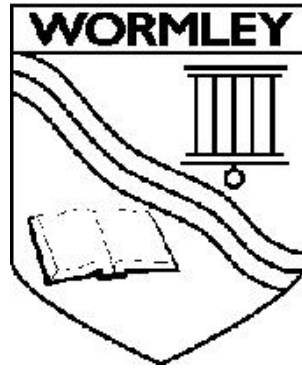


WORMLEY C of E PRIMARY SCHOOL (VC)

Have Faith, Show Respect, Take Responsibility and Achieve



Childcare Disqualification Regulations Policy

Policy last reviewed – Summer 2021
Policy next review – Summer 2024

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Introduction

This guidance provides you with information about legislation that affects some roles in schools.

It is based on statutory guidance from the Department for Education (DfE) on the application of 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 in schools.

[The Department for Education \(DfE\) issued updated guidance which was effective from 31 August 2018](#)

It is recommended that the full list of offences/orders from this guidance are printed and maintained as a hardcopy so that staff without access to a computer can access them.

Staff Covered and relevant settings

Staff (including volunteers) 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) 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, or if they are directly concerned with the management of such childcare. Staff in secondary schools only come into 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 children under 8.

This includes:

Early years provision

Staff who provide any care for a child up to and including reception age. 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 provision (for children under 8)

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 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.

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.

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's the responsibility of the local authority to ensure that such staff are compliant with the requirements of the legislation explained in this guidance.

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 person who is self-employed (for example 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.

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's 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's 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. Guidance on how to apply for a waiver can be found in the application for an Ofsted waiver from disqualification of this guidance.

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 within the scope of the legislation and are covered by this guidance.

- 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.

Due to the flexible nature of the way in which staff may be deployed in schools both in teaching and non-teaching roles where regular rotation between class groups which include the provision of childcare as defined above occurs, it is advisable to consider this when requiring staff to complete a declaration form and ensure one is completed only if required.

The Headteacher will be covered by this legislation being directly concerned with management of the provision and other members of the school leadership may be too. Governors would not usually be covered but could be if they were volunteering to work in relevant childcare on a regular basis or if they are directly concerned with management which would be unusual.

Please note: Staff such as caretakers, cleaners, drivers, travel escorts, catering and office staff, who are not employed to directly provide childcare, are not covered by the legislation.

Who is disqualified?

The Regulations prohibit anyone who is disqualified themselves under the Regulations, from working in a relevant role.

A person may be disqualified through:

1. Having been included on the Disclosure and Barring Service (DBS) Children's Barred List.
2. Having been 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).
3. Having 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.
4. Having refusal or cancellation of registration relating to childcare, or children's homes, or being prohibited from private fostering, as specified in Schedule 1 of the 2018 Regulations.
5. Having been found to have committed an offence overseas which could constitute an offence regarding disqualification under the 2018 Regulations if it had been done in any part of the United Kingdom.

What constitutes disqualification and a list of relevant offences can be found in the schedules of the legislation which are contained in the statutory guidance here:

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

Schools are responsible for ensuring that staff within the relevant settings are made aware of the legislation but are free to decide how this should be done which could include a section in the safeguarding policy or another policy. Whilst a school is required to gather sufficient and accurate information it is not necessary to ask staff to complete a self-declaration form but many do incorporate such a form within the recruitment pre-employment checks.

A Childcare Disqualification Regulations Declaration Form) is attached at the end of this guidance **however it is important that staff who are not in the relevant settings are not required to complete and schools should not therefore operate a blanket approach. This approach is in accordance with the following paragraph from the 2018 DfE regulations:**

“It is important that schools avoid asking for information that is not relevant to ensure that they are not in breach of data protection legislation. 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. 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.

Schools should refer to Keeping Children Safe in Education and the Department's [Data protection: toolkit for schools](#) to comply with data protection legislation, including GPDR and the 2018 DPA.”

If there is a positive declaration on any employee's form schools should seek guidance from the Herts for Learning HR Services Team, for those that buy into the service, on the next steps to take as many issues arise, including data protection.

Where schools, receive information and are satisfied that an individual working in a relevant setting falls within one of the disqualification criteria in the 2018 regulations they must inform the individual of this and explain the implications of disqualification to them, including whether they can apply to Ofsted for a waiver of disqualification (for example, Ofsted cannot grant a waiver to an individual who is on the Children's Barred List) and make clear what information the individual will need to share with Ofsted and why. When communicating these matters to a staff member schools should consider taking advice from their HR provider, designated officer, safeguarding lead officer or adviser.

