

Nottinghamshire School Policy and Guidance Disqualification under the Childcare Act 2006

September 2018
HR Advice, Support and Training Service

For Schools within our Collaboration:



At the schools within our collaboration, we are committed to ensuring equality of education and opportunity for all pupils, staff, parents and carers receiving services from the school, irrespective of race, gender, disability, faith or religion or socio-economic background. All staff are expected to uphold and promote the fundamental principles of British values, and as such, the schools within our collaboration are fully committed to safeguarding and promoting the welfare of all our pupils including protection against radicalisation. We therefore aim to develop a culture of inclusion and diversity in which all those connected to the school feel proud of their identity and able to participate fully in school life. Our core purpose, values and ethos is embodied in our mission that everyone takes:

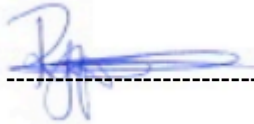
P= personal
R= responsibility
I = in
D= delivering
E= excellence

Frequency of Review: Annually

Reviewed and approved by: The Governing Body

Date: Spring 2023

Date of Next Review: Spring 2024

Signed:  (Chair of Governing Body) Date: 21.03.2023

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SCHOOL Disqualification under 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

Policy and Guidance Updated September 2018

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Please also note that any changes to the original policy documentation will require your governing body or trust to re-consult with the secretaries of the recognised trade unions and staff in your school.

Introduction

- 1.0 The Governing Bodies of **Holgate Primary & Nursery School and Sutton Road Primary School & Nursery** adopted this **Policy and Guidance** on (*insert date*). **The Finance and Personnel Committee** of the governing body will review and monitor the impact of the policy annually with the head teacher. The next review will take place **Spring term 2024**. The governing body delegates to **the Finance and Personnel Committee of the governing body** the responsibility for approving decisions relating to this policy and guidance.
- 1.1 The governing body has adopted the **policy and guidance** set out in this document to provide an agreed framework for the exercise of its powers and discretions in relation to all staff employed in the school and/or or engaged to provide early years childcare (which includes paid and voluntary work) as set out in the statutory guidance ‘Disqualification under the Childcare Act 2006 and the 2018 Regulations. The 2018 Regulations came into force on 31 August 2018. A copy of the revised Regulations can be found at: <http://www.legislation.gov.uk/ukxi/2018/794/contents/made>. A copy of the statutory guidance can be found at: <https://www.gov.uk/government/publications/disqualification-under-the-childcare-act-2006/disqualification-under-the-childcare-act-2006>

Revised Statutory Guidance 2018 including relevant offences and orders

- 1.2 The Department of Education (‘DfE’) has issued revised statutory guidance and a separate document containing Table A - Relevant Offences and Table B – Relevant Orders and

Annexes to accompany the 2018 Regulations. A copy of these two documents can be found at;

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/741597/APPENDICES-Disqualification_under_the_childcare_act_statguidance_4_.pdf

- 1.3 Anyone disqualified under the Regulations is prohibited from providing relevant **childcare**¹ or from being directly concerned in the **management**² of such provision and from working in a **relevant setting**³ which includes schools. All schools therefore have a legal responsibility to ensure that they do not knowingly recruit or continue to employ a person in relevant childcare provision who is disqualified under the 2018 Regulations which is a criminal offence.

Disqualification by association

- 1.4 The most important change arising out of the 2018 Regulations means that schools are no longer required to establish whether a member of staff providing or managing childcare is “**disqualified by association**”. Regulation 9 (disqualification by association) no longer applies to staff in a relevant school setting and from 1 September 2018 disqualification by association is only relevant where childcare is provided in domestic settings (e.g. where childminding is provided in the home). This means that **from 1 September 2018 Schools should not be asking their staff questions about cautions or convictions of someone living or working in their household and must review their staffing policies and safer recruitment procedures accordingly.**
- 1.5 The governing body understands its responsibilities and is committed to taking decisions in accordance with the principles of public life as listed in DfE guidance; objectivity, openness and accountability. Governing bodies should ensure that they are fully aware of their responsibilities under employment law in applying this procedure.
- 1.6 The governing body recognises the legal requirements placed upon them by the Education Act 2002, Childcare Act 2006 and the 2018 Regulations. This document will apply to all staff, including apprentices and volunteers, directly employed or engaged to provide childcare (or the management of childcare) by the school and other persons covered by the 2018 Regulations.
- 1.7 References to the governing body should be taken to refer to the entity that is responsible for exercising governance functions for a maintained school or academy, which in the case of a multi-academy trust may be the trust board. Likewise references to governors should be taken

