

## **DfE Statutory Guidance – Disqualification under the Childcare Act 2006- February 2015**

### **Factsheet for Staff**

It is important that staff read the attached information carefully and look up any of the links provided to further documentation, where relevant to their situation, before signing Form A. The details included in this factsheet will enable staff to determine whether they also need to complete Form B.

The statutory guidance issued by the Department for Education (DfE) in 'Keeping Children Safe in Education', October 2014, has been replaced by the above document. The relevant regulations are specifically the Childcare Disqualification Regulations 2009, but these were made under section 75 of the Childcare Act 2006. This statutory guidance clarifies the required childcare disqualification checks to be carried out by all schools that provide education or childcare for children up to the age of 8.

### **Safeguarding Requirements**

In addition to the existing pre-employment checks which schools must carry out to identify risks to children and make informed decisions about the suitability of individuals to work in schools, the Childcare Act 2006 and Childcare (Disqualification) Regulations 2009, place separate requirements on schools. It is possible for these regulations to affect the future deployment, and even employment of relevant staff. Schools have no choice but to implement the regulations.

The requirements relate to employees who:-

- provide early years childcare/education to children of up to and including reception age (to 1<sup>st</sup> September, following a child's 5<sup>th</sup> birthday),
- or later years childcare, out of school hours, to children who have not yet attained the age of 8,
- or are employed in connection with such provision.

The disqualification criteria are listed below, as given in the DfE guidance 'Disqualification under the Childcare Act 2006' ([https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/414345/disqual\\_stat-guidance\\_Feb\\_15\\_3.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/414345/disqual_stat-guidance_Feb_15_3.pdf)). Staff who are unsure of whether a particular offence or order is included are advised to follow the link, as relevant offences and orders are given at the end of the document

- Inclusion on the Disclosure & Barring Service (DBS) Children's Barred List.
- Being found to have committed certain violent criminal offences against children and adults, which are referred to in reg 4 & Schedules 2 & 3 of 2009 Regulations (note that reg 4 also refers to offences that are listed in other pieces of legislation).
- Certain orders made in relation to the care of children, which are referred to in reg 4 and listed at Schedule 1 of the 2009 Regulations.

- Refusal or cancellation of registration relating to childcare or children's homes, or being prohibited from private fostering, as specified in Schedule 1 of the 2009 Regulations.
- Living in the same household, where another person who is disqualified lives or works (disqualification by association), as specified in reg 9 of the 2009 Regulations
- Being found to have committed an offence overseas which would constitute an offence regarding disqualification under 2009 regulations, if it had been done in any part of the UK.

**In addition to consulting the list of offences/orders supplied by the DfE, staff who are not sure about the relevance of a caution, conviction may wish to consult with their union representative or other appropriate professional adviser.**

Schools are responsible for ensuring that they have robust systems in place to check that the staff they employ are suitable to work with children. Checking staff suitability should not only be undertaken during recruitment, but should be an *ongoing process* that is embedded in regular practice.

Schools will need to ask existing staff working in the relevant settings, and those who are directly concerned in the management of this provision, to provide the relevant information, not only about themselves, but also about people who live or work in their household with them.

#### Disqualification by Association

If a member of staff is living in a household with someone who has received a relevant offence/caution or order (that is not spent), then the staff member is disqualified from working with children of reception age or under within school hours or children up to age 8 in before/after school childcare, by reason of association. Association extends to every person with whom the staff member shares a household including, but not limited to, foster children, house sharers and lodgers.

Where a person living in the household of a relevant employee meets the criteria for disqualification, the staff member should provide the details of the order, determination, conviction or other grounds for disqualification, as specified on the attached Form B.

This requirement guards against an individual working with young children who may be under the influence of a person who lives with them, and where that person may pose a risk to children. **You are not required to take action to discover the background of people living in the same household but to provide a declaration where relevant information is known to you to the best of your knowledge.**

#### Staff Covered

- Staff who work in early years provision (including teachers and support staff working in school nursery and reception classes), within school hours and/or delivering before/after school childcare.

- Staff working in later years provision for children of above reception age but who have not yet attained the age of 8, in before or after school settings e.g. breakfast clubs and after school provision. **This does not include education/supervised activity in extended school hours for curricular learning activities, like choir, sports teams.**
- Those employed with management responsibility for the above.

