

9c Childcare Disqualification Requirements

Guidance for Schools and Employees

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Childcare Disqualification Requirements – Revised Wigan Guide for Schools (May 2015)

Introduction

1. In February 2015 the Department for Education (DfE) published “Disqualification under the Childcare Act 2006 Statutory guidance to for local authorities, maintained schools, academies and free schools”. This replaced the supplementary advice that was issued by the DfE on 10 October 2014.
2. This guidance to schools has therefore also been updated to reflect the DfE guidance, and it **replaces the guidance issued to schools in December 2014**.
3. It is important to note the key differences between this guidance and the guidance previously issued to schools. The categories of staff covered by the Childcare (Disqualification) Regulations 2009 have not changed, and are as set out in paragraph 9 below. However, the DfE advice in October 2014 that it was acceptable to take a broad approach to the implementation of the regulations by applying them to all staff in primary schools has changed, with their new guidance making it very clear that **only those staff specifically covered by the regulations should be required to provide information about any convictions and cautions relating to themselves or those in their household**.
4. Given this situation, and in accordance with Data Protection, schools which have acted on the previous guidance are advised to **destroy any declaration forms which were completed by staff outside the categories set out in paragraph 9**, unless action has been taken in respect of the member of staff concerned – in which case schools should contact their HR provider for advice.
5. This guidance for schools is essentially a summary of the key points of the DfE guidance issued on 26 February 2015 and subsequently updated on 17march 2015; schools should refer to the detailed DfE guidance, available via the link below, for more information. It should be noted that the Disqualification under the Childcare Act 2006 Statutory guidance for local authorities, maintained schools, independent schools, academies and free schools is to be reviewed in September 2015.

DfE advice

6. The link to the DfE guidance is as follows:-

<https://www.gov.uk/government/publications/disqualification-under-the-childcare-act-2006>

7. 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*.

8. The Regulations prohibit anyone who is disqualified themselves under the Regulations, or who lives in the same household as a disqualified person or where a disqualified person works in their house from working in a relevant setting, including in schools.

Which staff are covered by the regulations?

9. The Childcare (Disqualification) Regulations 2009 indicate that 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.
10. 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.
11. 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.
12. 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**. Schools 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 Local Authority 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. 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.
13. In relation to staff employed by childcare providers (i.e. not employed by the school or local authority) who hire or rent school facilities or premises, schools should ensure that such providers have appropriate policies and procedures in place in regard to safeguarding children, including under the 2009 Regulations.

14. Who is disqualified?

The criteria for disqualification under the 2006 Act and 2009 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 2009 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 2009 Regulations;
- d. refusal or cancellation of registration relating to childcare,¹ or children's homes, or being prohibited from private fostering⁴, 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 2009 Regulations;
- f. being found to have committed an offence overseas which would constitute an offence regarding disqualification under the 2009 Regulations if it had been done in any part of the United Kingdom.

¹ 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 2009 Regulations).

⁴ Pursuant to legislation references in paragraph 17 of Schedule 1 to the 2009 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 2009 Regulations.

15. Full details of what constitutes "disqualification" are in Tables A and B of the DfE Guidance (February 2015), which is available via the link in paragraph 6 above. Any queries should be referred to Ofsted.

Staff Suitability Declaration Form – current staff

16. Although the Statutory Guidance states that it is not necessary for schools to ask staff to complete a self-declaration form to obtain information about whether a staff member is disqualified it states that schools **must** keep a record of those staff who are employed to work in or manage relevant childcare and should record the date on which disqualification checks were completed. For this reason it is advised that schools use the staff suitability declaration form provided with this Childcare Disqualification Requirements – Revised Wigan Guide for Schools (May 2015)
17. To comply with the DfE Statutory Guidance, schools should inform all relevant staff (as defined in paragraph 9 above) of the disqualification regulations. Wigan Council advise that relevant staff complete the attached 'staff suitability declaration form', to provide information about themselves, and about those living or working in their households, in accordance with the relevant legislation, which relates to working with children.