¹ The meaning of childcare is provided at section 18 of the Childcare Act 2006 (<http://www.legislation.gov.uk/ukpga/2006/21/contents>).

² Staff who are 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.

³ A 'relevant setting' provides early year's 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) or 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

to mean whoever is responsible for fulfilling governance functions. Where maintained schools are federated under a single governing body this will be the federated governing body.

- 1.8 In fulfilling staffing responsibilities, the governing body may delegate its staffing functions in accordance with its articles of government. In delegating functions, the governing body must not lose sight of the fact that it retains overall accountability for the decisions made by those to whom the function has been delegated. As a result the governing body should regularly review their arrangements for managing staffing functions and that the right people are fulfilling these roles on its behalf.
- 1.9 The School Staffing (England) Regulations 2009 confers the right of the County Council to send a representative to all proceedings of the governing body of a community or voluntary controlled school relating to the selection or dismissal of any teacher (including the head teacher and deputy) to offer advice. If the County Council decides to send a representative they must be allowed to attend. Any advice offered as a result must be considered by the governing body (or those to whom the function has been delegated) when reaching a decision. This will usually be a senior officer from the HR Service who may also advise the governing body/head teacher as appropriate. The same rights do not automatically apply in respect of maintained foundation, voluntary-aided and foundation special schools.

Consultation and Agreement with the Recognised Trade Unions

- 1.10 The Nottinghamshire School **Disqualification under the Childcare Act 2018 Policy and Guidance** is recommended for adoption by all community, voluntary aided, voluntary controlled, academy, foundation, and trust schools who purchase their HR Service from Nottinghamshire County Council.
- 1.11 This policy and guidance has been subject to consultation and has been agreed with all of the recognised trade unions through the JCNP process and meets legislative requirements.
- 1.12 Due to the complexities of this area of employment and education law, governing bodies are strongly advised to adopt the attached policy without amendment. Should, exceptionally, a governing body seek to amend the recommended policy, they will need to consult/negotiate any changes collectively with all the secretaries of the recognised trade unions and confirm any amendments to the local authority. Governing Bodies are strongly recommended to seek advice from the HR service in these circumstances.

Equalities and Equal Opportunities

- 2.0 The governing body recognises its legal responsibilities to staff under the Equality Act 2010 and this policy will ensure equality and fairness regardless of race, sex, sexual orientation, religion or belief, gender re-assignment, pregnancy and maternity, marriage and civil partnership, disability or age. All decisions will be taken in accordance with relevant equalities legislation, the Employment Relations Act 1999, the Part-Time Workers (Prevention of Less Favourable Treatment) Regulations 2000 and the Fixed Term Employees (Prevention of Less Favourable Treatment) Regulations 2002.

- 2.1 The governing body is aware of its responsibilities under the Freedom of Information Act 2000 to make available this policy to all staff at the school and its responsibilities to be compliant with the Data Protection Act 2018 and the General Data Protection Regulations 2018.

Aims of the Policy

- 3.0 This policy and guidance sets out the key obligations and requirements under the 2018 Regulations:
- a) The individuals and relevant settings covered by the 2018 Regulations;
 - b) Responsibilities of the local authority and schools;
 - b) What action schools should take to comply with the 2018 Regulations; and
 - d) How individuals should apply to Ofsted for a waiver
 - e) The importance of understanding this check in the context of strengthening the schools safer recruitment and safer working practices.

