

Childcare Disqualification Requirements

Guidance for settings
(Early years, Childcare and Schools)



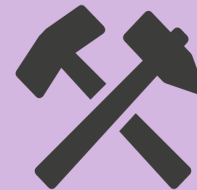
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In August 2018, the DfE updated its statutory guidance, detailing the obligations on early years settings, schools and local authorities under the Childcare Act 2006 and the application of the Childcare (Disqualification) and Childcare (Early Years Provision Free of Charge) (Extended Entitlement) (Amendment) Regulations 2018.

The key difference in the new 2018 guidance is that the ‘disqualification by association’ has been removed as a reason why an employee may not be permitted to work in childcare (other than where the childcare is provided in a domestic setting). This means that, from 31 August 2018, an individual cannot be disqualified from working in childcare because of an offence committed by someone who lives or works in their household – known as ‘disqualification by association’. The staff suitability declaration form has been amended to reflect this change.

This guidance is essentially a summary of the key points of the [DfE guidance](https://www.gov.uk/government/publications/disqualification-under-the-childcare-act-2006) (https://www.gov.uk/government/publications/disqualification-under-the-childcare-act-2006) and has been developed to support schools and council settings covered by the regulations. Where the guidance refers to ‘manager’ this will be the Headteacher for schools.

The arrangements set out in the guidance are **additional to** the arrangements in place to safeguard and promote the welfare of all children set out in *Keeping Children safe in Education* (KCSIE), the *Early Years Foundation Stage* (EYFS) and in *working Together to Safeguard Children*.

Settings must therefore continue to exercise their safeguarding duties in respect of all staff, and in this connection, may seek advice and support from LADO and their HR representative in relation to any matter that may represent a safeguarding risk.



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Which settings and staff are covered by the regulations?

The following categories of staff in nursery, primary or secondary school settings are covered:

- early years provision - staff who provide any care for a child up to and including reception age (i.e. from birth up to 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;
- 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;

- staff who are directly concerned with the management of such early or later years provision;
- volunteers and casual workers who are directly concerned with the management of childcare provision, or who work on a regular basis, whether supervised or not, in relevant childcare.

Which settings and staff are not covered?

- school governors are **not** covered by the regulations unless they volunteer to work in relevant childcare on a regular basis, or they are directly concerned with the day-to-day management of such provision.
- most staff who are only occasionally deployed and are not regularly required to work in relevant childcare **will not automatically come within the scope of the legislation.** Setting managers should exercise their judgement about when and whether such staff are within scope, evaluating and

recording any risks and control measures put in place, and taking advice from the LA Designated Officer (LADO), safeguarding lead officer or adviser and HR provider when appropriate. A record of any risk assessment should be retained on the employee's personnel file and a copy provided to the individual concerned. Such assessments would be appropriate, for example, in secondary schools where staff are involved in liaising with primary schools and may have contact with pupils up to age eight. In general, employees such as caretakers, cleaners, drivers, transport escorts, catering and office staff would not normally be covered by the legislation,

In relation to staff employed by childcare providers (i.e. not employed by the school or LA) who hire or rent school facilities or premises, settings should ensure that such providers have appropriate policies and procedures in place in regard to safeguarding children, including under the 2018 Regulations.



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Who is disqualified?

The criteria for disqualification under the 2006 Act and 2018 Regulations include those set out in the list below:

- a. inclusion on the Disclosure and Barring Service (DBS) Children's Barred List,
- b. being found to have committed certain violent and sexual criminal offences against children and adults which are referred to in regulation 4 and Schedules 2 and 3 of the 2018 Regulations (note that regulation 4 also refers to offences that are listed in other pieces of legislation);
- c. certain orders made in relation to the care of children which are referred to in regulation 4 and listed at Schedule 1 of the 2018 Regulations;
- d. refusal or cancellation of registration relating to childcare (*4), or children's homes, or being prohibited from private fostering (*5), as specified in Schedule 1 of the 2009 Regulations;
- e. living in the same household where another person who is disqualified lives or is employed (disqualification 'by association') as specified in regulation 9 of the 2018 Regulations (**note that regulation 9 only applies where childcare is provided in domestic settings, or under a domestic premises registration**);
- f. being found to have committed an offence overseas which would constitute an offence regarding disqualification under the 2018 Regulations if it had been done in any part of the United Kingdom.

(*4) Except if the refusal or cancellation of registration is in respect of registration with a child minder agency or the sole reason for refusal or cancellation is failure to pay a prescribed fee under the 2006 Act (Regulation 4(1) of the 2018 Regulations).

(*5) Pursuant to legislation references in para 17 of Schedule 1 to the 2018 Regulations.

The above list is only a summary of the criteria that lead to disqualification. Further details about the specific orders and offences which will lead to disqualification are set out in the 2018 Regulations.

Full details of what constitutes "disqualification" are in paragraphs 6 – 8 and Tables A and B of the [DfE Guidance \(July 2018\)](#).

Any queries should be referred to Ofsted.





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Staff Suitability Declaration Form

Current Staff

Although the statutory guidance states that it is not necessary for settings to ask staff to complete a self-declaration form to obtain Information about whether a staff member is disqualified, it states that settings **must** keep a record of those staff who are employed to work in or manage relevant child-care and should record the date on which disqualification checks were completed. For this reason it is advised that settings use the staff suitability declaration form provided.

Settings should inform all relevant staff of the disqualification regulations.