Schools 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](#). Ofsted will need the individual to complete the waiver application accurately and fully and will need information about the individual.

Pending the outcome of the waiver application the employee is not able to continue working in settings covered by the regulations. They can be temporarily redeployed into another role, or adjustments can be made to their role to avoid them working in relevant childcare, or placed on paid leave of absence. If these options are not possible, the employee must be suspended on full pay. When making decisions about the redeployment of staff schools should take into account the risk of harm to children concerned and their obligations under the 2006 act, the EYFS and KCSiE guidance. Ofsted may grant a full or partial waiver and if a waiver is not granted or the employee does not submit an application, the employee will need to be dismissed unless redeployment options are available.

Data Protection

Schools must record the date on which the checks were completed. Whilst not a mandatory field, we recommend that this is added to the schools' Single Central Record (SCR). For those undertaking roles not in scope the advice is to input 'N/A' on the SCR.

In maintaining records, schools must ensure they comply with the requirements of the Data Protection Act and in particular destroy all irrelevant information. For example, this would include circumstances where an employee has declared something which is not covered by the regulations.

It is vital that schools do not ask staff or third parties to make requests for their criminal records in connection with employment, as this will amount to an enforced subject access request which will be an offence under section 56 of the DPA.

Disclosing offences – Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (as amended in 2013)

The vast majority of roles in schools and relevant childcare settings are exempt from the Rehabilitation of Offenders Act 1974 (ROA). The Ministry of Justice have [guidance on the ROA](#). Individuals working in these settings are therefore covered by the [Rehabilitation of Offenders Act 1974 \(Exceptions\) Order 1975 \(as amended in 2013\) \('the Exceptions Order'\)](#).

As a result, they are normally required to disclose 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.

The majority of offences that lead to disqualification under the 2018 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 a DBS certificate. The DBS has produced [a list of specified offences that will never be filtered](#). All the offences listed in Table A in [the appendices](#) must always be disclosed, as should any offence involving death or bodily injury to a child (even if not specifically listed in the table).

Schools should inform their staff that when responding to questions about their criminal record, 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. [Guidance provided by the DBS](#) will help schools understand the old and minor cautions and convictions that do not need to be disclosed.

Schools may wish to consider obtaining professional advice from their HR provider, designated officer, or safeguarding lead officer or adviser to help them establish whether staff with relevant cautions or convictions are disqualified from working in relevant childcare. Individuals may also wish to consider contacting independent organisations for advice such as Nacro or Unlock. These organisations are independent of government. The Department accepts no liability for the information given by any third party organisation.

What checks must the school do in relation to individuals working on the school site not employed by the school?

Where schools use staff from any agency or third-party organisation, to work in relevant childcare in schools, 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 deploys a contractor who is self-employed to work in relevant childcare provision, the school must ensure that they are compliant with the requirements of the legislation explained in this guidance.

Who is responsible for checking trainee staff?

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, 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.

What should I do for staff that are likely to work in areas that are in scope but do not do so now?

We suggest that where a school has several class groups that are in scope of the regulations, all staff who may be assigned to a class in scope of the regulations, complete a declaration form and apply for a waiver if appropriate.

If it is clear that an individual will not realistically be required to work in a class in scope of the regulations they should not be asked to complete a declaration form.

Appendix 1 – Childcare Disqualification Regulations Declaration Form

(This is provided to staff via a [Google form](#))

School

Please do not complete this form if you do not work in the relevant settings as outlined in the Childcare Disqualification Regulations

The Childcare Disqualification Regulations require organisations that provide care for pupils in certain age ranges and settings to ensure that staff and volunteers working in those settings are not disqualified from doing so under the “Disqualification under the Childcare Act 2006”.

Reference:

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

A person may be disqualified through:

1. Having been included on the Disclosure and Barring Service (DBS) Children’s Barred List
2. Having been 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)
3. Having 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
4. Having refusal or cancellation of registration relating to childcare, or children’s homes, or being prohibited from private fostering, as specified in Schedule 1 of the 2018 Regulations
5. Having been found to have committed an offence overseas which could constitute an offence regarding disqualification under the 2018 Regulations if it had been done in any part of the United Kingdom

The above list is only a summary of the criteria that lead to disqualification. Further details about the specific orders and offences, which lead to disqualification, are set out in the 2018 Regulations.