18. The vast majority of roles in schools and relevant childcare settings are exempt from the Rehabilitation of Offenders Act (ROA) and as a result, individuals are normally required to disclose all their unprotected convictions and cautions, including those that are spent.
19. Under the ROA, employees cannot be required to disclose spent cautions and convictions relating to individuals who live or are employed in the same household as them. Staff working in childcare are entitled to respond to a question relating to the criminal record of a person who is living or is employed in their household as though it only relates to 'unspent' cautions or convictions that are included on the list of relevant offences.
20. It is recognised that staff may not necessarily be aware of the requested information in respect of those living or working in their household; the declaration requires them to answer 'to the best of their knowledge'.
21. By signing the form, staff are declaring their own situation, and to the best of their knowledge, the situation of persons in their household, at that particular point in time. **Staff will be required to sign a declaration at the beginning of each school year**, and will also be required to inform the school as soon as possible should any change in their circumstances arise. As each new form is signed each September, the previous form on file will be confidentially destroyed.
22. Schools should make available the DfE Statutory Guidance, which details the disqualification orders, offences etc, and which is available via the link in paragraph 6 above, and make these available for staff for reference. This is not a comprehensive list therefore any potential disqualification should be explored with Ofsted.
23. It is recognised that in some cases the completion of the forms could be a very sensitive matter for employees. Schools are encouraged to provide support to employees as necessary; employees can also get support from their Trade Union and from the Employee Assistance Programme or the Teacher Support Network. Details are at the end of this document.

Storage and use of information

24. Declaration forms must be treated in the strictest confidence, and must be retained on personal files in accordance with the data protection provisions. Schools must be mindful of their obligations for handling personal data under the Data Protection Act (DPA) and should act accordingly. Advice on handling data is provided in the ICO's *Guide to data protection* and further information is available from the ICO (at <https://ico.org.uk>). The Headteacher is responsible for considering the declaration forms, and, as required, taking appropriate action; in respect of the Headteacher's declaration form, this should be considered, and acted upon if necessary, by the Chair of Governors.
25. Schools should not store personal data or sensitive personal data about household members without their consent, and they should ensure that any information is kept to a minimum, is accurate and is only stored for the minimum period of time necessary. Third parties (ie household members) must be informed of how and for what purpose the information will be used. To assist in complying with the data protection provisions in respect of third parties, a statement is included on the declaration form for the person concerned to sign to confirm that they have read it and understand how their information will be used and stored.

26. Schools 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 personnel file. Substantive details of criminal records checks should not be retained and information that is provided to schools that is not relevant should be destroyed.
27. Schools must not ask staff or third parties to make requests for their criminal records in connection with employment as, with effect from 10 March 2015, this will amount to an enforced subject access request which will be an offence under the DPA and may result in prosecution against an organisation making such a request.

Process to follow if an employee appears to be disqualified

28. If a Headteacher becomes aware that a staff member or volunteer in their school is or may be disqualified from working with children, the Headteacher should contact Ofsted (telephone: 0300 123 1231) and ask to speak to a Regulatory Officer to explain the circumstances; it is important that the name of the Regulatory Officer is recorded. If it is not possible to speak to a Regulatory Officer, an e-mail should be sent to disqualification@ofsted.gov.uk
The Headteacher should tell the relevant individual that Ofsted has been informed and 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. (The section headed 'Application for Ofsted waiver from disqualification' in the DfE Guidance (paragraphs 35 – 41) may assist in this regard). When communicating these matters to a staff member schools should take advice from HR, LADO and safeguarding lead officer or adviser.
29. 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. *This is a requirement of the Early Years Foundation Stage 3.18.*
30. Should the Headteacher wish to discuss the situation before contacting Ofsted, they may contact either the LADO or their HR Provider in the first instance.
31. If Ofsted confirm that a person's convictions, cautions, reprimands and personal circumstances disqualify them from working with children or that they are disqualified by association they cannot continue to work 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.
32. 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 elsewhere in school 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 be a neutral act, not a punitive step, and would be taken to ensure that

the legislation and DfE guidance are being observed. Schools may wish to contact their HR provider for advice should such situations arise.

