



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 2018'](#) 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?

'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.

2.1 *'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.

2.2 *'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 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
- asked to complete a Declaration Form, as soon as possible, stating that they are not disqualified (a Model Declaration Form is enclosed).

4.2 All new appointments, including new volunteers, must complete a Declaration Form and their Disclosure and Barring Certificates should be checked against the list of offences in the Regulations.

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

4.4 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 as soon as possible, but no later than 14 days after the school should have known about their status.

Further Advice and Information

The schools HR team are available to provide advice and assistance on how to comply with the guidance and the law, the feasibility of redeploying disqualified persons and how the disqualified person can apply to Ofsted for their disqualification to be waived.

CONFIDENTIAL DECLARATION FORM

CHILDCARE (DISQUALIFICATION) REGULATIONS 2018

Employees should consider taking advice, e.g. from their trade union, professional association, Human Resources, prior to the completion of this document. This must not delay completion of the document.

Anyone who satisfies the definition of a disqualified person under the Regulations is prohibited from working in connection with any Early Years Care, Childcare for Children in Later Years, i.e. below the age of 8, or from being directly involved in the management of such provision, unless they have applied for, and been granted, a waiver from Ofsted.

Therefore, the school is required to ask all employees, Governors, volunteers, agency workers and other providers of services, who work at the school in connection with this type of provision, to make a declaration about whether they are a disqualified person under the Regulations.

A person may be disqualified under the Regulations because:

- they have certain Orders, Directions or Restrictions placed upon them in relation to children or childcare or:
- they have been Cautioned or Convicted of certain offences.

Therefore, before completing this declaration you **MUST** read the description of the circumstances that could mean that you are a 'Disqualified Person' provided in the Regulations and summarised in the Department for Education's Guidance **'Keeping Children Safe in Education 2018'**.

**DATA PROTECTION
FAIR PROCESSING NOTICE**

All information supplied on this form may be held and used as detailed:

The form will be processed and retained by the school in order to ensure that the information gathered is recorded on the school's ICT system and will be retained securely on the employee's file only for as long as necessary. The information on the form may also be shared with Human Resources.

The information you provide may also be shared with third parties of professional bodies such as the Disclosure & Barring Service, the Department for Education, Teaching Regulation Agency and Ofsted should there be a need for the Council/school to make a referral.

For further information about how we use your information please refer to the Council's Data Protection Policy on the School's [Extranet](#) and Privacy Statement on www.solihull.gov.uk.

The Declaration Form is to be completed by all new staff when they commence in their post and may be completed by all EYFS employees on an annual basis.

ANYONE WHO FAILS TO COMPLETE AND RETURN THIS FORM MAY BE SUBJECT TO DISCIPLINARY ACTION AND WILL NOT BE PERMITTED TO CONTINUE WORKING IN THE SCHOOL.

Name:		Job Title:	
School:			

Self-Declaration Form	Please circle one option for every question
Have you had a child placed under a care order?	YES/NO
Have or are your children the subject of a child protection order?	YES/NO
Have you been refused or had cancelled a Childcare registration * (*except for non-payment of fees) or have you been disqualified from private fostering?	YES/NO
Have you committed an offence overseas which would have resulted in disqualification if it had occurred in the UK?	YES/NO

If you have answered 'Yes' to any of the questions above, you should provide details below. You may provide this information separately if you wish, but you must provide it without delay. Details, should include copies of the Order, Restriction, Conviction, Caution, etc. (with date(s) and the relevant Court(s) or Organisation(s). For Cautions or Convictions, an enhanced DBS Certificate may be provided.

Declaration
In signing this form, I confirm that the information provided is true to the best of my knowledge and that I will notify the Headteacher immediately of anything that affects my suitability for work in the school, including any future Cautions, Warnings, Convictions, Orders or other Determinations that would disqualify me from working with children.

Signed:			
Print Name:		Date:	
Post Title:			

FREQUENTLY ASKED QUESTIONS

1. **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. Other offences may also lead to non-employment under normal DBS assessment processes.

All staff should be reminded that if their circumstances change, they must inform the school immediately.

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.)?**

Statement from Department of Education: “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.

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

Statement from 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?

A Declaration should be made of anything considered relevant. 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?

There are five key areas to check (below) as part of the regulations and only two of them can be discovered through the enhanced DBS check, and the barred list, where relevant. Therefore staff will need to complete the form as well.

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 (only know by asking on the form)
4. Childcare registration cancelled or refused* (*except for non-payment of fees) (only know by asking on the form)
5. Relevant overseas conviction (only know by asking on the form)

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. What should I do with the forms once these have been returned by an employee?

The forms should be placed on the employee's/volunteer's personal file kept within school in a secure place.

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.