4. Who is disqualified?

- 4.1 A member of staff may be disqualified under the 2018 Regulations if they:

- a) Have certain orders or other restrictions placed upon them
- b) Have a conviction (not time limited) of a relevant offence or a caution (if post-2007) for a relevant offence;

Table A – Relevant Offences and Table B – Relevant Orders

- 4.2 The statutory guidance sets out the full disqualification criteria under the 2018 Regulations and Tables A and B brings up to date the offences and orders meaning a person is disqualified if any of the following apply:

- a) Inclusion on the Disclosure and Barring Service (DBS) Children’s Barred List
- b) If they have been subject to an order, a refusal for registration, or disqualified through other provisions, in any circumstances of the kind specified in the DfE Statutory Guidance (p 25) **Table B** – Relevant Orders referred to in paragraph 1.2 above;
- c) Alternatively, the list of orders and determinations that will lead to disqualification are set out in Regulation 4(2) listed in Schedule 1 to the 2018 Regulations and can be accessed as detailed in paragraph 1.1 above.
- d) If they have been cautioned (including a reprimand or warning) since 6 April 2007 or have ever been convicted of:
 - o Any offence against or involving a child (*NB: a child is a person under the age of 18*); and/or
 - o Any violent* or sexual offence against an adult (offences referred to in regulation 4, schedules 2 and 3 of the 2018 Regulations) (**NB: a violent offence includes but is not limited to murder, manslaughter, kidnapping, false imprisonment, ABH, GBH*); and/or
 - o Any offence under the Sexual Offences Act 1956 or 2003; and/or
 - o Any other relevant offence
- e) If they have been found to have committed an offence overseas which would constitute an offence leading to disqualification under the 2018 Regulations if it had been committed in any part of the UK.

- 4.3 The DfE Statutory Guidance **Table A** – Relevant Offences must always be disclosed. *(NB: however, please note that this is not an exhaustive list and new offences may be added).*
- 4.4 The legislative list is available from the school office or at the links below:
<http://www.legislation.gov.uk/uksi/2018/794/schedule/1/made>
<http://www.legislation.gov.uk/uksi/2018/794/schedule/2/made>
- 4.5 Employees must understand that disclosure of any of the above circumstances is an ongoing process and where an employer, staff member or volunteer becomes aware of relevant information that may lead to disqualification, the school must take appropriate action in line with the 2018 Regulations. Schools should consider using the DBS update service to supplement any employee self-declaration. If the school is unsure whether an offence is relevant, please seek advice from your school's HR Business Partner. Full details of what constitutes "disqualification" are set out there:
<http://www.legislation.gov.uk/ukpga/2006/21/part/3/chapter/5/crossheading/disqualification-from-registration>
- 4.6. For new employees, an up to date DBS certificate will help establish whether the offences committed by an individual are relevant offences relevant to their employment.

5. Staff covered and relevant settings

- 5.1 The Regulations cover staff who **directly provide** childcare in nursery, infant, junior and primary or secondary school settings where the following applies:
- Early years provision – staff who provide childcare for a child up to and including reception age (from birth until 1st September following their 5th birthday). This includes education in nursery and reception classes and/or any 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; and/or
 - Later years provision (for children under 8) – staff who are employed to work in childcare provided by the school **outside** of normal school hours for children who are above reception age but 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 choir or sports teams) but it does include before school settings such as breakfast clubs and after school provision; and / or
 - staff who are directly concerned in the **management** of such early or later years childcare provision. Schools should use their judgment to determine who is covered in this category but this will include the head teacher, any other member of the leadership team, manager, supervisor or volunteer responsible for the day-to-day management of the provision.
- 5.2 Staff who work in the following roles are **not** covered by the Regulations:
- Only provide education, childcare or supervised activity during school hours to children above reception age; or
 - Only provide childcare or supervised activity outside of school hours for children who are aged 8 and over; and
 - Have no involvement in the management of relevant childcare provision.
- 5.3 Governors 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 the provision.

