



# **Childcare Disqualification Requirements**

## **Guidance for Schools**

# Childcare (Disqualification) Regulations 2018

## The Legal Duty to Conduct Checks on Persons in Schools

### 1. New Requirements

1.1 The Department for Education has issued supplementary advice to its [‘Keeping Children Safe in Education 2020’](#) guidance explaining the **Childcare (Disqualification) and Childcare (Early Years Provision Free of Charge) (Extended Entitlement) (Amendment) Regulations 2018** which applies to relevant persons (see definitions below) in schools.

1.2 The supplementary advice explains that:

- The checks required by the Regulations should be undertaken with all relevant persons, i.e. those currently within the school and those new to the school.
- The law prohibits anyone who is disqualified under the Regulations from undertaking relevant work in a relevant setting, including a school.
- A disqualified person can ask Ofsted to waive their disqualification to enable them to undertake relevant work.

1.3 During school inspections, it is likely that Ofsted will ask whether the required checks have been undertaken. Therefore, any results generated by these checks should be recorded alongside the others conducted by the school in the Single Central Record.

### 2. Who Must Be Checked?

#### 2.1 ‘Relevant Person’

This includes all employees, Governors, volunteers, agency workers and other providers of services, whether currently with the setting or a new appointment, undertaking relevant work in a relevant setting.

#### 2.2 ‘Relevant Work’

Working in connection with any Early Years care, or childcare for children in later years, i.e. below the age of 8, or being directly involved in the management of such provision.

#### 2.3 ‘Relevant Setting’

This includes Nursery and Key Stage 1 classes in schools, any provision that involves caring for children who are not registered pupils of the school, and Before and After School Clubs, regardless of the type, or phase, of school in which those activities take place.

Therefore, as the Regulations use the phrase ‘in connection with’, these rules are likely to apply to everyone in Nurseries and Primary Schools, because they are unlikely to work exclusively with children aged 8 and over, but secondary schools that provide childcare for children aged under 8 can limit their checks to relevant persons performing relevant work.

### 3 Who Is Disqualified?

3.1 A person is disqualified if any of the following apply:

- The person is included on the DBS Children's Barred List.
- The person is the subject of an Order, Direction or similar in respect of childcare, including Orders made in respect of his, or her, own children.
- Registration has been refused or cancelled in relation to childcare, children's homes or private fostering.
- The person has been cautioned for, or convicted of, certain violent or sexual criminal offences against adults and any offences against children (these are listed in the **Childcare (Disqualification) and Childcare (Early Years Provision Free of Charge) (Extended Entitlement) (Amendment) Regulations 2018** and include similar offences committed abroad).

**NB:** A full list of disqualifications is available in the Regulations and the Guidance.

### 4. Action Required

4.1 All 'relevant persons' in the school must be supplied with a copy of the Guidance, which explains when a person is disqualified under the Regulations and a section should be included in the school's safeguarding policy to make staff aware of their duty to disclose information that prevents them from working in a regulated role.

4.2 If the school is redeploying existing staff into roles regulated by the childcare disqualification requirements:

- You may need to conduct updated recruitment checks and cross-reference the results with the list of relevant offences that would disqualify someone (see section 3.1 above). You could use the DBS Update Service to get updated checks (if the staff member is registered)

Whether you conduct these checks, and which ones you do, will be based on your knowledge of the person. For example, if you recruited a teacher for a year 1 position 6 months ago, but would like to redeploy them as a reception teacher (a regulated post) for the new academic year, you should consider:

- The outcome of recent recruitment checks: if relevant checks returned no previous convictions you may not need to conduct a new check
- Their conduct since they've been employed in your school: do you have reason to believe that their circumstances would've changed since you last conducted the checks?

4.3 All new appointments, including new volunteers, must have an up-to-date enhanced DBS certificate and barred list check, and the school should conduct any other relevant recruitment checks (like checks for people who've lived or worked overseas). The school should cross-reference the results of the checks with the list of relevant offences that would disqualify someone (see section 3.1)

4.4 All records, documents and information associated with these checks must be stored securely and in accordance with the General Data Protection Regulations 2018.

## 5 What to do if someone is disqualified

5.1 If anyone is identified as being a disqualified person under the Regulations, the school must ensure that they are immediately removed from the relevant setting, taking advice from Human Resources (schools team) on how to do this, and then ensure that the matter is reported to Ofsted by emailing [disqualification@ofsted.gov.uk](mailto:disqualification@ofsted.gov.uk) as soon as possible, (but no later than 14 days after the school should have known about their status).

