

Disqualification under the Childcare Act 2006 (DfE 2015)

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Statutory Guidance – school staff are covered by this legislation if they are:

- employed and/or provide early years childcare (until 1 September following a child's fifth birthday, i.e. up to and including reception age) or;
- later years childcare (children above reception age but who have not attained the age of 8) in nursery, primary or secondary school settings or;
- if they are directly concerned with the management of such childcare.

Regulations prohibit anyone who is disqualified themselves under the Regulations, or who lives in the same household as a disqualified person, from providing early years or later years childcare as above.

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Who may be disqualified?

A person is disqualified if any of the following apply:

- they have been cautioned for, or convicted of certain violent or sexual criminal offences against adults and any offences against children;
- they are the subject of an Order, direction or similar in respect of childcare, including orders made in respect of their own children
- they have had registration refused or cancelled in relation to childcare in children's homes or have been disqualified from private fostering;
- they live in the same household where another person who is disqualified lives or works (disqualification 'by association').

Full details of what constitutes "disqualification" are included in the statutory guidance

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Which staff are not within the scope of the guidance?

- Caretakers, cleaners, drivers, transport escorts, catering and office staff who are not employed to provide direct childcare.
- Staff employed by childcare providers, i.e. not employed by the school, who hire or rent school facilities or premises. NB schools should ensure that such providers have appropriate policies and procedures in place in regard to safeguarding children, including under the 2009 Regulations.
- Staff involved in any form of health care provision for a child, including school nurses, speech and language therapists and education psychologists. They are specifically excluded from the statutory definition of childcare and are therefore not covered by the legislation and statutory guidance.
- 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.

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What should schools do?

1. Schools are responsible for ensuring that anyone who falls within the scope of the guidance is **made aware of the legislation**, including that they may be disqualified 'by association where they live in the same household as a disqualified person or in a household in which a disqualified person is employed.
2. Schools must 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. 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.

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3. Schools must make staff and volunteers who fall within the scope of the guidance 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, e.g. the guidance states that schools may include a section in the school's safeguarding and child protection policy (or another policy document).
4. The new guidance states that it is not necessary for schools to ask staff who are within the scope of the guidance to complete a self-declaration form in order to establish whether or not they are disqualified.
5. Schools should refer affected staff and individuals to the table of relevant offences and orders set out within the guidance between pages 13 and 45 in order to establish whether or not they are disqualified or a person who lives in their household is disqualified.

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Disqualified Workers

6. If the school is satisfied that a staff member is disqualified, contact the school's HR provider, Education Safeguarding Manager or legal adviser.
7. Inform Ofsted and explain to the member of staff that they may apply to Ofsted for a waiver.
8. Whilst a waiver is being considered, schools may redeploy staff away from the relevant age groups or adjust their role.
9. Where a school is unable to redeploy the member of staff or adjust their role, they should consider paid leave or, as a last resort, suspend the person whilst the waiver is considered.
10. If a disqualified employee or volunteer chooses not to apply for a waiver or an application for a waiver is refused, the school will have to decide whether the individual could be permanently redeployed to work **only** with children over 5 years of age during the school day and over 8 years of age before and after school; or whether dismissal would be appropriate.