- 5.4 Volunteers and casual workers (including individuals on work experience or training) who work in school on a regular basis, whether supervised or not, in relevant childcare or who are directly concerned with the management of childcare provision are within the scope of the 2018 Regulations and statutory guidance.
- 5.5 Staff who are not employed to directly provide childcare are **not** covered by the legislation. This means that staff employed by the school or the local authority as caretakers, cleaners, catering staff, DSO catering and cleaning staff, drivers, transport escorts and office staff are **not** covered unless their role or their job description specifically requires them to provide childcare as defined by the Childcare Act 2006. In certain circumstances this decision may not always be clear cut, particularly where roles are blurred and if schools are in any doubt they should seek advice from their named HR Business Partner.
- 5.6 Staff involved in any form of healthcare provision for a child are specifically excluded from the statutory definition of childcare, and are therefore **not** covered by the legislation. This category means that school nurses, and local authority staff such as speech and language therapists and education psychologists are excluded from the legislation.
- 5.7 Staff employed in secondary schools will not ordinarily be covered by the Regulations due to the ages of children taught but secondary schools will be required to undertake checks on relevant staff (including managers) where early years and later years childcare provision for children up to the age of 8 is provided outside of school hours e.g. childcare facilities and before or after school clubs. This will include provision that is open to children up to the age of 8 but which is not exclusively provided to children of those ages. The relevant persons in this situation will be staff in the school who organise, supervise or manage the activity, club or facility that is open to children under the age of 8.
- 5.8 Ofsted Inspectors – while not specifically referred to in the statutory guidance, Ofsted have informed Nottinghamshire County Council that in their view, Ofsted Inspectors are not covered by the requirements of the ‘Childcare Disqualification’ legislation. Ofsted have provided NCC with written confirmation that all Ofsted staff, including approved additional inspectors have been through a DBS ‘Enhanced with Barred List information’ check.
- 5.9 It is the responsibility of the local authority to ensure that centrally employed staff who are deployed to work in relevant childcare settings (for example peripatetic music teachers or special needs teachers or teaching assistants) are compliant with the requirements of the Regulations. The local authority will ensure the appropriate disqualification checks for centrally employed staff covered by the Regulations and will confirm to schools that the appropriate disqualification checks have been undertaken. Nottinghamshire County Council has also produced a document ‘Guidance on Visitors, including VIP’s to schools’ [Schools portal Visitors Policy](#)
- 5.10 It is important to note that staff and volunteers who are only occasionally deployed and not regularly required to work in relevant childcare will **not** automatically come within the scope of the legislation. The statutory guidance states “*Schools and local authorities 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 local authority’s HR provider, LADO or safeguarding lead officer when appropriate. A record of the assessment should be retained on the employee’s personal file and a copy supplied to the individual concerned.*” Schools are strongly advised to seek advice from their named HR Business Partners if they are unsure on what action to take.

- 5.11 Staff directly employed to provide or manage childcare, such as teachers, teaching assistants, mid-day supervisors are therefore covered by the regulations but only if they work in relevant childcare provision. In Nottinghamshire schools staff employed in these roles are normally required to be deployed to work across the school with any age range and the advice is that all of these staff should be asked to complete the declaration.
- 5.12 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 their designated HR Business Partner. 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. Therefore Teaching and TA 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. MDSA's will come under the scope as they work across the whole school age range regularly.
- 5.13 Schools should ensure that childcare providers who hire or rent school facilities or premises (e.g. private childcare provider where the school is not the employer), have appropriate policies and procedures in place to safeguard children, which meet the statutory requirements, including the new 2018 Regulations.
- 5.14 Where the school (or local authority) 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.
- 5.15 Where the school deploys a person who is self-employed (e.g. 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.
- 5.16 The requirements in paragraph 4 also apply where training suppliers, such as initial teacher training providers, are placing trainees or students at the school, who are working and/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 (i.e. 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 from Ofsted (and the school should confirm this prior to them starting?)

