



**Schools HR Policy &
Procedure Handbook**



Guidance for schools (2018)

This guidance has been **shared with** the following professional associations and Trade Unions representing Teachers, Headteachers and Support Staff:

<p>Keeping Children Safe in Education</p> <p>Disqualification under the Childcare Act 2006</p>  <p>Oakmeadow CE Primary and Nursery School</p>	
<p>This Shropshire Council Guidance has been adopted by the Governing body: March 19</p>	

- National Education Union
- National Association of Schoolmasters Union of Women Teachers
- National Association of Headteachers
- Association of School and College Leaders
- Unison
- GMB

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Childcare (Disqualification) Guidance for Schools

Introduction

Safer recruitment and an ongoing culture of vigilance is an important part of safeguarding children to promote the welfare of children in education.

Oakmeadow CE Primary & Nursery School is committed to safeguarding and promoting the welfare of all pupils in its care and expects all staff and volunteers to share this commitment.

The School / Academy see it as vital that there is a culture of safe recruitment and on-going vigilance. School governing bodies can adopt other HR Keeping Children Safe in Education (KCSiE) policies and guidance to help deter, reject and identify people who might be unsuitable to work with children and young people.

- Safer Recruitment Policy
- DBS Guidance for Schools
- Suitability Disqualification Guidance for Schools
- Single Central Record Guidance for Schools
- Whistle Blowing Procedure / Speaking Up About Wrong Doing
- Child Reporting Concerns Guidance
- Code of Conduct for school based staff
- Dealing with Allegations of Abuse

This guidance provides clarity for all maintained schools and academy schools on the requirements under the Childcare (Disqualification) and Childcare (Early Years Provision Free of Charge) (Extended Entitlement) (Amendment) Regulations 2018 (“the 2018 regulations”) and related obligations under the Childcare Act 2006 to ensure the suitability of staff and volunteers who work with children.

This guidance also seeks to support head teachers and managers with appropriate process and procedure for checking the suitability of staff and volunteers and disqualification.

2. Background Information

2.1 What is the key relevant legislation that supports this guidance?

Key relevant legislation includes:

- Childcare Act 2006 (sections 75, 76)
- The Childcare (Disqualification) and Childcare (Early Years Provision Free of Charge) (Extended Entitlement) (Amendment) Regulations 2018 (“the 2018 regulations”)

Other legislation relevant to ensuring suitability to work with children includes:

- Safeguarding Vulnerable Groups Act 2006
- The Early Years Foundation Stage (Welfare Requirements) Regulations 2012
- Statutory Framework for the Early Years Foundation Stage 2013

Schools must also 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

2.2

What about the GDPR?

In order to ensure that they are not in breach of data protection legislation, it is important that schools avoid asking for information that is not relevant.

However, it should be noted that data protection legislation, including GDPR, does not prevent an employer from asking questions relating to the suitability of the individual employed on safeguarding grounds.

The DfE is clear that fears about sharing information cannot be allowed to stand in the way of the need to promote the welfare and protect the safety of children.

2.3 What are the legislative changes leading up to September 2018?

The statutory framework for Early Year’s Foundation Stage (EYFS), which sets out disqualification requirements in nursery and reception classes has been in place to protect child minders for some time. This framework became statutory for maintained schools and academies from 1 September 2014.

On 13 October 2014, the Department for Education (DfE) published supplementary advice to its statutory guidance, ‘Keeping children safe in education’ (KCSIE), around childcare

disqualification requirements. The advice was produced to help schools understand the duty placed on them by childcare legislation. This was replaced in February 2015 with new DfE supplementary advice and updated in June 2016 with the 'Disqualification under the Childcare Act 2006.'

On the 31 August 2018, and although not a definitive list, the DfE published updated guidance on 'relevant offences' that would lead to disqualification and what an individual must disclose when applying for a DBS check.

This guidance may be accessed via the following link:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/741597/APPENDICES-Disqualification under the childcare act statguidance 4 .pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/741597/APPENDICES-Disqualification_under_the_childcare_act_statguidance_4.pdf)

3. Eligibility

3.1 Which school staff are in scope of the 2018 Regulations?

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, that is up to and including reception year)

This includes education in nursery and reception classes or any supervised activity (such as breakfast clubs, lunchtime supervision and after school care provided by the school) both during the normal school day and outside of school hours for children in the early years age range.