The school should tell the staff member that they can apply to Ofsted for a waiver **unless:**

- They're on the children's **or** adult's barred lists
- They committed an offence against a child as defined by schedule 4 of the Criminal Justice and Courts Services Act 2000 **and** the court has ordered that they're disqualified

5.2 The employee can be advised that when they apply for a waiver, they should provide Ofsted with the following information (if they know it):

- Details of the grounds for disqualification under the 2018 regulations (including any orders, determinations, cautions, or convictions)
- The date of the order, determination, caution, or conviction, or the date when the other ground for disqualification arose
- The body or court which made the order, determination, caution or conviction, and the sentence imposed (if any)
- A certified copy of the relevant order

While the school is waiting for someone to apply for their waiver, they should take advice from the HR Advisory school's team on:

- Whether it's appropriate to redeploy staff elsewhere in the school, or to make adjustments to their role to avoid them working in regulated roles or settings
- Where you can't make alternative arrangements, whether to grant paid leave or similar, or suspend the member of staff while waiting for the waiver (this should be a last resort)

If the employee does not apply for a waiver, or a waiver is declined, the school will need to discuss the matter with HR to consider and make decisions about:

- Whether the person can be permanently redeployed
- The appropriateness of redeployment
- Whether steps should be taken to legitimately terminate their employment

## FREQUENTLY ASKED QUESTIONS

1. **For existing staff, should we obtain a DBS, and are employers expected to verify the absence of any Orders or restrictions?**

There is no requirement to check DBS Certificates for all existing staff and there is no evident process for verifying if someone has a Childcare Order, or other restriction, against them. If the school is redeploying existing staff into roles regulated by the childcare disqualification requirements they may wish to conduct updated recruitment checks and cross-reference the results with the list of relevant offences that would disqualify someone (see section 3.1 above).

*Paragraph 23 of the DfE's statutory guidance advises that schools have a responsibility only to ensure that anyone in a relevant setting is made aware of the circumstances which would disqualify them from providing childcare and of the penalties associated with working while disqualified without a waiver. **All staff should be reminded that if their circumstances change, they must inform the school immediately and this should be included in the school's safeguarding policy.***

*For new staff, the enhanced DBS Certificate should be checked against the list of offences in the Schedules. Other offences may also lead to non-employment under normal DBS assessment processes.*

2. **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, in a Primary/Junior School, does this include the Year 6 Teacher/LSA who may not teach under-eights, but may at any time be involved in their care or supervision (e.g. trips, playground duty etc.)?**

*The statement from Department of Education includes: “The Childcare Act stipulates that a disqualified person should not be employed in connection with early or later years’ childcare and 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.”*

3. **What about contractors and agency staff?**

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

*The Council is responsible for making sure any of its staff who are deployed to work in settings covered by the regulations are not disqualified, including peripatetic music*

*teachers and specialist special educational needs teachers.*

#### **4. How long will it take to process an application for a Disqualification Waiver?**

*In a statement from the Department of Education: "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, particularly when other agencies have to be contacted."*

#### **5. What if a person is not sure whether they have a relevant offence?**

*An employee should disclose anything considered relevant to their Headteacher. Schools/Academies can check the position with the Department of Education.*

#### **6. Why can't we just look at an enhanced DBS check and take the information from here?**

Out of the key areas to check (below) as part of the regulations, only two of them can be discovered through the enhanced DBS check, and the barred list, where relevant.

1. Relevant offences (from DBS check)
2. Children's Barred List (for Barred list check, if in regulated activity)
3. Had a child placed under a care order Childcare registration cancelled or refused\*  
(\*except for non-payment of fees) (There is no evident process for verifying if someone has a childcare order or other restriction against them and self-disclosure will be required)
4. Relevant overseas conviction (from the recruitment checks)

#### **7. The guidance states that people could be disqualified if their 'Childcare registration was cancelled or refused (except for non-payment of fees)', is this as a parent or practitioner?**

This is as a practitioner, so for example if the person was in the past a childminder or applied for registration to be a childminder, or ran an EYFS provision, or applied for registration to be do so.

#### **8. Can we still issue staff an annual declaration form to disclose their circumstances?**

It is no longer recommended to issue staff with a self-declaration form due to GDPR reasons. An enhanced DBS Certificate will confirm the position for new staff; for existing employees schools could consider using the DBS Update Service if they move into a role covered under the regulations. Schools should regularly remind all staff about the expectation to inform the school where their relationships and associations,

both within and outside of the workplace (including online), may have implications for the safeguarding of children in the school.

## **9. What constitutes childcare outside of the normal school day?**

Childcare includes Breakfast Clubs, Homework Clubs, Nursery and Crèche provision provided 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 covered as they are not providing childcare.