

Childcare Disqualification Requirements (August 2018)

Guidance for Schools and Employees

Document history

School/Academy:	
Date adopted by Governing Body:	
Signed (Chair):	
Signed (Headteacher):	

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February 2015	Updated hyperlinks
May 2015	Review - legislative changes
July 2018	Review – legislative changes

This Guidance on Childcare Disqualification Requirements has been developed for all Wigan Schools and Academies that purchase the HR Services of Wigan Council under a Service Level Agreement.

Introduction

1. In July 2018 the Department for Education (DfE) published draft “Disqualification under the Childcare Act 2006 Statutory guidance to for local authorities, maintained schools, academies and free schools”, which becomes statutory guidance with effect from 31 August 2018. This replaces the former guidance that was issued by the DfE in June 2016.
2. This guidance to schools has therefore also been updated and it **replaces the guidance issued to schools in May 2015.**
3. 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). In the context of schools, 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, included at the end of this guidance, has been amended to reflect this change.
4. Until 31 August 2018 the current guidance should be followed, dated May 2015 and available on the Employment Handbook for Schools. From 31 August onwards this updated guidance and form, dated July 2018, should be used, which is also available on the Employment Handbook for Schools.
5. This guidance for schools is essentially a summary of the key points of the DfE guidance issued in July 2018; schools should refer to the detailed DfE guidance, available via the link below, for more information.

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*. **Schools 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 from their HR provider in relation to any matter that may represent a safeguarding risk.

Which staff are covered by the regulations?

8. The Childcare (Disqualification) and Childcare (Early Years Provision Free of Charge) (Extended Entitlement) (Amendment) Regulations 2018 (“the 2018 Regulations”) 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.
9. 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.
10. 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 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,

11. 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 2018 Regulations.

12. 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.

^{1(*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 paragraph 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.

13. Full details of what constitutes "disqualification" are in paragraphs 6 – 8 and Tables A and B of the DfE Guidance (July 2018), which is available via the link in paragraph 6 above. Any queries should be referred to Ofsted.

Staff Suitability Declaration Form – current staff

14. 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 Guidance for Schools (July 2018)
15. To comply with the DfE Statutory Guidance, schools should inform all relevant staff (as defined in paragraph 8 above) of the disqualification regulations. Wigan Council advise that relevant staff complete the attached 'staff suitability declaration form', to provide information about themselves, in accordance with the relevant legislation, which relates to working with children.
16. 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.
17. 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 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.
18. 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 and therefore any potential disqualification should be explored with Ofsted.
19. 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 Education Support Partnership. Details are at the end of this document.

Storage and use of information

20. 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 2018 (DPA), General Data Protection Regulation (GDPR), the Rehabilitation of Offenders Act 1974 (ROA) and the Human Rights Act 1998 and should act accordingly. Where the Council provides HR support to schools, and in this connection may therefore hold personal information about staff in schools, the Council holds that information in

accordance with the GDPR. The school also holds personal staff data in line with the GDPR, as set out in the Data Privacy Primary Notice and the Recruitment and Employment Privacy Notice. Advice on handling data is provided in the DfE's Data Protection Toolkit for Schools, available here: <https://www.gov.uk/government/publications/data-protection-toolkit-for-schools>

21. 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.
22. 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 personal 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.
23. 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 amounts to an enforced subject access request which is an offence under section 184 of the 2018 DPA and may result in prosecution against an organisation making such a request.
24. Schools are advised to refer to the details in paragraphs 25 – 33 of the DfE Guidance, available via the link in paragraph 6 above, for further guidance on storage and use of information.

Process to follow if an employee appears to be disqualified

25. 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 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 an Ofsted waiver from disqualification' in the DfE Guidance (paragraphs 38 – 44) 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.
26. A school 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.

- 27.** 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 not be 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.
- 28.** 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.
- 29.** 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)
- 30.** Alternatively the school may ring the LADO Team on 01942 486034 or email them on: lado@wigan.gcsx.gov.uk
- 31.** 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 25 - 30 above.
- 32.** The details of how to make an application are available from Ofsted via the following link: <https://www.gov.uk/government/publications/applying-to-waive-disqualification-early-years-and-childcare-providers>
- 33.** 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.

34. 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.

Staff suitability declaration form – recruitment process

35. 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, 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 in schools

36. 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.

Consultation with Trade Unions

37. 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.

38. 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 404030.

You may contact the DfE with specific queries regarding disqualification requirements by emailing them at: mailbox.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, this service is available by telephone on 0800 030 5182 or visit the health and well-being portal www.healthassuredeap.com. **Those schools that participate in the EAP scheme the Log in details for the EAP portal will be confirmed by the school business manager/school office.**

To log onto the site:

click onto member login;
type the word [School to insert username here];
type the word [School to insert password here] as the password.

The Education Support Partnership (formerly the Teacher Support Network) <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.

You can contact them by telephone on 08000 562 561 or text them on 07909 341 229 and they will call you back within an hour. Alternatively you can email them at: support@edsupport.org.uk.

Name of school/Council Department:

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Staff suitability declaration

This form is to be completed by new staff and volunteers who are covered by the Childcare (Disqualification) and Childcare (Early Years Provision Free of Charge) (Extended Entitlement) (Amendment) Regulations 2018 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:

Or Line Manager (for Council staff):

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 (Early Years Provision Free of Charge) (Extended Entitlement) (Amendment) Regulations 2018, 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 head teacher or Line Manager, 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>
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If you have answered YES to any of the questions above, please provide further information overleaf:

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What the information you have provided will be used for:

- The information will be used solely for the purpose of complying with the Childcare (Disqualification) and Childcare (Early Years Provision Free of Charge) (Extended Entitlement) (Amendment) Regulations 2018 before commencement of employment and on an annual basis as a minimum and obligations under the Childcare Act 2006 in schools.
- This will be held confidentially on the personal file of the employee who has completed this form and only shared with Ofsted if a Waiver application is required.
- Any information provided which is not relevant to the Childcare (Disqualification) and Childcare (Early Years Provision Free of Charge) (Extended Entitlement) (Amendment) Regulations 2018, before commencement of employment and on an annual basis as a minimum, and to obligations under the Childcare Act 2006 in schools or which contains more detail than necessary for the purpose of complying with the Regulations will be destroyed in a confidential manner.

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/Line Manager of anything that may affect my suitability to work with children.

I will ensure I notify the head teacher/ Line Manager immediately of any changes to my situation.

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/Line Manager (signature).....
Date.....
(Name in block capitals).....

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

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Signed.....
Date action taken.....
Head teacher/Line Manager

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

Any uncertainty around disqualification should be queried with Ofsted.

(July 2018)