33. When making decisions about the redeployment of staff schools 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.
34. At this point, if the school has not already contacted LADO, they should inform LADO by completing the LADO referral form (available from <http://www.wigan.gov.uk/WSCB/Professionals/LADO-notification-form.aspx>) in full ensuring that they detail:
 - the individual's name
 - the individual's date of birth
 - name of setting where the individual works
 - the individual's home address
 - the name and contact details of the person referring the matter to the LADO
 - a brief outline of the details (including child's details if applicable)
35. Alternatively the school may ring the LADO Team on 01942 486034 or email them on: lado@wigan.gcsx.gov.uk.
36. The disqualified person can make an application to Ofsted for a waiver, which, if granted, would enable them to continue to work in the relevant setting. The application can only be made by the individual; the school cannot make it on their behalf, although the school can support/assist the individual to make the application. Whilst the waiver is under consideration, the employee must not undertake work in the relevant setting – see paragraphs 28 – 34 above.
37. The details of how to make an application are available from Ofsted via the following link:
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/379549/Applying_20to_20waive_20disqualification_20early_20years_20and_20childcare_20providers_20from_20September_202014.doc
38. Ofsted will consider the application and either grant or refuse a waiver. There are no defined timescales for waiver decisions. If a waiver is granted, the school will need to see the waiver letter before they can allow the person to return to their previous role.
39. 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. If a waiver is not granted, the school should contact their HR provider immediately.

40. 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 those schools who purchase services from the Local Authority, arrangements will be made for this to be 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.

41. External agency workers in schools

Schools 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 concerned to confirm that such checks have been undertaken.

42. Consultation with Trade Unions

Local trade unions have been advised of the approach the Local Authority is recommending to schools, and have been provided with a copy of this guidance. Two unions (NASUWT and NUT) have indicated that, at a national level, they are seeking legal advice about the relevance of the Childcare (Disqualification) Regulations 2009 to schools settings.

43. 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 school HR Representative, via your nominated school link, or on 01942 827679; or you may contact the DFE with specific queries regarding disqualification requirements by emailing them at: mailbox.disqualification@education.gsi.gov.uk

The general enquiries number for Ofsted is 0300 123 1231.

Employee Assistance Programme (EAP)

For schools who have access to the Employee Assistance Programme (EAP), which provides free confidential advice and support to employees on a range of issues, this service is available by telephone on 0800 243 458 or visit www.workplaceoptions.co.uk
To log onto the site:

- click onto member login;
- type the word 'Wigan' (user name); and
- type the word 'employee' as the password.

Teacher Support Network

For teaching staff, The Teacher Support Network 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. They can be contacted by telephone on 08000 562 561 or by text on 07909 341 229 and they will call back within an hour. Alternatively their email address is: support@teachersupport.info

(May 2015)

Name of school:

Staff suitability declaration

This form is to be completed by new staff and volunteers who are covered by the Childcare (Disqualification) Regulations 2009 before commencement of employment and on an annual basis at the commencement of the autumn term.

Name of employee/volunteer:

Job title:

Name of Headteacher:

Please answer the questions and sign the declaration below to certify that you have, to the best of your knowledge, provided accurate and up to date information in respect of the Childcare (Disqualification) Regulations 2009, which relate to working with children from birth to children under the age of eight. Provision of any false information will be treated seriously, in line with disciplinary procedures, and could lead to dismissal.

Please read the DfE Disqualification under the Childcare Act 2006 Statutory guidance for local authorities, maintained schools, independent schools, academies and free schools which accompanies this declaration form. If there are any aspects of the declaration which you are unsure about, or if you have any questions or need assistance, please let your headteacher, or the recruiting manager if you are a job applicant, **know immediately**.