The **vast majority** of roles in relevant settings are exempt from the Rehabilitation of Offenders Act and as a result, individuals are normally required to disclose all their unprotected convictions and cautions, including those that are spent.

By signing the form, staff are declaring their own situation at that particular point in time. **Staff will be required to sign a declaration at the beginning of September each year** and will also be required

to inform the setting as soon as possible should any change in their circumstances arise. As each new form is signed, the previous form on file will be confidentially destroyed.

Settings should make available the DfE Guidance, which details the disqualification orders and offences. This is not a comprehensive list and therefore any potential disqualification should be explored with Ofsted.

It is recognised that in some cases the completion of the forms could be a very sensitive matter for employees. Managers are encouraged to provide support as necessary. Details of further support can be found on Page 8.

Storage and use of information

Declaration forms must be treated in the strictest confidence, and must be retained on personal files in accordance with the data protection provisions. Settings must be mindful of their obligations for handling personal data under the Data Protection Act 2018 (DPA)

the General Data Protection Regulation (GDPS) Rehabilitation of Offenders Act 1974 (ROA) and Human Rights Act 1998.

Personal data is held in line with the GDPR, as set out in the Data Privacy Primary Notice and the Recruitment and Employment Privacy Notice. Advice for schools on handling data is provided in the DfE's Data Protection Toolkit

Settings may choose to keep information on the declaration form as part of the single central record, or maintain a record separately. Where personal information that is relevant to disqualification is filed it should be kept on the personal file.

Substantive details of criminal records checks should not be retained and information that is provided that is not relevant should be destroyed. Settings must not ask staff or third parties to make requests for their criminal records in connection with employment. This is an offence under section 184 of the 2018 DPA and may result in prosecution against an organisation making such a request. Details can be found in paras 25 – 33 of the DfE Guidance,





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If an employee appears to be disqualified

If a manager becomes aware that an employee or volunteer in their setting is or may be disqualified from working with children, they should explain the implications of disqualification 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) and make clear what information the individual will need to share with Ofsted and why. Further guidance can be found in the DfE Guidance (para 38 – 44)

When communicating these matters to an employee, managers should take advice from HR, LADO and safeguarding lead officer or adviser.

Settings must not continue to employ an individual whose convictions, cautions, reprimands and personal circumstances disqualify them from working with children in connection with early or later years childcare provision, nor should a disqualified individual

provide or be directly concerned in the management of such provision unless they have received a waiver from Ofsted which covers the role that they wish to undertake.

Whilst awaiting a waiver decision where these circumstances arise, consideration should be given as to whether it is appropriate to make alternative working arrangements so that the employee is not working with the relevant age range, either by temporarily redeploying them or by adjusting appropriate aspects of their role.

Such adjustments may not be feasible, and so it may be necessary to consider granting leave with pay, or as a last resort, suspension with pay. Suspension from work would not be a punitive step, and would be taken to ensure that the legislation and DfE guidance are being observed.

Managers should contact their HR representative for advice.

When making decisions about the redeployment of staff, managers should take into account the risk of

harm to children concerned and their obligations under the 2006 Act, the EYFS, KCSIE guidance and any other relevant safeguarding guidance.

At this point, if the manager has not already contacted LADO, they should inform LADO by completing the [LADO referral form](#) in full ensuring that they detail:

- the individual's name;
- the individual's date of birth;
- the name of the setting the individual works in;
- the individual's home address;
- the name and contact details of the person referring the matter to the LADO; and
- a brief outline of the details (including child's details if applicable)

Alternatively the manager may ring the LADO Team on 01942 486034 or email lado@wigan.gcsx.gov.uk.

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The application can only be made by the individual; the setting cannot make it on their behalf, although they can support/assist the individual to make the application. Whilst the waiver is under consideration, the employee must not undertake work in the relevant settings. The details of how to make an application are available from Ofsted

There are no defined timescales for waiver decisions. If a waiver is granted, the setting will need to see the waiver letter before they can allow the person to return to their previous role. In the event that a waiver is not granted, or is partially granted, there will be implications for the continued employment of the person concerned, which may ultimately result in dismissal. Settings should contact their HR representative in such cases.

Staff suitability declaration form – recruitment process

All short-listed candidates for posts covered by the regulations, as

outlined in this guidance, will be required to complete a declaration form as part of the pre-employment process.

For schools who purchase services from the Local Authority, this is part of the pre-employment checks during the recruitment process for schools. Other schools will need to take appropriate steps to implement an appropriate process themselves.

External agency workers

Managers must ensure that any external agency providing staff in relevant settings carry out these checks prior to placing them in the school by asking the agency to confirm that such checks have been under-taken.

Trade Union Consultation

Local trade unions have been advised of the approach the LA recommends and have been provided with a copy of this guidance.

Further information and contact details

If you require further advice or support around disqualification from working with children please contact the LADO Team on 01942 486034 or your HR Representative.

You may contact the DfE with specific queries regarding disqualification requirements by emailing mail-box.disqualification@education.gov.uk

The general enquiries number for Ofsted is 0300 123 1231.

For schools that purchase the Employee Assistance Programme (EAP), which provides free confidential advice and support to employees on a range of issues. visit <http://thehub/eap>

The Education Support Partnership <https://www.educationsupportpartnership.org.uk/> is available for support and guidance on a wide range of issues; this service is a free service, available 24 hours a day, seven days a week, 365 days a year. Telephone 08000 562 561, text on 07909 341 229 or email support@edsupport.org.uk.