6 Action required by your school.

- 6.1 **IDENTIFY RELEVANT STAFF-** Schools must ensure that they are not knowingly employing a person who is disqualified under the 2018 Regulations in connection with relevant childcare provision. The school should identify and keep a record of those staff and volunteers who work in or manage relevant childcare. The school should record this information on the Single Central Record (SCR) and once completed record the date of the disqualification check. [Schools portal SCR guidance notes](#)

- 6.2 **MAKE RELEVANT STAFF AWARE** – anyone who falls within the relevant categories of staff as described in this guidance should be told by the head teacher that they are covered by the legislation.
- 6.3 **GATHER SUFFICIENT AND ACCURATE INFORMATION** using the Declaration Form. All relevant staff (including the head teacher, SLT, volunteers, relevant Governors as per paragraph 5.3 above and any individuals absent from work on a prolonged basis eg maternity, sickness or secondment) **must** be asked to complete the “Disqualification under the Childcare Act 2006 Declaration Form” **as soon as possible**, to enable the checks to be completed. A date for the return of the form should be given (one week is reasonable) and this should be entered onto the form when given to the member of staff/volunteer. Schools should print the Schedules (Table A and B) to the Regulations (which detail the disqualification orders, offences etc) and make these available for staff (either with each form or in a central place) for reference. In gathering information to make decisions, schools must ensure that they act proportionately and minimise wherever possible the intrusion into the private lives of staff. The links are here:

<http://www.legislation.gov.uk/ukxi/2009/1547/schedule/1/made>
<http://www.legislation.gov.uk/ukxi/2009/1547/schedule/2/made>
<http://www.legislation.gov.uk/ukxi/2009/1547/schedule/3/made>

The list of offences set out in the Statutory Guidance Tables and Annexes tables A and B may change as offences are added or removed from the Regulation schedules. Schools should always go back to the source legislation to confirm which offences are relevant at any time. All current and prospective employees (and volunteers) who work in a relevant childcare setting are required to complete and sign the Declaration in relation to any relevant position they hold within the school.

Staff will know their own personal situation with regard to the specific offences. Paragraph 8 sets out the information Ofsted will require as part of the waiver application process. It is important that all staff understand that the new disqualification check supersede any previous safer working checks, including DBS. Where relevant offences are identified, individuals are covered by the Regulations and must apply to Ofsted for a waiver (see section 8), even where the offence/caution declared on the form may already be known to the school possibly as a result of a previous DBS or CRB check.

The school must ensure that from 1 September 2018 questions are no longer asked about cautions or convictions of someone living or working in their household. This requirement no longer applies in schools and has now been removed from the declaration form. In addition schools must not ask for a copy of the person’s criminal record from the police (please note this is not the same as a DBS certificate which may be obtained from an individual).

Where a member of staff does not complete and return the form within the timescale, they should be reminded and given a further week to return it. If it is not returned at this point the employee should be warned that a failure to return the form within a further 7 days may require the school to deal with the matter as a conduct issue for failure to comply with a reasonable request and take action to remove the individual from school. Please contact the named school HR Business Partner for advice should this arise.

- 6.4 **PROCESS COMPLETED FORMS** - completed forms signed by the employee should be returned confidentially to the head teacher / chair of governors (for the head teacher). The

date of the satisfactory completion of the disqualification check should be recorded on the SCR. This is necessary because Ofsted will want to see confirmation that checks have been undertaken for relevant staff as part of the normal inspection process.

- 6.5 MANAGE PERSONAL DATA EFFECTIVELY-** It is very important for this process to be managed confidentially and that only information requested on this declaration form is obtained from staff. Schools must avoid requests for information which is not relevant to ensure that the school is not in breach of the Data Protection Act 2018 (DPA) which is the UK's application of the General Data Protection Regulation 2018 (GDPR); Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (as amended 2013); Rehabilitation of Offenders Act 1974 ROA); and Human Rights Act 1998. Schools should avoid asking for medical records, details about unrelated cautions or convictions or spent convictions of employees, DBS certificates from third parties, or copies of a person's criminal record. Staff or third parties should not be asked to make requests for their criminal records from the police or courts as this will amount to an enforced subject access request which is an offence under S184 of the 2018 DPA leaving the school liable to prosecution. Further information about S184 is provided in the ICO Guidance found here: <https://ico.org.uk/for-organisations/guide-to-the-general-data-protection-regulation-gdpr/>.