Please circle yes or no against each bullet point below:

<p>Questions relating to you (you are exempt from the Rehabilitation of Offenders Act and must disclose spent cautions and convictions relating to those listed below): Are you <i>disqualified from caring for children</i>? For example:</p> <ul style="list-style-type: none"> • Have you been cautioned (on or after 6 April 2007) or convicted (at any time) of any offences against a child? • Have you been cautioned (on or after 6 April 2007) or convicted (at any time) of any violent or sexual offences against an adult? • Have you been barred from working with children by the Disclosure and Barring Service (DBS)? • Have you been subject to any order relating to the care of children? • Have you been refused registration or had registration cancelled in relation to childcare or a children's home or have you been disqualified from private fostering? • Have you been found to have committed an offence overseas which would constitute an offence regarding disqualification under the 2009 Regulations if it had been done in any part of the United Kingdom ? • Have you been found not guilty of a relevant offence by reason of insanity or disability? 	<p>YES/NO</p> <p>YES/NO</p> <p>YES/NO</p> <p>YES/NO</p> <p>YES/NO</p> <p>YES/NO</p> <p>YES/NO</p>
<p>Questions relating to ALL others living or working in your household ('household' means anyone residing permanently with you or for any temporary period of time). Please disclose <u>unspent</u> cautions and convictions related to those below:</p> <p>Is anyone living or working in your household <i>disqualified from caring for children</i>:</p> <ul style="list-style-type: none"> • Has anyone living or working in your household been cautioned (on or after 6 April 2007) or convicted (at any time) of any offences against a child? • Has anyone living or working in your household been cautioned (on or after 6 April 2007) or convicted (at any time) of any violent or sexual offences against an adult? • Has anyone living or working in your household been barred from working with children by the Disclosure and Barring Service (DBS)? 	<p>YES/NO</p> <p>YES/NO</p> <p>YES/NO</p>

• Has anyone living or working in your household been subject to any order relating to the care of children?	YES/NO
• Has anyone living or working in your household been refused registration or had registration cancelled in relation to childcare or a children's home or has anyone been disqualified from private fostering?	YES/NO
• Has anyone living or working in your household been found to have committed an offence overseas which would constitute an offence regarding disqualification under the 2009 Regulations if it had been done in any part of the United Kingdom?	YES/NO
• Has anyone living or working in your household been found not guilty of a relevant offence by reason of insanity or disability?	YES/NO

If you have answered YES to any of the questions above, please provide further information below:

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For household member, if appropriate

If you have provided information about someone in your household, please enter their name below, and ask them to read and sign the statement below, which explains what the school will do with the information:

Name of household member:

Relationship to employee (eg husband, wife, partner, son daughter etc).....

I confirm that I have read the information provided about me on this form, and I consent to the school retaining it in line with the following provisions:

- The information will be used solely for the purpose of complying with the Childcare (Disqualification) Regulations (2009) and will be held confidentially on the personal file of the employee who has completed this form.
- Any information provided which is not relevant to the Childcare (Disqualification) Regulations (2009) or which contains more detail than necessary for the purpose of the school complying with the Regulations will be destroyed in a confidential manner
- If I have any queries about this form, I may contact the Headteacher of the school and speak to him/her in confidence about this matter

Signature:

Date:

I confirm that the information that I have provided on this form is true and accurate, to the best of my knowledge.

I understand my responsibility to safeguard children and am aware that I must notify the head teacher of anything that may affect my suitability to work with children, including the suitability of anyone living or working in my household.

I will ensure I notify the head teacher immediately of any changes to my situation or that of anyone living or working in my household.

I give permission for you to contact any previous settings, local authority staff, the police, the DBS, or any medical professionals, to share information about my suitability to care for children.

I have read and understand the DfE Disqualification under the Childcare Act 2006 Statutory guidance for local authorities, maintained schools, independent schools, academies and free schools

Signed.....
Date.....
(Name in block capitals).....

Headteacher (signature).....
Date.....
(Name in block capitals).....

Head teacher – please record follow-on action taken, where relevant

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Signed.....
Date action taken.....
Head teacher

Note to Office: Please destroy previously completed declaration and replace with the current declaration.

Any uncertainty around disqualification should be queried with Ofsted.

(May 2015)