**Clarification around Disqualification under the Childcare Act 2006 and the continuing need for declarations of suitability**

You will be aware that the disqualification by association requirement (i.e. the need for staff to declare the disqualification criteria of those living at the same address) ceased with effect from 31 August 2018 for those in non-domestic settings (including schools). **However, the need for staff in relevant settings to declare their suitability to work in their roles continues.** Details of the updated statutory guidance can be found at [www.gov.uk/government/publications/disqualification-under-the-childcare-act-2006](http://www.gov.uk/government/publications/disqualification-under-the-childcare-act-2006). IT is recommended that school leaders and business managers familiarise themselves with this guidance.

The declaration does not need to be in writing, but must be recorded, ideally on the single central record. The form at Appendix A is provided for schools to use if they wish to continue to use a paper copy to capture this information.

For new employees, an up-to-date enhanced DBS certificate will help schools establish whether offences committed by individuals are relevant offences. For existing employees schools could consider using the DBS Update Service to supplement any employee self-declaration.

**Data Protection and records**

Schools must ensure that information gathered in relation to those covered by the act and regulations is handled fairly and lawfully and kept securely, consistent with relevant legislation including the Data Protection Act 2018 and GDPR. The statutory guidance provides further advice about spent and protected convictions in the Rehabilitation of Offenders Act, in addition to importance of the review of historical data and removal/destruction of information no longer required.

The statutory guidance states that personal data, including any details of an individual’s criminal record, should not be held without consent from the individual. In instances where an individual does not consent to their personal data being held, schools should only record the date the declaration was made, details of any additional safeguarding restrictions, and whether or not an Ofsted waiver has been granted.

**Who is covered by the legislation?**

Staff are covered by this legislation if they are employed or engaged to provide early years childcare. This covers the age range from birth until 1 September following a child’s fifth birthday (up to and including reception year), or later years childcare covering children above reception age but who have not attained the age of 8, and applies to all school settings. It also applies to those who are directly concerned with the management of such childcare.

The 2018 statutory guidance provides further clarity in relation to outside providers using school facilities, centrally employed local authority employees, agency or third-party and self-employed workers, trainees and students working at the school, and volunteers and casual workers. It also provides advice on the roles that would normally be excluded, and those people who are not covered by the requirements.

**Application for an Ofsted waiver from disqualification**

Where an individual makes a declaration that falls into one of the disqualification criteria, this should be explained to them and, where appropriate, they should be instructed to apply to Ofsted for a waiver (this will not be granted where individuals are on the Children’s Barred List). Further information can be found at: [www.gov.uk/government/publications/applying-to-waive-disqualification-early-years-and-childcare-providers](http://www.gov.uk/government/publications/applying-to-waive-disqualification-early-years-and-childcare-providers) and in the statutory guidance.

Whilst a waiver application is being processed by Ofsted, schools must assess the alternatives in relation to redeployment within the school and carry out a risk assessment to ensure that individuals do not pose a danger to early years children (or later years in childcare provision). Where this is not possible, HR advice should be sought and it may be necessary to send the member of staff home on paid leave while they apply for a waiver from Ofsted. Your HR advisor should be contacted for further advice and can provide a template letter.

Schools must not continue to employ an individual who is disqualified 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. This does not imply that individual are prevented from working in a school in any other setting.

**Schools must ensure that:**

* senior leaders and school business managers are familiar with the full statutory guidance ([www.gov.uk/government/publications/disqualification-under-the-childcare-act-2006](http://www.gov.uk/government/publications/disqualification-under-the-childcare-act-2006)) and actions required
* reference is made in relevant school policies and staff alerted to the requirements appropriate to their roles in school
* anyone who falls within the relevant categories is made aware that they will be required to make an annual declaration
* relevant staff and other workers at the school complete the declaration process annually
* swift follow-up action is taken following a declaration
* staff are no longer asked questions about the criminal history of associates of the individual
* it is made clear to staff covered by the legislation, their responsibility to notify the school immediately if their circumstances change in relation to their declaration during the year
* they seek HR or Safeguarding advice, as necessary

**APPENDIX A – STAFF SUITABILITY DECLARATION** (page 1 of 2)

Name of school: [name]

**Disqualification under the Childcare Act 2006 and amendment regulations 2018**

This form is to be completed by all new staff before commencement of employment and by all staff and volunteers on an annual basis at [school to determine time of year].

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Post: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Please answer the questions set out below and sign the declaration to confirm that you are suitable to work with and care for children. If there are any parts of the declaration that you are not able to meet, you should disclose this immediately to the Headteacher.

|  |  |  |
| --- | --- | --- |
| Have you been cautioned or convicted of any offences against a child? | YES | NO |
| Have you been cautioned or convicted of any violent or sexual offences against an adult? | YES | NO |
| Have you been barred from working with children by the Disclosure and Barring Service (the DBS, this used to be known as the CRB)? | YES | NO |
| Have you been prohibited from teaching? | YES | NO |
| If you have children, have your children, at any time, been taken into care? | YES | NO |
| Have your children been, at any time, the subject of a child protection order? | YES | NO |
| Has a court order been made, at any time, in respect of a child under your care? | YES | NO |
| Have you ever been refused registration or had registration cancelled in relation to childcare or a children’s home or have you ever been disqualified from private fostering? | YES | NO |
| Have you ever been cautioned, reprimanded, given a warning or convicted of any similar offence in another country? | YES | NO |

Further information about relevant convictions/cautions can be found on the reverse of this form.

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

|  |
| --- |
|  |

I understand my responsibility to safeguard children and am aware that I am required to notify the head teacher of anything that may affect my suitability.

I understand that failure to declare any relevant information may result in disciplinary action, which could lead to dismissal.

I will ensure that I notify the head teacher immediately of any changes in relation to this declaration.

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

Signed: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Print name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Headteacher Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

|  |
| --- |
| Headteacher notes of any action taken:  Signature: Date: |

**Prohibitions** (page 2 of 2)

Schools are prohibited from knowingly employing a disqualified person in a relevant setting unless a waiver has been granted by Ofsted (see below). The disqualification criteria under both the 2006 act and the 2018 regulations are listed in the updated regulations and include:

* inclusion on the Disclosure and Barring Service (DBS) Children’s Barred List
* 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)
* 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
* refusal or cancellation of registration relating to childcare (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)), or children’s homes, or being prohibited from private fostering , as specified in paragraph 17 of Schedule 1 of the 2018 regulations
* 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, defined as ‘premises which are used wholly or mainly as a private dwelling’ in section 98 of the act, or under a domestic premises registration, including non-domestic premises up to 50% of the time)
* being found to have committed an offence overseas, which would constitute an offence regarding disqualification under the 2018 regulations if it had been committed in any part of the United Kingdom

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 and appendices.

**Relevant offences and orders**

Under the legislation a person is disqualified if they are found to have committed an offence which is included in the 2018 regulations (a ‘relevant offence’) this includes:

* being convicted of a relevant offence
* on or after 6 April 2007, being given a caution for a relevant offence
* on or after 8 April 2013, being given a youth caution for a relevant offence

A person who is found not guilty of a relevant offence by reason of insanity or found to be under a disability and to have committed the act for which they have been charged in respect of a relevant offence is also disqualified (regulation 2(2) of the 2018 regulations).

Additionally any offence resulting in the death of or bodily injury of a child is considered a relevant offence under the legislation and must be disclosed.

For further information, please go to: [www.gov.uk/government/publications/disqualification-under-the-childcare-act-2006](https://www.gov.uk/government/publications/disqualification-under-the-childcare-act-2006)