The legislation does not prevent a school from gathering data, where a failure to do so would result in a child being placed at risk of harm. Personal data should not be held without consent from the individual. In instances where consent is not provided, only a record of the date and the date the declaration was made, details of any safeguarding restrictions and whether or not an Ofsted waiver has been granted should be recorded. Schools should review, in line with their retention schedules, any historic data collated and destroy any information that is no longer required. This does not extend to records which contain information about allegations of sexual abuse or other information schools are obliged to preserve in line with the requirements of the inquiry into child sexual exploitation and / or other child protection requirements. All data should be managed according to the schools own Data Protection Policy. Advice on handling data is provided in the [ICO Guide to Data Protection](#)

7. Disclosure of relevant offence or caution

The school should take immediate action if they:

- a) know of any staff in a relevant setting who is or may be disqualified
- b) receive a positive declaration from any member of staff / volunteer

- 7.1** If any member of staff / volunteer answers "Yes" to any of the questions they should take the form to the head teacher / chair of governors immediately so that the next steps can be considered. The head teacher should contact their chair of governors and named HR Business Partner. Schools should ensure that information is kept to a minimum, is accurate and stored for the minimum period of time necessary. In order to comply with the requirements of the DPA any personal information that is retained which is relevant to disqualification should be held on the employee's confidential personal file and held securely in a locked cabinet. It is critical that substantive details of criminal records checks should not be retained and information provided to the school that is not relevant should be destroyed. Guidance on the general data protection regulation issues for employers carrying out criminal records checks is provided in the [ICO Guide to Data Protection](#)

- 7.2** The head teacher should confidentially discuss the information provided on the declaration form with the individual, provide support to the individual and carefully consider the relevant

offences to ensure that the offence is covered by the Regulations. The member of staff should also be advised to contact their Trade Union for additional support and advice.

- 7.3 Where necessary schools should seek advice from their named HR Business Partner to help them establish whether the member of staff with relevant cautions or convictions is disqualified from providing childcare. In complex cases the HR Service will seek legal advice on behalf of the school. Where it is established that the offence or caution is covered by the Regulations, the head teacher should discuss the immediate implications for the individual with their named HR Business Partner before further discussing the next steps in detail with the member of staff.
- 7.4 In considering the relevant offences, the school must take into account the Rehabilitation of Offenders Act 1974 (the 'ROA 1974'). This allows certain criminal convictions, cautions, and youth cautions (formerly reprimands and final warnings) to be considered spent after a specified period of time known as the rehabilitation period, which is decided by the sentence or disposal received. However, the vast majority of roles in schools and relevant childcare settings are exempt from the ROA 1974 under the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (as amended in 2013) ('the Exceptions Order'). As a result, school employees are normally required to disclose all their convictions and cautions, including those that are spent. The exception is that certain minor cautions and convictions are 'protected' for the purposes of the Exceptions Order, which means they are not subject to disclosure to employers and they are removed or 'filtered' from standard or enhanced DBS certificates.
- 7.5 The majority of offences that lead to disqualification under the Regulations will never become protected, which means that they must always be disclosed by a member of staff employed to work in relevant childcare, and they will not be filtered from the DBS certificate. Schools should inform their staff that when responding to questions about their cautions or convictions, they do not need to provide details about any protected cautions or protected convictions. Staff working in childcare are entitled to respond to a question relating to their criminal record as though it only relates to cautions or convictions that are not protected.
- 7.6 The DBS have provided guidance (<https://www.gov.uk/government/collections/dbs-filtering-guidance>) to help schools understand the old and minor cautions and convictions that do not need to be disclosed. All offences listed in Tables A and B of the 2018 Statutory Guidance must always be disclosed, as should any offences involving the death or bodily injury to a child (even if not listed in the table).
- 7.7 Where it is established that an individual working in a relevant setting falls within the remit of one of the disqualification criteria as set out in the 2018 Regulations, the school must inform Ofsted by email (disqualification@ofsted.gov.uk) and inform the individual that Ofsted has been notified.
- 7.8 The head teacher (or chair of governors in the case of the head teachers) should confidentially discuss the implications of the disqualification with the individual, including that it is expected that the individual will make an immediate waiver application to Ofsted. It should be made clear that the responsibility for considering a waiver rests with Ofsted and that a waiver cannot be granted to an individual who is on the Children's Barred List.
- 7.9 The school must not allow a staff member who is disqualified to continue in their current role in connection with early years or later years childcare provision or in a role that is directly

concerned with the management of such provision unless they receive a waiver from Ofsted which relates to the role they undertake or have applied to undertake.