If you work in the relevant setting, you are required to sign the declaration below confirming that you are not disqualified under those Regulations. You do not have to disclose convictions, cautions, reprimands or final warnings that are “protected” as defined by the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (as amended in 2013)

If you fail to complete and return the form, this will be regarded as a disciplinary matter, which may result in dismissal and if you are a job applicant the offer of employment will be withdrawn. In the case of volunteers (where required to sign) it may mean that you can no longer work at the school.

A disqualified person is not permitted to continue to work in a relevant setting, unless they apply for and are granted a waiver from Ofsted.

Reference:

<http://www.ofsted.gov.uk/resources/applying-waive-disqualification-early-years-and-childcare-providers>

Name	Post
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Please circle one option for every question

Section 1 – Disqualification Criteria – when responding to the following questions about your cautions or convictions, please bear in mind that you only need to provide details of any convictions that are relevant to the childcare disqualification legislation – see link below.

Have any orders been made in respect of you in relation to the care of children which are referred to in regulation 4 and listed at Schedule 1 of the 2018 Regulations?	YES / NO
Have you been found to have committed certain violent and sexual criminal offences against children or adults which are referred to in regulation 4 and Schedules 2 and 3 of the 2018 Regulations?	YES/NO
Have any orders been made which prevents you from being registered in relation to child care, children’s homes or fostering as specified in Schedule 1 of the 2018 Regulations?	YES/NO
Have you been found to have committed an offence overseas, which would constitute an offence regarding disqualification under the 2018 Regulations if it had been done in any part of the UK? These are summarised in the following document: https://www.legislation.gov.uk/ukxi/2018/794/contents/made	YES / NO
Are you barred from working with Children (Disclosure and Barring Service (DBS))?	YES / NO
Are you prohibited from Teaching?	YES / NO
Are there any other relevant offences in respect of you as set out in Schedule 1 of the 2018 Regulations? See link above for further details.	YES/NO

Section 2 – Provision of Information

If you have answered YES to any of the questions above you should provide details below in respect of yourself. You may supply this information separately if you so wish, but you must do so without delay.

Details of the order, restriction, conviction, caution etc.	
The date(s) of these	
The relevant court(s) or body(ies)	

If possible please provide a copy of the relevant order, caution, conviction etc. In relation to cautions/convictions a DBS certificate may be provided.

Section 3 – Declaration

In signing this form, I confirm that the information provided is true to the best of my knowledge and that:

- I understand my responsibilities to safeguard children.
- I understand that the information provided on this form will be retained on my personal file.
- I understand that I must notify my Headteacher immediately of anything that affects my suitability including any cautions, warnings, convictions, orders or other determinations made in respect of me or unspent convictions that would render me disqualified from working with children.
- I understand that I must notify the Headteacher immediately if there are any changes or additions to the information I have supplied on the form that may occur in future.

Signed			
Print Name		Date	

Appendix 2 - Childcare Disqualification letter

[ON HEADED NOTEPAPER OF EMPLOYER]

[SCHOOL NAME]
[ADDRESS LINE 1]
[ADDRESS LINE 2]
[POSTCODE]

[TITLE] [RECIPIENTS NAME]
[ADDRESS LINE 1]
[ADDRESS LINE 2]
[POSTCODE]

[DATE]

Dear [],

Childcare Disqualifications

I am writing to notify you of some legislation that affects your role. The Childcare (Disqualification) Regulations 2018 are made under the Childcare Act 2006. In accordance with the guidance issued by the Department for Education which has highlighted to the school the need to ensure employees who are providing 'childcare' to children in certain settings to provide us with additional information.

The Regulations prohibit anyone who is disqualified themselves under the Regulations from working in a relevant role. A person is disqualified if any of the following apply:

- 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
- 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.

The above list is only a summary of the criteria that lead to disqualification. Further details about the specific orders and offences, which will lead to disqualification, are set out in the 2018 regulations.

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

We have classified your role to be providing 'childcare' to children in the relevant settings and therefore this role falls within scope of the legislation.

Enclosed is a Childcare Disqualification Regulations Declaration Form, which you will need to complete and return to the Headteacher. This form must be received by [DATE]

If there is a positive declaration on your form we will need to meet to discuss next steps, otherwise relevant information from your Declaration Form will be retained on your personal file. You are also required to update your Headteacher if your circumstances change in relation to these regulations after completing this form.

If you have any questions on the above, please contact [NAME] on [CONTACT DETAILS].

Yours sincerely

XXXXXXXXXX



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