a home visit to discuss the waiver application. The outcome of the process will be notified to the individual in writing. This letter should be shared with the Principal so that any necessary action can be taken, including arranging a meeting to discuss any implications of the outcome, including a return to work where appropriate.

It is important that regular contact is made with the employee during this period by their line manager to ensure the necessary support is offered and that professional dialogue is maintained throughout the process.

Where an individual decides not to apply for a waiver, or a waiver is declined, the academy 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. In this connection, the individual will have the right of representation at any formal meetings.

Staff Disqualification Declaration

Academy	
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In October 2014, March 2015 and July 2015 the Department for Education (DfE) issued an update to its Statutory Guidance "Keeping Children Safe".

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

This update requires schools which provide care for pupils under the age of 8, to ensure that staff and volunteers working in these settings are not disqualified from doing so under the Childcare (Disqualification) Regulations 2009. Reference:

<http://www.legislation.gov.uk/uksi/2009/1547/schedule/3/made>

A person may be disqualified through

1. having certain orders or other restrictions placed upon them
2. having committed certain offences
3. living in the same household as someone who is disqualified by virtue of 1 or 2 above (this is known as disqualification by association)

You are required therefore to sign the declaration below confirming that you are not disqualified under those Regulations from working in this school.

A disqualified person is not permitted to continue to work in a setting providing care for children under age 8, unless they apply for and are granted a waiver from OFSTED. Reference:

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

Name	Post	
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? 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: (*n.b. for cautions only - an offence which is before 6 April 2007 is not subject to disqualification)		
<ul style="list-style-type: none"> Any offence against or involving a child? (a child is a person under the age of 18)? 		YES / NO
<ul style="list-style-type: none"> Any violent or sexual offence against an adult? 		YES / NO
<ul style="list-style-type: none"> Any offence under the Sexual Offences Act? 		YES / NO
Any other relevant offence?		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		
<p>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 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.</p>		YES / NO
Section 4 – Provision of Information		
If you have answered YES to any of the questions above you should provide details 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:		
<ul style="list-style-type: none"> I understand my responsibilities to safeguard children. I understand that I must notify the 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