

Statutory guidance
**Disqualification under the Childcare Act
2006**

Updated 31 August 2018

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

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About this guidance

This is statutory guidance from the Department for Education on the application of the Childcare (Disqualification) and Childcare (Early Years Provision Free of Charge) (Extended Entitlement) (Amendment) Regulations 2018 ("the 2018 regulations") and obligations under the Childcare Act 2006 in schools.

This latest guidance came into force **1st September 2018**.

The new 2018 Regulations remove the **disqualification by association** offence from schools. Disqualification (under Regulation 9) now only applies when childcare is provided on domestic settings. However, schools should be aware **Disqualification under the Childcare Act 2006, still applies** to staff meeting the published criteria.

What does this mean to schools?

Following the removal of disqualification by association, schools are no longer required to establish whether a member of staff providing, or employed to work in childcare, is disqualified by association. Accordingly, schools are not entitled to ask about cautions or convictions of someone living or working in the household of relevant staff members.

It should be noted that other statutory guidance may be relevant where the third-party lives on the school premises, such as in boarding schools.

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 \(Disqualification\) and Childcare \(Early Years Provision Free of Charge\) \(Extended Entitlement\) \(Amendment\) Regulations 2018.](#)
3. [Disqualification under the Childcare Act 2006: Statutory Guidance published in August 2018. The August 2018 Statutory Guidance"\): specifically, Table A which sets out the relevant offences.](#)

What roles does the guidance cover?

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 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.
- 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.
- School governors are also subject to additional arrangements and can also be disqualified from being a governor in maintained schools, under regulation 17, Schedule 4 of the School Governance (Constitution) (England) Regulations 2012.
- Volunteers and casual workers (including individuals on work experience) who are directly concerned with the management of childcare provision, or who work on a regular basis, whether supervised or not, in relevant childcare.
- Staff from any agency, or third-party organisation (for example a supply teacher, music teacher or sports coach) to work in relevant childcare provision or contract out such childcare. Schools must obtain confirmation that the agency or organisation providing the staff has informed them that they will be committing an offence if they are deployed to work in relevant childcare or are directly concerned in the management of such provision, if they are disqualified under the 2018 regulations. This should include the provider requesting that their staff inform them if they consider that they could be disqualified under the legislation.
- Self-employed (for example a music teacher or sports coach) to work in relevant childcare provision. School must ensure that they are compliant with the requirements of the legislation.
- Training suppliers, such as initial teacher training providers, placing trainees or students at school, who are working or being trained in a relevant setting.
- Trainee staff (salaried), for example on employment-based teacher training programmes, it's the responsibility of the school to ensure that they comply with the legislation.
 - If a salaried trainee is disqualified from childcare, schools should inform the training provider of this.
- Trainee staff (fee or self-funded students), it's the responsibility of the training provider to conduct the relevant checks to ensure that trainees placed in schools are not disqualified from childcare or that they have obtained a waiver from Ofsted.

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, taking advice from their HR provider, the authority's designated officer, safeguarding lead officer or adviser when appropriate.

Arrangements must only be applied if an individual is in scope of the criteria and should not be used in a 'just in case' scenario or where an individual will not be undertaking a relevant childcare provision under the 2018 regulations.

A record of the assessment should be retained on the employee's personnel file and a copy supplied to the individual concerned.

The following categories of staff would **not usually** be covered by the legislation but there will be exceptions:

- caretakers, cleaners, drivers, transport escorts, catering and office staff.
- school governors and proprietors, 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.

What should schools do now?

Schools must ensure:

- they are not knowingly employing a person who is disqualified under the 2018 regulations in connection with relevant childcare provision. They must also ensure that they do not apply these arrangements to individuals who do not fall in scope or are specifically excluded.
- in gathering information to make these decisions schools must ensure that they act proportionately and minimise wherever possible the intrusion into the private lives of their staff. Schools must ensure that they handle personal information fairly and lawfully and take care not to breach:
 - Data Protection Act 2018 (DPA)
 - General Data Protection Regulation (GDPR) (EU) 2016/679
 - Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (as amended in 2013) ('the Exceptions Order')
 - Rehabilitation of Offenders Act 1974 (ROA)
 - Human Rights Act 1998
- anyone who falls within the relevant categories of staff described in the staff covered and staff who may be covered sections is made aware of the legislation.
- make these staff aware of what information will be required of them and how it'll be used to make decisions about disqualification.

Schools are free to decide how to bring these requirements to the attention of their staff, drawing the regulations to their attention, as well as the information provided by Ofsted. It's not necessary to ask staff to complete a self-declaration form to obtain information about whether a staff member is disqualified. However, where schools decide to adopt the approach of using a self-declaration form, it's important that the questions posed in the declaration are relevant and limited to the requirements of the legislation.

Schools should be aware it is a criminal offence to continue to knowingly employ a Disqualified Person and for a Disqualified Person to be involved in childcare in any of the categories set out above.

Schools should:

- review their staffing policies and safer recruitment procedures, declaration documents, and make changes accordingly
- consider providing training to governors and staff with management responsibilities in this important area.
- inform their staff that when responding to questions about their cautions or convictions, they do not need to provide details about any convictions that are not relevant to the childcare disqualification legislation.
- keep a record of those staff who are employed to work in or manage relevant childcare provision.
 - record the date on which the information about disqualification was provided
- review any historic data collected and destroy any information which is no longer required
- not hold personal data, including any details of an individual's criminal record, without consent from the individual.
- choose to keep details of their checks as part of the single central record, or they may retain a separate record.
- ensure that their procedures make the requirements of the legislation clear and should explain to new and existing staff working in relevant childcare that they should inform the school if their circumstances change.
- alert all staff to the addition, for example via a staff bulletin or an email, if they choose to add information pertaining to disqualification into their policies.