- 7.10 Whilst Ofsted consider the waiver application, the school should exercise judgement and carefully consider whether it is possible to make reasonable adjustments to the current role or whether redeployment to another role is appropriate or practical (to include consideration of reasonable adjustments to make this role feasible), to avoid them providing childcare. An individual could be disqualified from working in school with children of reception age or under, but potentially could be deployed to work with children aged 6 or 7 or older, provided that they do not work in childcare provision outside of normal school hours. For example, a primary school could consider whether or not a risk assessment could enable a Midday Supervisor to be safely deployed to work with juniors and not with reception age children on a temporary basis. This may or may not be practicable even on a temporary basis and it is a matter for the school to determine.
- 7.11 In making a decision at the pre waiver stage, the school should take account of the risk of harm to children and the school's obligations under the Childcare Act 2006 and the Regulations, the EYFS, KCSIE guidance and any other relevant safeguarding and safer working guidance. In exercising judgement, schools, and for centrally employed staff, the local authority should evaluate and record the risks and control measures which can be put in place to enable the member of staff to remain in school. The head teacher should seek advice from the HR Service and/or LADO. Where such decisions are made a detailed record of the risk assessment should be discussed and confirmed in writing with the individual, signed by both parties and retained on the employee's personal file.
- 7.12 Where alternative redeployment arrangements cannot be made or it is not appropriate to do so, the school should consider whether to grant special paid leave or as a last resort take a decision to suspend the member of staff whilst the waiver application is under consideration. HR advice should be taken in this regard.

8 Application to Ofsted for a waiver from disqualification

- 8.1 The school should explain to the individual that details about how to make an application for a waiver, and a copy of the form, can be found in the [Ofsted fact sheet: Applying to waive disqualification: early years and childcare providers](#)

The individual should be advised that they are expected to complete the waiver application immediately, accurately and fully to minimise delay on a decision being reached. Ofsted will require information about the individual who satisfies the disqualification criteria. This should include, where this is known or available:

- a) details of any order , determination, conviction, or other grounds for disqualification from registration under the 2018 Regulations;
- b) the date of the order, determination or conviction, or the date when the other ground for disqualification arose;
- c) the body or court which made the order, determination, caution or conviction, and the sentence/disposal (if any) imposed; and
- d) if held, a certified copy of the relevant order (in relation to the order, caution or conviction). Schools should not request DBS certificates from third parties, or copies of a person's criminal record obtained directly from the police, prison, probation service

or courts, as this would be considered an enforced subject access request-, which is a criminal offence.

- e) there is provision on the waiver application for the applicant to provide details as to the circumstances of the offences and any mitigating factors here should be specified, for example the offence is historic, not related to a child, it arose as a result of unique circumstances, etc.

The individual should inform the school as soon as the waiver application has been submitted to Ofsted.

