**Disqualification under the Childcare Act – statutory guidance**

The Department for Education (DfE) has issued statutory guidance for schools about disqualification under the Childcare Act - <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/414345/disqual_stat-guidance_Feb_15__3_.pdf>.

This clarifies the guidance that the DfE issued in October 2014. The legal position remains the same, so there are no changes to the requirements placed on schools, but the statutory guidance does draw together information that has already been published including information about the relevant offences and relevant orders that apply for disqualification under the childcare act.

The regulations prohibit anyone who is disqualified themselves, or who lives in the same household as a disqualified person, from working in a relevant setting, including in schools.

The regulations apply to

* staff who work in early years provision up to the age of 5 (up to 1st September following their 5th birthday - including teachers and support staff working in school nursery and reception classes);
* staff working in later years childcare settings for those up to the age of 8 (including breakfast clubs, after school clubs and crèche facilities)
* staff who are directly concerned in the management of such early or later years provision.

All staff employed in these settings who come into regular contact with children at these ages should undergo additional checks under the regulations.

**Action for schools**

Schools will need to determine which members of staff require the additional checks.

While it is clear that all those working in the settings described above and in the management of the settings are included, it is less clear with regard to other staff in schools who may come into contact with the children in these settings. This matter was discussed by the Education Sub Group of the Croydon LSCB, and they have proposed that the intensity and frequency tests currently used to determine whether DBS checks are required should be used to assess which members of staff require checks under the childcare disqualification regulations.

Schools are reminded that they should be proportionate in their response to the legislation and statutory guidance, and not undertake checks for staff for whom it is not relevant.

Schools can decide how to obtain information from their staff in order to demonstrate that they have complied with the legislation. One option is to use a declaration form.

Schools will need to undertake an annual check for relevant staff and include the check as part of the recruitment process where appropriate.

Further advice, and forms, will be available from the school’s HR provider.

**Disqualified Workers**

If the declaration process reveals that someone is disqualified, they can apply to Ofsted for a waiver. The process is described in the Ofsted document “Applying to waive disqualification” - <http://www.ofsted.gov.uk/resources/applying-waive-disqualification-early-years-and-childcare-providers>

Ofsted may grant a full or partial waiver, including a waiver that would allow an individual to work in a relevant school setting. While a waiver application is under consideration the individual **must not continue to work in these settings**, and while schools should endeavour to find suitable alternative employment while the waiver application process is underway, schools may need to suspend members of staff during this time. Schools should contact their HR provider for further support during this process.

**Single Central Record**

There is no statutory requirement to make an entry on the schools single central record, but adding a column on the record will provide a mechanism for schools to demonstrate that they have undertaken the check on staff.

**Ofsted**

Ofsted inspectors have been asked to check that schools are fulfilling their obligations under these regulations as part of the inspection of safeguarding.