- later years childcare (this covers children above reception age but who have not attained the age of 8) in nursery, primary or secondary school settings

This refers to staff who are employed to work in childcare provided by the school outside of the normal school day for children who are above reception age but who have not attained the age of 8. This does not include education or supervised activity for children above reception age during school hours (including extended school hours for co-curricular learning activities, such as the school's choir or sports teams) but it does include before-school settings, such as breakfast clubs, and after school provision.

Staff directly concerned in the management of early or later years provision are covered by the legislation. Schools will need to use their judgement to determine who is covered, but this will include the headteacher, and may also include other members of the school's leadership team and any manager, supervisor, leader or volunteer responsible for the day-to-day management of the provision.

Whilst the Regulations predominantly affect nursery and primary school settings, secondary schools can be affected if they provide or manage childcare provision for younger children, e.g. by hosting after-school childcare for under 8s.

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, are also within the scope of the legislation and

are covered by this guidance.

School leaders should ensure that all staff in scope of the Regulations know of the changes, for example during a safeguarding update at Inset day or via other internal communications.

3.2 Which school staff are out of scope of the 2018 Regulations?

Staff employed who work in the following roles are not covered by the 2018 regulations and therefore these arrangements must not be applied to them.

This includes staff who have no involvement in the management of relevant provision and only provide:

- education, childcare or supervised activity during school hours to children above reception age
- childcare or supervised activities out of school hours for children who are aged 8 or over

Staff involved in any form of health care provision for a child are specifically excluded from the statutory definition of childcare and are therefore not covered by the legislation. This includes:

- school nurses
- speech and language therapists
- education psychologists

3.3 What about governors, office, cleaning and catering staff?

In general, individuals undertaking the following roles would normally be excluded from the legislation:

- caretakers
- cleaners
- drivers
- transport escorts
- catering staff
- office staff

School governors and proprietors are not covered by the legislation, 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.

Further guidance on the safeguarding arrangements covering governors and the safeguarding responsibilities of governing bodies and proprietors is provided in KCSIE.

Additionally, it should be noted that, whilst out of the scope of these regulations, school governors in maintained schools are also subject to additional arrangements and can also be disqualified from holding office (being a governor in maintained schools) under regulation 17,

3.4 We have a private nursery which runs from our school premises. Does this apply to them?

In relation to staff employed by childcare providers (not employed by the school or local authority) who hire or rent school facilities or premises (for example a private, voluntary or independent childcare provider), schools should ensure that such providers have appropriate policies and procedures in place in regard to safeguarding children, including under the 2018 regulations.

3.5 Who checks local authority staff?

Where centrally employed local authority staff are deployed to work in relevant childcare settings in schools (for example peripatetic music teachers or individuals supporting children with additional needs) it is the responsibility of the local authority to ensure that such staff are compliant with the requirements of the legislation explained in this guidance.

3.6 What about agency and self-employed staff?

Where schools or local authorities use 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, they 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.

Where the school engages a self-employed person (e.g. a music teacher or sports coach) to work in relevant childcare provision, the school must ensure that they are compliant with the requirements of the legislation explained in this guidance.

3.7 Do I need to check trainee teachers?

These requirements also apply where training suppliers, such as initial teacher training providers, are placing trainees or students at the school, who are working or being trained in a relevant setting.

Where trainee staff are salaried, for example on employment-based teacher training programmes, it is 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. Where trainee staff are not on a salaried programme (fee or self-funded students), it is 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.

3.8 Wouldn't it be easier for schools to check all staff?

Staff who are not employed to directly provide childcare, are not covered by the legislation.

Similarly, most staff who are only occasionally engaged and are not regularly required to work in relevant childcare will not automatically come within the scope of the legislation.

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, and taking advice from the school or authority's human resources (HR) provider, the authority's designated officer, safeguarding lead officer or adviser, when appropriate.

These arrangements must only be applied if an individual is in scope of them 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.

4. Reasons for Disqualification

4.1 What are the main reasons for disqualification?

The criteria for disqualification under the 2006 Act and the 2018 regulations include, but are not limited to:

- 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

4.2 How do schools check if an offence is relevant?

As only certain convictions / events lead to disqualification, Headteachers will need to refer to the Relevant Offences table set out in Appendices A and B of the government guidance.

