



DISQUALIFICATION GUIDANCE for Schools and Academies

KEY LEGISLATION AND GUIDANCE:

Key legislation and guidance with which staff should be provided by the Designated Safeguarding Lead relating to Disqualification and Disqualified Persons include the following:

1. Childcare Act 2006: sections 75 and 76 (“The 2006 Act”)
2. The Childcare (Disqualification) Regulations 2009 (“the 2009 Regulations”): Full details of what constitutes disqualification can be found in the Regulations: specifically 4 and schedules 1, 2 and 3.
3. Disqualification under the Childcare Act 2006: Statutory Guidance published in February 2015 (“the February 2015 Statutory Guidance”): specifically Table A which sets out the relevant offences.

WHAT ARE DISQUALIFICATION CHECKS?

These Disqualification checks arise from the 2009 Regulations. They are separate to other checks that are already being carried out by Schools such as DBS Checks.

The term School(s) referred to throughout this Guidance means Catholic Schools and Academies.

A person may be disqualified (“a Disqualified Person”) under the 2009 Regulations because:

- they are on the Children’s Barred List (for which the School will carry out a Disclosure and Barring System check);
- have been cautioned for or convicted of certain violent and sexual criminal offences against children and adults;
- there are grounds relating to the care of children (including where an order is made in respect of a child under a person’s care, including their own children);
- they have had registration refused or cancelled in relation to childcare or children’s homes or been disqualified from private fostering;

- they live in the same household where another person who is disqualified lives or works. This is called ‘disqualification by association’.

WHO IS A DISQUALIFIED PERSON?

A Disqualified Person would fall within the following categories of staff in nursery, primary or secondary school settings:

- ❖ Those who provide early years childcare (this covers the age range from birth until 1 September following a child’s fifth birthday i.e. up to and including reception age). This includes education in nursery and reception classes and/or 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.
- ❖ Those who provide later years childcare (this covers children above reception age but who have not attained the age of 8) in nursery, primary or secondary school). This does not include education or supervised activity for children above reception age during school hours but it does include before school settings such as breakfast clubs and after school provision;
- ❖ Those who are directly concerned in the management of such childcare.

It is a criminal offence for Schools to continue to employ knowingly a Disqualified Person

It is a criminal offence for a Disqualified Person to be involved in childcare in any of the categories set out above.

Paragraph 9 of the February 2015 Statutory Guidance makes clear that staff such as caretakers, cleaners, drivers, transport escorts, catering and office staff are not employed to directly provide childcare and are therefore not covered by the legislation.

Paragraph 17 of the February 2015 Statutory Guidance specifies that volunteers and casual workers come within the scope of the legislation if they are directly concerned with the management of childcare provision or work on a regular basis in relevant childcare.

You should also note that the School Governance (Constitution) (England) Regulations 2012 provide that a person is disqualified from holding or continuing to hold office as a governor if they are disqualified from registration under the 2006 Act

In the case of workers that are supplied by an agency or third party organisation, schools should ensure that the agency or organisation has carried out the relevant checks.

HOW SHOULD YOUR SCHOOL NOTIFY STAFF?

Paragraph 20 of the February 2015 Statutory Guidance states that: '*Schools must make these staff aware of what information will be required of them and how it will be used to make decisions about disqualification. **Schools are free to decide how to bring these requirements to the attention of their staff.** As a means of making staff aware of their duty to provide such information, **they may for example choose to include a section in the school's safeguarding policy, or another policy document,** or by means of an addition to new staff members' contracts of employment. Schools should draw this guidance to the attention of their staff and the information provided by Ofsted referenced in this guidance.'*

Paragraph 21 continues: *In addition to ensuring staff are made aware of the relevant legislation, schools need to take steps to gather sufficient and accurate information about whether any member of staff in a relevant childcare setting is disqualified by association. **It is not necessary for schools to ask staff to complete a self-declaration form to obtain this information and about whether a staff member is disqualified.***

ACTION TO BE TAKEN BY YOUR SCHOOL

- Schools should have already appointed a Designated Safeguarding Lead in compliance with updated Statutory Guidance: Keeping Children Safe in Education published in March 2015 paragraph 36.
- Schools should print the Schedules to the 2009 Regulations (which detail the disqualification orders, offences etc) and make these available for staff
- Schools should print the relevant offences are set out in Table A of The February 2015 Statutory Guidance and make these available for staff
- Schools should ask all staff (including those who are absent from work) to acknowledge that they have read and understood the Disqualification Policy. The Disqualification Policy should be incorporated into the School policy and procedures.
- The Statutory Guidance provides that: *Schools that choose to add information pertaining to disqualification into their policies should alert all staff to the addition, for example via a staff bulletin or an e-mail.*
- The Disqualification Policy sets out the ongoing obligation to disclose to the School if they are or become a Disqualified Person.
- Schools should remind staff of this obligation on a regular basis, for instance, by reminding staff of the Disqualification Policy at annual safeguarding training and/or by way of an annual staff bulletin or email and/or at any point a staff member changes jobs.

- Schools must ensure that any external agency providing relevant staff in relevant settings carry out these checks prior to placing them in the School.
- All short-listed candidates in relevant settings, from this point onwards, should be required to sign the Disqualification Policy, (and DBS certificates should be checked).
- Schools will also need to update their Pre-Employment Checks Procedure accordingly. There is no requirement from the DfE or the 2009 Regulations to add the check (of relevant staff) to the single central record.
- Schools must handle and store all information in school carefully, in accordance with normal Data Protection rules

WHAT IF AN EXISTING OR NEW STAFF MEMBER IS DISQUALIFIED?

You must always consult with your Human Resources provider and / or seek independent legal advice if you become aware of any member of staff who is or may be disqualified. Decisions will need to be taken by schools on a case by case basis subject to their individual circumstances.

The 2009 Regulations require that anyone who is disqualified will need to be immediately removed from the relevant setting (either by temporary appropriate redeployment where possible or suspension if absolutely necessary).

Ofsted must be notified as soon as possible but at the latest within 14 days of the date that the school became aware of the information. The DfE recommend contacting Ofsted using their normal enquiry email address: enquiries@ofsted.gov.uk.

Schools should also explain the implications to the relevant staff member and advise them that they can usually apply to Ofsted for a waiver of disqualification.

END OF GUIDANCE DOCUMENT