This means that staff who work in the following roles are **not** included:

- Those who provide education, childcare or supervised activity during school hours to children **above reception age.**
- Those who only provide childcare or supervised activities out of school hours for **children who are aged 8 or over.**
- Those who 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.
- Health care staff, eg school nurses, speech therapists and educational psychologists are excluded from the legislation.

Most staff who are only occasionally deployed with relevant age groups of children and are not regularly required to work in relevant roles will not automatically come within the scope of the legislation. Schools will therefore have to exercise their judgement about when and whether such staff are within scope. The Headteacher will evaluate the risks, whether any control measures are required and make a record of this, which will be lodged in the staff member's personnel file.

A signed declaration form (Form A) will be provided for appropriate existing and new staff to confirm that they have been made aware of the requirements and of the duty to declare any relevant conviction/caution/order.

It is important that staff check the details of the disqualification requirements, so that they can determine if, and how, the requirements apply to them. Full details of the relevant offences can be accessed through the link on page 1 of this factsheet or written copies available in.....

### Two Important Points:

- **Staff completing a declaration of their own convictions/cautions/orders need only declare relevant offences and need not include details about any protected cautions or convictions.** Roles in school are exempt from the rehabilitation of offenders act (ROA) so staff are normally required to disclose all their convictions/cautions but there are a few minor cautions that are 'protected', and they are also filtered from DBS certificates. If in doubt please check.
- **Staff completing a declaration relating to the convictions of a third party (person living or working in their household) are not required to disclose spent cautions or convictions.** Staff should respond to questions relating to the criminal record of a person living or working in their household as though it only relates to 'unspent' cautions/convictions, that are included on the list of relevant offences.

Please find attached declaration Form B which must be completed and returned by..... to....., in a sealed envelope marked personal and confidential, **only if** you or someone in your household, meet any of the criteria for disqualification.

Where you have no information to declare it is only necessary to sign Form A stating that you have received the information and understand the requirements these regulations place on you to make a declaration, where appropriate.

It is important that staff understand that, should their personal circumstances change at any time, with respect to the disqualification requirements, the Headteacher must be informed immediately.

### **Positive Declarations**

If the school does become aware of information which may lead to the disqualification of an employee, this must be reported to Ofsted by the school as soon as possible, and at the latest, within 14 days.

Failure to do so is a breach of the Regulations. Individuals who are so identified may apply to Ofsted for a waiver to allow them to continue working with children. The staff member must make the application, not the school. Ofsted consider each application on its own merits and a full or partial waiver may be granted, depending on the circumstances. ([www.ofsted.gov.uk/resources/applying-waive-disqualification-early-years-and-childcare-providers](http://www.ofsted.gov.uk/resources/applying-waive-disqualification-early-years-and-childcare-providers))

The school must make any third party aware of declarations received concerning their convictions/cautions/orders. This will be undertaken in writing by special delivery post. The third party will be informed of the process the school is required to follow, what will be retained on record and offered the opportunity to confirm or correct any of the information received.

Once it has been identified that an employee fulfills the disqualification criteria, they are not permitted to work in the provision for children up to and including reception age, or provision for children from reception age to 8 years of age, out of school hours, or be directly employed in the management of that provision. While Ofsted is considering a waiver request, the individual must not continue to work in these settings and where possible the school will seek to deploy the employee elsewhere in the school.

Depending on the context of the school concerned and the nature of the reason for disqualification, there may be a need to consider the suspension of the individual.

If a waiver is granted by Ofsted, it will then be up to the school to make a decision as to whether to continue to employ the person. The school would need to consider whether any conditions on the waiver can be fulfilled. Where a waiver is not granted, the school must determine whether the individual can be permanently deployed where they will not be involved in the provision for the relevant age groups of children. This may lead to a hearing to consider the allegation that the member is disqualified from working with young children which may be a reason to terminate the contract of employment.

Staff who have concerns about the requirements of the legislation are encouraged to discuss with their professional association or union, where they hold membership.

## Agency Staff

Schools must ensure that any external agency providing staff in relevant settings carry out these checks prior to placing them in school.

# Form A

**Staff member**.....

Department/Category of staff .....