The full guidance and supporting Appendices are accessible via the following link.

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

Please note, the lists in the Appendices were compiled on 2 July 2018 and have not been

updated since then. They list offences that are mentioned in regulation 4 of the 2018 regulations and are not comprehensive of all offences that would lead to disqualification.

It is also important to note that overseas offences are not included in the list.

The lists also cover offences for which a person could be barred from regulated activity relating to children under regulation 8 of the 2018 Regulations, and therefore be disqualified.

For further advice and guidance, please contact your HR Business Partner.

4.3 What are the changes to disqualification by association?

From 31 August 2018, school staff will no longer be disqualified from working with younger children when they share a household with a disqualified person.

The Childcare Disqualification Regulations still apply to schools, and schools are required to ensure that staff are aware of their responsibility to disclose information which is relevant to the disqualification criteria. Schools should also keep and monitor appropriate records.

A self-declaration form can be issued to all staff and volunteers in scope of the Regulations.

A self-declaration form can be found in Appendix A

5. Checking Suitability

5.1 Do existing pre-employment checks cover new staff and volunteers or is there anything further schools need to do?

The 'Carefirst' pre-employment checks carried out by Employment Services covers disqualification of individuals to ensure that relevant offences are identified.

Schools are notified immediately if someone is disqualified.

This guidance advises schools to issue new relevant staff with the Suitability Declaration Form (appendix 1) unless they are confident that the recruitment processes and paperwork have sufficiently included the requirements of the legislation. In practice, it will be sensible to include the completion of the form as part of the school's induction process.

5.2 How should schools request this information from existing relevant staff and volunteers?

The Suitability Declaration Form at Appendix A can be used to collect information from all staff in scope of the Regulations.

This document has been agreed by the unions listed on the first page of this guidance.

6. Action to take with completed Suitability Declarations

6.1 How long should schools allow for individuals to complete the Suitability Declaration Form?

Headteachers may want to issue the guidance and Suitability Declaration Form to relevant staff and volunteers and allow up to 10 days for completion and return, so that they have the opportunity to understand the requirements and implications of the declaration.

If the form is not returned within the given timescale, any non-returns should be noted as 'chased', allowing no more than a further 5 working days for the declaration to be returned.

6.2 Do schools need to repeat this exercise?

There is no need to ask staff to repeat the declaration once it has been completed and this date is recorded on the Single Central Record (or separately – see FAQ 8.1) It is recommended that schools do, however, remind staff of their duty to provide such information if their circumstances should change.

Headteachers may choose to include a section on the school's safeguarding policy or another policy (in addition to adding to new staff member's recruitment processes.) This policy can then be referred to during a staff annual appraisal, staff development days, in staff bulletins or by email.

6.3 Do schools need to take any further action once the declaration has been returned?

There is no need to take any further action. Once it is received, unless there is good reason to doubt the individual's honesty, the declaration can be taken at face value with any disclosures relating to relevant offences dealt with accordingly.

6.4 What are the implications if the Suitability Declaration Form is only partially completed or staff and volunteers refuse to complete it?

In the event that any individual refuses to complete the Suitability Declaration Form and following attempts to request this in writing within the given timescales, (see 6.1), Headteachers should explain that:

Employed staff:

- The school may be in breach of Ofsted regulations if they employ a disqualified person without reasonable excuse. Ofsted may prosecute the employer i.e. school / academy/ Local Authority unless they can prove they did not reasonably know about the offence.
- By refusing to complete the declaration, they have refused to follow a reasonable management instruction.
- The matter may therefore be dealt with under the schools disciplinary procedures which may include suspension whilst the matter is investigated.

Volunteers:

- The school may be in breach of Ofsted regulations if they employ or engage a disqualified

person without reasonable excuse (there is no prosecution for volunteers).

- By refusing to complete the declaration, they have refused to follow a reasonable management instruction.
- They cannot continue to volunteer in school whilst the matter is being considered.
- Their actions may ultimately lead to no further volunteer work being offered.

6.5 What if an individual responds to the Declaration and it is clear that s/he is disqualified?

Once a provider (school) has asked an individual to declare information about their circumstances, the law provides that this must be acted upon if it brings into doubt their suitability to work in relevant childcare. Schools must therefore be able to demonstrate that they have taken appropriate steps to make sure they do not knowingly employ someone who is disqualified. HR Business Partners can assist with this process.

