

Department for Education statutory guidance - *Disqualification under the Childcare Act 2006 July 2018*

Guidance for REC members - August 2018

The Department for Education (DfE) has published updated statutory guidance titled 'Disqualification under the Childcare Act 2006'. **From 31 August 2018** this replaces the previous guidance titled [Disqualification under the Childcare Act 2006 – statutory guidance for schools](#) dated February 2015.

Overview – what is disqualification?

The Childcare Act 2006 and the Childcare (Disqualification) and Childcare (Early Years Provision Free of Charge) Extended Entitlement (Amendment) Regulations 2018 include provisions (which we will refer to as the disqualification provisions) under which individuals can be disqualified from working in or being employed to carry out **relevant childcare roles**.

A person can either be disqualified in their own right because they:

- Are on the Disclosure and Barring Service Children's barred list
- Have been convicted of certain violent/sexual offences
- Have been made the subject of certain care orders relating to the care of children
- Have been refused or have had cancelled registration relating to childcare, children's homes or prohibited from fostering;
- Have been convicted of an offence overseas which would have resulted in disqualification if the offence had been committed in the UK.

Or they can be disqualified *by association* because they live in the same household as a person who is disqualified lives or is employed.

These disqualifications provisions are not new, but the updated guidance has been issued to take into account certain changes that have been made.

Grounds for disqualification

The grounds for disqualification, including details of the relevant orders and offences are set out in detail in the statutory guidance. Please review this for further information.

What has changed?

- Following a consultation exercise in 2016, the DfE decided to remove *disqualification by association in relation to roles in schools and registered non-domestic childcare settings* such as private, voluntary and independent nurseries.
- No change will be made in respect to childcare which is carried out in a domestic setting, such as a childminder's home. Disqualification by association will continue to apply to this type of childcare.
- The 'Disqualification under the Childcare Act 2006' statutory guidance (which we refer to as the statutory guidance) has been updated to reflect these changes.

This means that from 31 August 2018 there will no longer be a requirement for schools to carry out checks to determine whether staff who carry out **relevant childcare roles** are *disqualified by association*, and accordingly, employment businesses that supply staff to schools will also no longer be required carry out such checks. Recruitment and vetting procedures must be updated accordingly.

There will however be an ongoing requirement to seek information to ascertain whether a person carrying out **relevant childcare roles** is disqualified in their own right. As was the case previously, such information should only be sought in respect of individuals who are being supplied to carry out **relevant childcare roles**.

Relevant childcare roles

Disqualification checks are only required for candidates who are seeking work which involves relevant childcare roles. For further details see the 'Staff covered and relevant settings' section of the statutory guidance.

However, in summary, the following are **relevant childcare roles**:

- Provision of early years childcare; or
- Later years childcare in nursery primary or secondary school settings.
- Staff directly concerned with the management of the above.

Note that the statutory guidance states that:

Staff in secondary schools only come in to scope if they provide childcare, or manage the childcare provision for those children covered by these arrangements. For example if they host after-school childcare for the under 8's.

Staff not covered

This means that staff employed who work in the following roles are not covered, i.e. staff who:

- *only provide education, childcare or supervised activity during school hours to children above reception age; or*
- *only provide childcare or supervised activities out of school hours for children who are aged 8 or over; and*
- *have no involvement in the management of relevant provision.*

Anybody 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; and*
- *education psychologists.*

Impact for employment agencies and businesses

From 31 August 2018, employment agencies and employment businesses will need to amend their recruitment procedures and safeguarding checks to ensure that they no longer seek information from candidates about disqualification by association for roles that are not undertaken in domestic settings.

Ongoing checks should be made in relation to a candidate's disqualification in their own right, but this should only be done where the candidate is seeking work in **relevant childcare roles**.

The statutory guidance states that:

Where schools use staff from any agency, or third-party organisation (e.g. 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.

The statutory guidance also states that:

Schools must keep a record of those staff who are employed to work in, or manage relevant childcare provision. They should record the date on which the information about disqualification was provided.

Schools may choose to keep details of their checks as part of the single central record, or they may retain a separate record. Ofsted and the Independent School Inspectorates will check this as part of their routine school inspection process.

Actions for employment agencies and employment businesses

1. Provide candidates with a copy of (or link to) the statutory guidance.
2. Obtain written confirmation that they are not disqualified on any of the grounds set out in the guidance.
3. Ask them to confirm that they will notify the employment agency/employment business should any of the above change.
4. Advise them in writing that it is criminal offence for them to carry out work in a relevant childcare role if they are disqualified under the disqualification provisions.
5. Provide written confirmation to the client that the above steps have been taken. This can be included with confirmation of the other safeguarding checks (e.g. DBS checks) that are carried out.

One way to address this and confirm that a candidate is not disqualified, is for agencies/employment businesses to include information in their registration form to include the following or similar text as set out below:

Please find attached a copy of /a link to the Department for Education [Disqualification under the Childcare Act 2006 – statutory guidance for schools](#) dated July 2018 (the statutory guidance). It sets out the circumstances in which individuals are disqualified from undertaking certain childcare work (relevant childcare work) under the relevant statutory provisions. As part of our safeguarding checks we are required to check whether any candidates who are seeking work that involves relevant childcare work are ‘disqualified’ from carrying out that type of work. Individuals may be disqualified because they have either been convicted of a relevant offence or are subject to a relevant order. Please review the statutory guidance which provides further details and sign below if you can confirm the following:

I confirm that:

- *I have read the statutory guidance*
- *I am not disqualified on any of the grounds set out in the statutory guidance*

- *I will notify [NAME OF EMPLOYMENT BUSINESS/AGENCY] immediately if any of the above changes*

Signed

Name

Date

We are required to notify you that it is a criminal offence for you to work in a relevant childcare role or to be directly concerned with the management of such provision if you are disqualified under the relevant statutory provisions.

If you are disqualified we will not be able to place you/supply you into a role that involves relevant childcare work. However, as set out in the statutory guidance you may be able to apply to Ofsted for a waiver of disqualification and you should contact Ofsted directly for details of the application process.

Data Protection

In line with the principles of the Data Protection Act 2018 and the General Data Protection Regulation (EU) 2016/679, personal data should only be collected where there are legitimate grounds for collecting and using it and where processing is 'adequate, relevant and not excessive'. Care should be taken to ensure that only information that is necessary to carry out disqualification checks is collected. In particular, disqualification checks should not be carried out as a matter of course for all candidates, but only for those candidates who have expressly stated that they are seeking work that involves relevant childcare roles.

This document has been created for REC Corporate Members for information only. It is not a substitute for legal advice on related matters and issues that arise and should not be taken as providing specific legal advice on any of the topics discussed.

© REC 2018. All rights reserved: no part of this publication may be reproduced, stored in an information storage and retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording or otherwise, without the written permission of the REC.