

On 13 October 2014, the DfE published the 'childcare disqualification requirements' advice as a supplement to Keeping Children Safe in education.

In these FAQs, we help you decipher the advice and tell you what you need to do now.

Has this new requirement come out of the blue?

Yes, it has! The statutory framework for the early years foundation stage, which sets out the disqualification requirements, has been in place for child-minders and day nurseries for some time and the DfE confirmed that it applied to schools from 1 September 2014. However, the advice did not come out until 13 October 2014 which suggests that the fact that this law would now apply to schools may not have been recognised initially by the DfE.

This advice is in force now and we expect the DfE to consult on amending the Keeping Children Safe in education 2014 guidance early in 2015.

What does it mean for my school?

Primarily, this impacts on early years settings. Later years are affected too, but to a much lesser extent.

For all staff in the early years settings you now need to obtain a declaration from them that they have not been cautioned or convicted of certain offences or had relevant care orders made in relation to their own children.

You also need to go one step further and ask those staff to complete the same declaration on behalf of anyone else in their household. This is because individuals can be disqualified from working in early years settings as a result of convictions/care orders relating to those they live with.

Are all staff caught?

A good question. The advice is vague and the underlying legal definition of 'childcare' is extremely broad. It certainly includes all those who work in an early years classroom and the SLT responsible for managing early years, but in my view it will go for wider.

In primary and infant schools this is likely to extend to all staff, unless it can be shown that there is no contact between the early years children and the staff working in the rest of the primary school. This is only really possible where the nursery and reception classes are on a separate site or the early years site is physically divided from the rest of the school and there is no staff crossover.

Unless this can be shown, we have to advise that all staff are caught by this requirement, including midday and first aid staff.

What about later years children?

The advice document is vague, but having spoken to the DfE they have confirmed that only those that in before or after school clubs attended by children under 8 are caught. So staff working in later years settings are not caught simply because they teach/work with later years children during the school day.

What does 'others on the household' include?

This too is vague. It certainly is far wider than simply spouses and partners and would include children, other relatives living in the household, lodgers and flatmates.

The result of this requirement is that if someone living with the staff member or volunteer has been convicted of a relevant offence then your staff member/volunteer is disqualified as a result of their association with that individual.

How do you become disqualified?

An employee or volunteer is automatically disqualified if they or anyone in their household has:

- been cautioned or convicted of certain violent/sexual offences against a child or an adult
- has certain care orders made relating to the care of children
- had registration refused/cancelled in relation to childcare or children's homes or being disqualified from private fostering
- been included on the Children's Barred List.

This means that they won't have been told they are disqualified.

What do I need to do now?

You are required to obtain this information from staff. The advice requires you to ask relevant staff to complete a declaration confirming that they are not disqualified. To make life easier for you, our model declaration is available as part of our disqualification toolkit. You need to ask current staff and then build it in to your recruitment policy and process. There is no requirement for you to delve into the substance of the declaration. If they say no, you are entitled to take that answer at face value and rely on it.

You also need to add an additional column to your Single Central Record (SCR) to evidence that all staff have signed the declaration. Ofsted will check the SCR as part of your inspection, so getting this one right is important.

There is no requirement for volunteers to sign a declaration, so it is up to you to decide if you want to ask them. Some schools will want to in order to ensure consistency, others will simply meet the requirements and go no further. Either approach is acceptable. If you do opt to ask volunteers and you find they have committed a disqualifiable offence, there is no need to apply for a waiver. It is simply a matter for you to decide how you deal with that volunteer. We can help you with that.

What if they answer ‘yes’ on the declaration?

The declaration asks deliberately broad questions so answering yes is not the end of the world. The next step is to sit down with the staff member identify exactly what the conviction was for and check the Ofsted list to see if it is a disqualifiable offence. If it is not on the list, then we are not worried. If it is on the list, then that staff member is disqualified immediately.

What do I do if the staff member is disqualified?

Firstly, you have to notify Ofsted within 14 days. The next step is for the individual to apply to Ofsted for a waiver. Whilst awaiting the outcome of the waiver application, the individual remains disqualified. As a result, you either need to move them into a role that does not include early years childcare (or later years childcare as applicable and defined above) or suspend them pending the outcome of the waiver. As discussed above, for most primary and infant schools it will prove difficult to move the individual into a suitable role and so suspension might be the only option. Remember: You should seek advice before suspending and we can support you with this.

If the waiver is granted, you can go back to normal. If it is not, then the individual remains disqualified and appropriate disciplinary action should be taken. For further information contact me.

talk to us...

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