



## Keeping children safe in education: childcare disqualification requirements - supplementary advice

The Department for Education has published this advice as a supplement to the *Keeping children safe in education* statutory guidance to help schools understand the requirements placed on them by childcare legislation.

### Safeguarding requirements

The child protection arrangements in place for all pupils, including the checks which schools must make to identify risks to children and to make informed decisions about the suitability of individuals to work in schools, are set out in the Department's [Keeping children safe in education \(KCSIE\) guidance](#). When appointing staff, schools must check: police records; police intelligence; Disclosure and Barring Service (DBS) barring lists; and for anyone that is appointed to teach, that they are not prohibited from doing so by the Secretary of State. The requirements of those working in nursery and reception classes in schools are set out in the [Early Years Foundation Stage \(EYFS\) statutory framework](#).

### Childcare disqualification requirements

[The Childcare Act 2006](#) and the [Childcare \(Disqualification\) Regulations 2009](#) place separate and additional requirements on schools. At the point that an individual is convicted of, or cautioned for, a criminal offence of a specified type or category, or where they meet other disqualification criteria set out in the regulations, the Act and Regulations disqualify staff from:

- providing early years childcare<sup>[1]</sup> or later years childcare to children who have not attained the age of eight; or
- being directly concerned in the management of that childcare.

In addition to inclusion on the Children's Barred List, the wider disqualification criteria include:

- being cautioned for or convicted of certain violent and sexual criminal offences against children and adults;
- grounds relating to the care of children (including where an order is made in respect of a child under the person's care);
- having registration refused or cancelled in relation to childcare or children's homes or being disqualified from private fostering;

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<sup>[1]</sup> 'Early years childcare is any care for a child from birth to the 1 September following a child's 5<sup>th</sup> birthday and includes education and any other supervised activity'.

- living in the same household where another person who is disqualified lives or works (disqualification 'by association').

The grounds for disqualification can be found in the childcare legislation set out above.

## **Staff covered**

This means that the following categories of staff in nursery, primary or secondary school settings are covered by the Childcare (Disqualification) Regulations 2009. These are the same arrangements as those in place for registered childcare provision outside of schools and include:

- 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.

## **Action for schools and individuals**

Schools are responsible for ensuring that all the staff they employ have had the appropriate checks. This includes ensuring that staff working in these specified early and later years settings are suitable to do so.

Schools should ask existing employees working in these settings and those who are directly concerned in the management of such provision to provide the relevant information not only about themselves but also about a person who lives or works in the same household as them. They should also ask for this information as part of the pre-employment checks they undertake on appointing new staff.

## **Disqualification by association**

The requirement to provide the relevant information about a person who lives or works in the same household as them, 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 i.e. 'by association'.

Schools may choose to ask staff to complete and sign a declaration which would help identify those caught by the 'by association' requirement, particularly where an individual may be reluctant to self-declare. When it is identified that an individual is disqualified or the 'by association' criteria is met, where possible, employees who work in the specified early or later years provision should be asked to provide the following information to their employer about themselves or any person who lives in the same household as them:

- 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).

Any relevant information passed to the school must be provided to Ofsted as soon as reasonably practicable, but at the latest within 14 days of the date the school became aware of the information or ought reasonably to have become aware of it if they had made reasonable enquiries.

## Ofsted waiver

Individuals who are disqualified are not permitted to continue to work in early or later years provision or be directly concerned in the management of that provision.

Where a school becomes aware that a member of staff is disqualified they should explain the implications to the individual and advise them that they can usually apply to Ofsted for a waiver of disqualification (Ofsted cannot, for example, grant a waiver to an individual who is on the Children's Barred List). Further details about how to make an application for a waiver can be found in the Ofsted fact sheet: [Applying to 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 the school settings described above. Whilst a waiver application is under consideration the individual must not continue to work in these settings.

## Where to get advice

If you have any comments or questions about the disqualification requirements placed on schools by childcare legislation, or require clarification of any of the information provided in this advice, please contact us using [mailbox.disqualification@education.gsi.gov.uk](mailto:mailbox.disqualification@education.gsi.gov.uk).

Advice on safeguarding matters and associated guidance can also be obtained from local children safeguarding boards, including Local Authority Designated Officers (LADOs).

In due course we will consult on making changes to the Department's *Keeping children safe in education* guidance to include additional information about these disqualification requirements. The *Statutory Framework for the Early Years Foundation Stage* document will also be updated in due course.

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