## **Employee Declaration - existing and new employees.**

The Department for Education (DfE) issued 'Disqualification under the Childcare Act 2006' in February, which referred to the application of the Childcare (Disqualification) Regulations 2009. 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 regulations. You can read the document by following the link below.

[www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/414345/disqual\\_stat-guidance\\_Feb\\_15\\_3\\_.pdf](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/414345/disqual_stat-guidance_Feb_15_3_.pdf)

**You must therefore read the Factsheet provided carefully and sign the declaration below.**

I confirm that I have received the Factsheet concerning the grounds for the disqualification of people from working in settings providing education/childcare for children up to and including reception age and involved in out of school hours provision, for children above reception age but under the age of 8, and have access to details of the relevant convictions, cautions and orders made.

I understand the requirements this places on me to complete the full declaration form (Form B), if relevant, with details of the convictions, cautions or orders made with reference to myself or member(s) of the household in which I live.

I understand that I must inform the Headteacher (Chair of Governors in the case of the Headteacher) of any relevant change in my personal circumstances, in relation to the disqualification criteria, immediately.

Signed..... Date.....

Received.....(Headteacher)

### Employee & Volunteer Disqualification Declaration

To only be completed where the staff member/volunteer believes they, or a household member, may have a conviction, caution or order made against them which may disqualify them from working with children in the relevant age groups, under the 2009 Childcare (Disqualification) Regulations.

Name.....

Post/role: .....

*A single list of the relevant cautions, convictions and orders can be found at the end of the DfE document 'Disqualification under the Childcare Act 2006 ([www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/414345/disqual\\_station\\_guidance\\_Feb\\_15\\_3\\_.pdf](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/414345/disqual_station_guidance_Feb_15_3_.pdf)), please remember to check whether any cautions/convictions made against you are 'protected'. Follow the link in the DfE document for information on this very small number of offences.*

*Please remember that the Rehabilitation of Offenders Act (ROA) will apply, where relevant, to the convictions/cautions received by any 3<sup>rd</sup> party whose details are included in this declaration. Any offences that are 'spent' **need not** be declared. The DfE document includes a link to more information about when certain convictions/cautions may be spent. While remembering that there is no requirement on staff to make enquiries of those living/working in their household to discover whether they have cautions, convictions or orders against them, if you are aware of such details please endeavour to the best of your ability to include all relevant information and exclude any material relating to convictions that are not listed in the regulations or where a third party's conviction is spent. (ROA does not apply to employees in schools, so the convictions do not become spent)*

**Circle one option for every question**

**Where a 'yes' response is given, you will be asked to provide details at the end of the form.**

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#### **Section 1 – Orders or other restrictions**

[Available from the school office or at the link below:  
<http://www.legislation.gov.uk/ukxi/2009/1547/schedule/1/made>]

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 ?

YES / NO

Are you barred form working with children (Disclosure & Barring Regs, DBS)?

YES / NO

Are you prohibited from teaching?

YES / NO



## **Section 2 – Specified and Statutory Offences**

Available from the school office or at the links below:

[www.legislation.gov.uk/ukxi/2009/1547/schedule/2/made](http://www.legislation.gov.uk/ukxi/2009/1547/schedule/2/made)

[www.legislation.gov.uk/ukxi/2009/1547/schedule/3/made](http://www.legislation.gov.uk/ukxi/2009/1547/schedule/3/made)

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 ? 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 including family, lodgers, house-sharers, household employees in your household, disqualified from working with children under the Regulations?

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. YES / NO

## Section 4 – Provision of Information

If you have answered YES to any of the questions above you should provide the details below in relation to yourself or, as relevant, a 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 includes dates

The relevant court(s) or body(ies)

## Section 5 - Declaration

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

1. I understand my responsibilities to safeguard children.
2. I understand that I must notify my Headteacher 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: \_\_\_\_\_ Date: \_\_\_\_\_

Applications can be made to Ofsted for a waiver to disqualification, please see website below. Reference:

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

Support will be provided with this process.

*Please remember that the school must make any third party aware of declarations received concerning their convictions/cautions/orders. This will be undertaken in writing by special delivery post. The third party will be informed of the process the school is required to follow, what will be retained on record and offered the opportunity to confirm or correct any of the information received.*