If it is clear that a relevant individual is disqualified, it will be necessary to inform Ofsted within 14 days from the date they became aware of information, which may lead to the disqualification of the individual. Failure to do so would be a breach of Early Years Foundation Stage (safeguarding and welfare) requirements.

The following information should be provided to Ofsted.

- *School name:*
- *DfE number*
- *Full name of the individual*
- *Contact telephone number (school)*
- *Position/job title of the individual – e.g. Child Workforce Volunteer*
- *Nature of the disqualifying offence*
- *Relationship of the referrer to individual concerned – e.g. Employer*

The Headteacher should tell the relevant individual that Ofsted have been informed and explain the implications of disqualification to them including whether or not they can apply for an Ofsted waiver. (There may be some circumstances where this will not be possible, e.g. if the individual is on the Childrens Barred List held by the DBS)

Further help on how the childcare disqualification arrangements should be applied in schools can be obtained from the Department for Education by email to mailbox.disqualification@education.gov.uk or phone 01325 340 409.

7. Applying for an Ofsted Waiver

7.1 Who can apply for an Ofsted waiver?

It is the responsibility of the individual (not the school) to apply to Ofsted for a disqualification to be waived.

The individual should be directed to the forms and guidance on the following web page.

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

The headteacher should ask to see a copy of the original Ofsted decision letter, sent to the individual, before employment or reinstatement to a job role is approved.

7.2 What is the status for the individual until a decision is reached from Ofsted?

Until a waiver may be granted by Ofsted, the individual remains disqualified and must not work or volunteer in early years or later years as defined in 3.1.

If they cannot be moved into a role outside of early years or later years provision, they may need to be suspended until the waiver decision is made. The headteacher must consider the risk and harm to children and their obligations under the 2006 Act.

Schools HR Business Partners can support Headteachers in making this decision.

7.3 What action should be taken if the waiver is granted?

Each waiver will be considered on its own merits and may be granted with limitations, e.g. to a particular type of employment or to a particular premises. If Ofsted decide to grant the waiver, they will advise the individual in writing. The headteacher must then make a decision as to whether they wish to employ / continue employing the individual. You must have sight of the original document and a copy of the waiver and any related information should be retained in the staff personnel file.

In the case of query or concern, advice can be sought from the school's HR Business Partner.

7.4 What action should be taken if the waive is refused or the individual decides not to apply for the waiver?

Where an individual decides not to apply for a waiver, or a waiver is declined, schools will have to consider and make decisions about whether the individual could be permanently redeployed, the appropriateness of redeployment, or whether steps should be taken to legitimately terminate their employment.

Where a disqualification *does* exist, and it is not possible to redeploy the individual or for the disqualification to be waived, it may be necessary to potentially end the contract of employment. This will be through the school's disciplinary procedure following which, they will have the right to appeal.

In some cases, the law does not allow Ofsted to consider granting consent to waive the disqualification, e.g. if they are included on the barred list or have been found to have committed an offence against a child, and the court had ordered they are disqualified from working with children.

Potentially, a fair reason for dismissal would be because the disqualification constitutes a

statutory duty or restriction prohibiting the employment from being continued.

Advice can be sought from your Schools HR Business Partner or HR Officer.

8. The Single Central Record (SCR)

8.1 Do schools need to record this new requirement on the SCR?

As schools need to keep a record of staff employed to work or manage relevant childcare (and record the date that the disqualification checks were completed) this guidance recommends that this is recorded on the Single Central Record. A new column is now included on the Local Authority's template. Headteachers may choose to record this separately for Ofsted and other inspectorates.

8.2 What paper work can be kept in order to comply with data protection legislation?

Where a school retains personal information that is relevant to disqualification, this should be kept on the personnel file. Substantive details of criminal records checks and copies of completed Suitability Declaration Forms need not be retained, and information that is provided to schools that is not relevant, should be destroyed. (e.g. unspent cautions or convictions which are not listed as a relevant offence).

9. Checklist

9.1 What have HR done?

- reviewed appropriate HR policies
- reviewed the Schools Application form and included satisfactory completion of disqualification declaration as a pre-condition in contracts of employment.
- reminded schools of the requirements of the regulations.

10. Monitoring and Review

The Governing Body will monitor the outcomes and impact of this guidance on an annual/bi-annual basis in conjunction with school representatives.