- 8.2 If the person decides not to apply to Ofsted for a waiver, or if there are restrictions imposed by Ofsted to a particular setting or job, or if a waiver is declined, the school will need to consider the implications for the member of staff and the school. The school will need to exercise judgement and carefully consider whether or not it is appropriate and practical for adjustments to be made so that the individual can be permanently redeployed into a post which avoids them working in a relevant childcare. In exercising this judgement, the school and for centrally employed staff, the local authority should take account of the risk of harm to children, their obligations under the 2006 Act, the EYFS, KCSIE Guidance. The school must evaluate and record the risks and the control measures which can be put in place. Where it is possible to make adjustments, the decision and a detailed record of the risk assessment should be discussed with the individual, agreed in writing and signed by both parties. A copy should be placed on the employee's personal file and a copy provided to the individual. Permanent changes and restrictions imposed by Ofsted on employment should be fully understood and where it is appropriate incorporated into the contract of employment. The documentation should be retained on the employee's personal file. Alternatively, if redeployment options are not practicable the school will be required to take steps to terminate the contract of employment. The governing body will not be able to over-turn an Ofsted decision, based on statutory regulations not to grant a waiver. The school should always seek advice from the HR Service in such circumstances.
- 8.3 Following a recruitment process for a post covered under the regulations, the successful applicant, must be required to complete the Disqualification Declaration Form. An offer of employment must only be conditional subject to the completion of this form and the receipt of any waiver from Ofsted if required. For new appointments, DBS checks will help schools to establish whether a prospective employee is covered by the Regulations and DBS certificates should be checked with reference to list of relevant orders offences in the 2018 Regulations (Schedules 1, 2&3) and statutory guidance.
- 8.4 The requirements of the legislation and the 2018 Regulations should be brought to the attention of all staff, volunteers and the governing body. The governing body should make arrangements to review this guidance on a regular basis. Staff should be reminded that the 2018 Regulations place an ongoing requirement on the school, governing body, staff member or volunteer to take appropriate action in line with the 2018 Regulations if they become aware of relevant information that may lead to disqualification.
- 8.5 Information about the requirement of the Regulations should be included in the staff handbook, employee, volunteer and governor induction programmes and staff briefings. The school should ensure that it's safeguarding, safer working and recruitment and selection policies and procedures are updated and revised practices implemented.

- 8.6 The Single Central Record (SCR) Guidance for schools and the updated SCR which now includes the disqualification by association check, has been updated and may be accessed here: [Schools portal SCR guidance notes](#)
- 8.7 Full guidance on pre-employment checks can be found in Keeping Children Safe In Education (July 2018) part 3 and on the School Portal and can be accessed here: [Keeping children safe in education \(KCSIE\)](#)
- 8.8 Schools should ensure that childcare providers who hire or rent school facilities or premises (where staff are not employed by the school or the local authority to undertake this work) have appropriate policies and procedures in place to safeguard children, including under the 2018 Regulations.
- 8.9 Where schools or the local authority use staff from any agency, or third party organisation to provide childcare, or contract out such childcare, they must obtain confirmation from the agency or organisation providing the staff that all of the necessary safer working checks have been completed. This means that staff deployed to work in relevant childcare, or who are directly concerned in the management of such provision are not disqualified under the 2018 Regulations.
- 8.10 Where the school or local authority deploy a self-employed contractor to work in relevant childcare provision as defined in this document, the school or local authority must ensure that they are not disqualified under the 2018 Regulations.
- 8.11 Initial teacher training providers, and other training suppliers, who place trainees or students at a school who work or are being trained for example on an employment based teacher training programme in a relevant setting are also covered. The school must therefore obtain written confirmation from the training provider that they are not disqualified under the 2018 Regulations.

Monitoring and Review

9. Where changes to this policy are proposed the governing body will undertake an Equality Impact Assessment (EQIA). The governing body will make available to staff the outcomes of the Equality Impact Assessment.
- 9.1 The governing body will monitor the outcomes and impact of this policy annually in line with a review on safer working practices.
- 9.2 This document should be read in conjunction with:
[Keeping children safe in education \(KCSIE\)](#)
- Further help on how the childcare disqualification arrangements should be applied in schools can be obtained from the Department for Education by email mailbox.disqualification@education.gov.uk; or by telephone – 01325 340 409.
- Any enquiries about the waiver application process should be made to Ofsted using the disqualification@ofsted.gov.uk mailbox.
- 10.0 Staff Declaration Form - Please find on the [schools portal](#)
- 11.0 FAQ's – Please find on the [schools portal](#)

Document history

Document produced by HR Service - March 2015 (AW)
Document updated by the HR Service - April 2015 (AW)
Document updated by the HR service - October 2016 (RH)
Document updated by the HR Service - September 2018

JCNP Staffing Regulations Working Party	September 2018
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Review date	As per legislative changes