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| Southampton City Council Strategic HR & OD | Date Printed: Nov 2018 |



**Childcare Disqualification Requirements**

**(Guidance for Schools)**

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**Keeping Children Safe in Education:**

**Childcare Disqualification Requirements (Guidance for Schools) (Updated 2018)**

1. **Introduction**

The Department for Education (DfE) have issued statutory guidance for schools and local authorities regarding the responsibilities for schools in relation to the Childcare (Disqualification) and the 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 guidance replaces the supplementary advice that was issued by the DfE in June 2016. A copy of the guidance can be found at:

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

This guidance covers the main responsibilities for schools in relation to this document.

1. **Who Is Covered By This Guidance**

Staff and volunteers who:

* Provide **any** care for children in early years provision – this includes children up to and including reception age.
* Provide childcare outside of school hours for children who are above reception age but who have not attained the age of 8 (breakfast and after school club provision)
* Are directly concerned in the management of such early or later years provision.
1. **Third Parties Covered by This Guidance**

**Agency staff/training providers –** Where schools use staff/volunteers from an agency or training providers in line with Section 2, they must obtain confirmation that the agency/training provider has informed the individual of their obligations under the above Regulations and has requested that the individual inform them without delay if they consider that they could be disqualified under the legislation.

**Local authority staff -** Where centrally employed local authority staff/volunteers are deployed to work in line with Section 2 in schools i.e. peripatetic music or special needs teachers, it is the responsibility of the authority and the area they work for to ensure that they are compliant with the requirements of the legislation. A letter confirming the checks carried out for authority staff has been sent to all Southampton schools but can also be found on the HR pages of the schools website.

**Contractors –** Where schools use contractors (self-employed) to work in line with Section 2, it is for the school to ensure that they are compliant with the requirements of the legislation.

It is recommended that confirmation that third parties are compliant with the requirements of the legislation be held with your Single Central Register.

1. **Who Is Not Covered?**

Staff/volunteers that are not directly providing childcare such as site managers, cleaners, drivers, transport escorts, catering and office staff are not covered by the legislation. This includes staff/volunteers in these roles that are only occasionally required to provide childcare in line with Section 2.

Staff employed by childcare providers (not employed by the school or SCC) that rent/hire school facilities. However, schools should check and confirm that such providers have appropriate policies and procedures in place regarding safeguarding children, including having measures in place to ensure that they are compliant with the requirements of the legislation.

Governors are not covered unless they volunteer to work in the school in line with Section 2 on a regular\* basis.

\*Regular is deemed to be at least once a week.

Schools must exercise their own judgement about when and whether a member of staff/volunteer falls within the scope of the legislation and should seek advice from their HR provider and the Local Area Designated Officer (LADO).

1. **Who Is Disqualified?**

A person is disqualified if they have been:

* included on the Disclosure and Barring Service (DBS) Children’s Barred List
* cautioned for, or convicted of certain violent or sexual criminal offences against adults and any offences against children.
* the subject of an Order, direction or similar in respect of childcare, including orders made in respect of their own children.
* had registration refused or cancelled in relation to childcare of children’s homes or have been disqualified from private fostering.
* Been 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

Further information regarding what constitutes “disqualification” can be found on the following: <http://www.legislation.gov.uk/uksi/2018/794/contents/made>

1. **What should schools do now?**

Schools must firstly identify staff and volunteers that are working in the capacity outlined in Section 2 of this guidance and will therefore be covered by the legislation.

Having identified these staff and volunteers, schools need to make them aware of their obligations by sending them Appendix A (Letter to Staff Covered by the Childcare Disqualification Legislation) which is at the back of this guidance. This outlines their obligations to disclose any relevant information if they are disqualified (as outlined in Section 5).

A copy of the DfE statutory guidance (link in Section 1) should be held in the School Office and made available to the relevant staff as this provides further information on the relevant offences and orders. Should further guidance be needed on this then schools are advised to contact the LADO or their HR provider.

Staff and volunteers should also be given the opportunity to discuss any queries or concerns with the headteacher and be reassured that this will be treated in a confidential and sensitive manner. Ultimately, schools have a statutory responsibility to request that staff covered by the legislation make disclosures for the relevant offences and orders against themselves.

Staff need to be aware that disciplinary action is likely to result if it becomes known that there had been a disclosure for themselves and that this hadn’t been declared. Schools are advised to seek support from their HR provider before taking such action.

Schools should give the letter to the relevant staff/volunteers to read and should request that they either: sign and return a copy of the letter to the office or sign a signature sheet confirming they have read and understood the letter. It is advised that this is done at the start of the academic year.

Any declaration made will be of a sensitive nature so schools must ensure that it is managed and stored in a secure manner and complies with the data protection regulations. The information should be restricted to those involved in the recruitment or employment of the affected individuals and handled in the same way that a DBS conviction information is managed.

Schools should update their Single Central Register to confirm this check has been done for the staff and volunteers covered by the legislation (this should include the date and person who did the check).

All new appointments (including new volunteers) that will be working in the capacity outlined in Section 2 should be sent Appendix A (Letter to Staff Covered by the Childcare Disqualification Legislation) during the recruitment process. DBS certificates should be checked with reference to list of relevant offences covered by the legislation.

Schools should ensure that their safeguarding policies are updated to include the requirements of the statutory guidance.

Whilst schools are no longer entitled to routinely ask staff about cautions and convictions of someone in their household, it is important that they still fully comply with the School’s Safeguarding Procedure and ‘Keeping Children Safe in Education’

<https://www.gov.uk/government/publications/keeping-children-safe-in-education--2>

It is important that staff are aware that behaviour by themselves, those with whom they share a household, or others in their personal lives may impact on their work with children and have safeguarding implications.