This procedure will be reviewed no later than 2 years by Human Resources in consultation with Trade Unions.

Childcare (Disqualification) Regulations: Staff/Volunteer Declaration Form (2018)

Information on the Regulations

The Childcare Act 2006, and associated 'Regulations' apply to school and academy settings as well as to childcare settings.

In order to comply with these Regulations, schools are required to ensure that certain individuals that the school employs or wishes to employ (or engage as volunteers) are not disqualified from working with children who have not yet reached the age of 8. All staff responsible for the provision of childcare or for the management of that provision (including new appointees or upon a relevant change of role) must therefore complete the declaration below and will be asked to do so again periodically in the future.

If a member of staff / volunteer is disqualified, there may be an impact on their ability to commence or remain working with the relevant age group. A disqualified person is not permitted to work in a setting providing care for children under age 8, unless they apply for, and are granted, a waiver from Ofsted.

A person may be disqualified from working at a school through:

- Inclusion on the Children's Barred List;
- Being cautioned for, or convicted of, certain violent and sexual criminal offences against children and adults;
- Grounds relating to the care of children (including where an order is made in respect of a child under the person's care);
- Having registration refused or cancelled in relation to childcare or children's homes or being disqualified from private fostering.

An offence committed overseas will also disqualify the individual under the Regulations if it would have disqualified the person had it been committed in any part of the United Kingdom.

Details of what constitutes disqualification can be found in the following schedules to the Regulations (hard copies can be obtained via the school office if required):

<http://www.legislation.gov.uk/ukxi/2018/794/schedule/1/made>

<http://www.legislation.gov.uk/ukxi/2018/794/schedule/2/made>

<http://www.legislation.gov.uk/ukxi/2018/794/schedule/3/made>

Please note that you do not need to declare any minor cautions or convictions which are 'protected' under the Rehabilitation of Offenders 'Exceptions Order' (and which are removed or 'filtered' from DBS certificates). For more information visit <https://www.gov.uk/government/collections/dbs-filtering-guidance>.

* The Childcare (Disqualification) and Childcare (Early Years Provision Free of Charge) (Extended Entitlement) (Amendment) Regulations 2018 come into force on 31st August 2018 and replace the Childcare (Disqualification) Regulations 2009

Name		Post	
Declaration in relation to you:			Please circle YES or NO below
Do you work in relevant childcare with children under 8?			YES / NO
<p><i>If you answered 'No' to this question, you do not need to respond to any further questions.</i></p> <p><i>Please ensure that you sign and date the declaration, overleaf.</i></p>			
Have you been barred from working with children by the Disclosure and Barring Service (or its predecessors)?			YES / NO

Have you been subject to any order relating to the care of children (e.g. care order, child protection order, exclusion order)?			YES / NO	
Have you been refused registration or approval to care, foster or look after children or had such registration cancelled (e.g. in relation to childcare provision, children's homes or private fostering)?			YES / NO	
Have you been cautioned* or convicted of any offences against a child (including overseas)?			YES / NO	
Have you been cautioned* or convicted of any violent or sexual offences against an adult (including overseas)?			YES / NO	
* For these purposes, only cautions given on or after 6 April 2007 need to be declared; a caution includes reprimands or warnings				
Declaration				
<p>I confirm that the information I have provided is true to the best of my knowledge.</p> <p>I understand I must notify the headteacher immediately of anything that might affect my suitability to work with children under 8 years old, including if my answers to any of the questions above change at any time.</p>				
Signed				
Print Name			Date	
For completion by school:				
No further action required			Further action required (see below)	
Details of further action taken (if applicable)				
Signed				
Print Name			Date	
Data Protection/GDPR – Privacy Notice				
<p>The school will record the date on which you provided this information.</p> <p>If you have answered 'NO' to the first question, or 'YES' to the first question but 'NO' to all of the others, we will only retain this form until it has been checked and we have transferred the date of this declaration onto our Single Central Record.</p> <p>If you have answered 'YES' to any of the last 5 questions on this form, we will retain a copy until the outcome of an Ofsted waiver application is known (if relevant) or until any other enquiries are complete. Thereafter, we will keep a record of any waiver applied for and granted, along with details of any safeguarding restrictions.</p> <p>We do not retain details of criminal records on your file without your explicit consent.</p>				