1. **Disqualified Workers**

Where schools receive information that an individual covered by the legislation may fall within the disqualification criteria they should first discuss the matter with the individual. The individual should be advised that they will need to apply to Ofsted for a waiver. The individual should be advised that it is their responsibility to make an application for a waiver. An Ofsted fact sheet and application form can be found at:

<https://www.gov.uk/government/publications/applying-to-waive-disqualification-early-years-and-childcare-providers>

Where a waiver application is being made, the disqualified individual will not be able to continue working in the capacity outlined in Section 2. Schools will need to decide whether it is appropriate to redeploy staff elsewhere in the school, or make adjustments to their role to avoid them working in the relevant childcare area i.e. not working with reception age children. If it is really not possible to redeploy the individual or make adjustments to the role then suspension will need to be considered (please refer to the Schools’ Disciplinary Procedure). This will be on full pay and will be a precautionary and not a punitive measure. Schools should take advice from their HR provider and the LADO for Safeguarding (details below) in dealing with cases where a disqualified person is identified.

Where an individual does not apply for the waiver or the waiver is declined then the school will need to decide whether it is appropriate to redeploy or make adjustments to avoid them working in the relevant childcare area on a permanent basis. If this is not possible or considered inappropriate then the school will need to take steps to legitimately terminate their employment following the Schools’ Dismissal Procedure. Again schools should seek support from the LADO and their HR provider in such cases.

LADO (Sue Sevier) 02380 835535 sue.sevier@southampton.gov.uk

Appendix A – Letter to Staff covered by the Childcare Disqualification Legislation

SCHOOL HEADED PAPER

DATE

Dear Colleague,

**Re: Childcare Disqualification Requirements**

The Department for Education advises early years settings and schools to undertake checks with regard to childcare legislation on a regular basis and ensure that this along with the information held on the Single Central Register for existing staff is up-to-date.

The School is required to carry out checks at the start of employment for new staff and on a regular basis for existing staff that are covered by the legislation. Staff working in the following areas are covered:

* Staff that provide **any** care for children in early years provision – this includes children up to and including reception age.
* Staff that provide childcare outside of school hours for children who are above reception age but who have not attained the age of 8 (breakfast and after school club provision)
* Staff that are directly concerned in the management of such early or later years provision.

The School must take reasonable steps to ensure that no one who is disqualified works in connection with the above provision in the school. In summary, a person is disqualified if they have:

* Been included on the Disclosure and Barring Service (DBS) Children’s Barred List.
* Been cautioned for, or convicted of certain violent or sexual criminal offences against adults and any offences against children;
* Been the subject of an Order, direction or similar in respect of childcare, including orders made in respect of their own children’
* had registration refused or cancelled in relation to childcare of children’s homes or have been disqualified from private fostering;
* been 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

This check is in addition to a DBS check. Any of the above criteria disqualify staff from providing the childcare provision outlined. Staff who have a relevant offence and/or an order are disqualified immediately and must apply to Ofsted to request a waiver in order to allow them to continue to work in these areas.

I have determined that you are covered by the legislation and for that reason, I have a legal obligation to make you aware that you have a duty to report any relevant information to me about yourself (even if that information has previously been considered in relation to a DBS check).

Further information on disqualification under the Childcare Act, including a list of the offences and orders covered, can be found at:

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

Broadly speaking, the ‘certain criminal offences’ include a caution or conviction for:

* any offences by an adult against or involving children
* Any sexual offence by an adult or a child against an adult or a child
* Murder, manslaughter, kidnapping, false imprisonment, assault occasioning grievous or actual bodily harm

For cautions, you are only required to disclose those issued on or after 6 April 2007. This does NOT apply to relevant convictions, which must be declared irrespective of date.

Whilst schools are no longer entitled to routinely ask staff about cautions and convictions of someone in their household, it is important that you still fully comply with the School’s Safeguarding Procedure and ‘Keeping Children Safe in Education’ – link below:

<https://consult.education.gov.uk/safeguarding-in-schools-team/keeping-children-safe-in-education/supporting_documents/Keeping%20Children%20Safe%20in%20Education%20Proposed%20Revisions.pdf>

It is important that staff are aware that behaviour by themselves, those with whom they share a household, or others in their personal lives may impact on their work with children and have safeguarding implications.

You are required to make me personally aware of any relevant information, in writing, by no later than 7 days from receipt of this letter. You will need to provide, as far as possible, any details relating to the order, determination, conviction or other grounds, the date it was made along with any other details including a copy of the relevant order or conviction. This information should be provided in a sealed envelope, clearly marked ‘Strictly confidential - for the attention of [insert name] only’ and handed to [insert name]. **Please be assured that any information disclosed will be treated in the strictest of confidence and in line with Data Protection requirements.**

Please note that this is an ongoing requirement and so, if you do not have any relevant information to disclose at this point, but do in the future, you must make me aware of any relevant information immediately.

I understand that a disclosure may be difficult and stressful. If you have any questions or concerns, please do not hesitate to contact me at [insert contact details]

I would like to thank you for your cooperation and support in complying with this legally required process.

Please sign below and return a copy of this letter to the office to confirm you have read and understood the content of this letter.

Signature:……………………… Print Name:…………………………… Date:………………..

**Or alternatively -** You are required to sign the signature sheet held in the office to confirm that you have read and understood the content of this letter.

Yours sincerely,

**Headteacher**

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