



## CES Guidance

### Disqualification Checks For Schools and Academies

#### **KEY LEGISLATION AND GUIDANCE:**

The term School(s) used throughout this Guidance means Catholic Schools and Academies.

\*\*\*Please note that the grounds for **disqualification by association** have changed significantly since 2009. The 2018 Regulations removed the disqualification by association offence where childcare is provided in non-domestic settings, because other safeguarding measures are well observed and in place. This means that schools do not need to apply the test for disqualification by association. Other disqualifications continue to apply to schools, as is set out below. Please ensure that you amend your recruitment practices accordingly if you have not already done so.\*\*\*

Key legislation and guidance with which staff should be provided by the Designated Safeguarding Lead relating to Disqualification and Disqualified Persons includes the following:

1. Childcare Act 2006: sections 75 and 76 ("The 2006 Act")
2. The Childcare (Disqualification) and Childcare (Early Years Provision Free of Charge) (Extended Entitlement) (Amendment) Regulations 2018 ("The 2018 Regulations").
3. Disqualification under the Childcare Act 2006: Statutory Guidance published in August 2018 ("the August 2018 Statutory Guidance"): specifically Table A which sets out the relevant offences.

Schools are advised to read the August 2018 Statutory Guidance which can be found here:

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

#### **WHAT ARE DISQUALIFICATION CHECKS?**

Disqualification checks arise from the 2018 Regulations. They are separate to other checks that are carried out by Schools such as DBS Checks.

A person may be disqualified under the 2018 Regulations because:

- they are on the Children's Barred List (for which the School will carry out a Disclosure and Barring Service check);
- they have been cautioned for or convicted of certain violent and sexual criminal offences against children and adults;

- there are grounds relating to the care of children (including where an order is made in respect of a child under a person's care, including their own children);
- they have had registration refused or cancelled in relation to childcare or children's homes or been disqualified from private fostering;
- They have committed an offence overseas, which would constitute a disqualifying offence under the 2018 Regulations had the offence been committed in the United Kingdom.

\*\*\*Note that disqualification under Regulation 9 (disqualification by association) now only applies when childcare is provided in domestic settings.

### **WHO IS A DISQUALIFIED PERSON?**

A Disqualified Person would fall within the following categories of staff in nursery, primary or secondary school settings:

- ❖ Those who provide early years 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). This includes education in nursery and reception classes and/or supervised activities (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.
- ❖ Those who provide later years childcare (this covers children above reception age but who have not attained the age of 8) in nursery, primary or secondary school). This does not include education or supervised activity for children above reception age during school hours but it does include before school settings such as breakfast clubs and after school provision;
- ❖ Those who are directly concerned in the management of such childcare.

### **It is a criminal offence for Schools to continue to knowingly employ a Disqualified Person.**

It is a criminal offence for a Disqualified Person to be involved in childcare in any of the categories set out above.

The August 2018 Statutory Guidance makes it clear that staff who are not employed directly to provide childcare are not covered by the legislation. Similarly, staff who are only occasionally deployed to work directly with children are not covered by the legislation. The August 2018 Statutory Guidance states that schools will need to exercise their judgement and ensure that appropriate control measures and safeguards are in place. The following categories of staff would not usually be covered by the legislation but there will be exceptions: caretakers, cleaners, drivers, transport escorts, catering and office staff. Schools will need to consider the scope of each role and take appropriate HR advice in determining whether a particular role is caught by the legislation. For example, an office worker who works directly with the children for a proportion of their working day (perhaps to provide lunchtime cover) may come under the legislation.

The August 2018 Statutory Guidance specifies that volunteers and casual workers come within the scope of the legislation if they are directly concerned with the management of childcare provision or work on a regular basis in relevant childcare.

You should also note that the School Governance (Constitution) (England) Regulations 2012 provide that a person is disqualified from holding or continuing to hold office as a governor if they are disqualified from registration under the 2006 Act.

In the case of workers that are supplied by an agency or third party organisation, schools should ensure that the agency or organisation has carried out the relevant checks.

### HOW SHOULD YOUR SCHOOL NOTIFY STAFF?

The August 2018 Statutory Guidance states that: *'Schools are responsible for ensuring that anyone who falls within the relevant categories of staff described in the staff covered and staff who may be covered sections is made aware of the legislation. Schools must make these staff aware of what information will be required of them and how it'll be used to make decisions about disqualification. Schools are free to decide how to bring these requirements to the attention of their staff. As a means of making staff aware of their duty to provide such information, they may, for example, choose to include a section in the school's safeguarding policy, or another policy document, or by means of an addition to new staff members' contracts of employment. Schools should draw this guidance to the attention of their staff and the information provided by Ofsted referenced in this guidance.'*

The August 2018 Guidance advises that schools are not required to ask staff to complete a self-declaration form in order to determine whether they are disqualified. If a self-declaration form is used, the questions will need to be appropriate for the specific role and staff should not be asked to complete a generic form asking for information that is not relevant to their post.

The August 2018 Guidance reminds schools of their obligations under the General Data Protection Regulation (GDPR) and the risk of committing a data breach if irrelevant information is sought. The Guidance August 2018 specifically advises against requesting medical records and details about criminal convictions relating to household members. Notably, disqualification by association is no longer applicable following the introduction of the 2018 Regulations. This means that schools should not ask staff to provide details about the criminal convictions of third parties living within their households. Although schools should not ask staff for irrelevant personal information, the August 2018 Guidance emphasises that promoting the welfare, protection and safeguarding of children is still paramount.

### ACTION TO BE TAKEN BY YOUR SCHOOL

- Schools should have appointed a Designated Safeguarding Lead in compliance with the Statutory Guidance: Keeping Children Safe in Education (September 2018).
- Schools should print the Schedules to the 2018 Regulations (which detail the disqualification orders, offences etc.) and make these available for staff.
- Schools should print the relevant offences set out in Table A of The August 2018 Statutory Guidance and make these available for staff
- Schools should ask all staff (including those who are absent from work) to acknowledge that they have read and understood the Disqualification Policy. The Disqualification Policy should be incorporated into the School's policies and procedures.

- The August 2018 Guidance provides that: *Schools that choose to add information pertaining to disqualification into their policies should alert all staff to the addition, for example via a staff bulletin or an e-mail.*
- The Disqualification Policy should set out the ongoing obligation to disclose to the School if they are or become a Disqualified Person.
- Schools should remind staff of this obligation on a regular basis, for instance, by reminding staff of the Disqualification Policy at annual safeguarding training and/or by way of an annual staff bulletin or email and/or at any point a staff member changes jobs.
- Schools must ensure that any external agency providing relevant staff in relevant settings carry out these checks prior to placing them in the School.
- All short-listed candidates in relevant settings, from this point onwards, should be required to sign the Disqualification Policy, (and DBS certificates should be checked). The CES Model Disqualification Policy can be found by following this link:

**[LINK]**

- Schools may need to update their Pre-Employment Checks Procedure accordingly. There is no requirement from the DfE or the August 2018 Regulations to add the check (of relevant staff) to the single central record. However the August 2018 Guidance states that schools must keep a record of those staff who are employed to work in, or manage relevant childcare provision and they should record the date on which any information about disqualification was provided. Schools can choose to keep details of checks as part of their single central record or maintain a separate record.
- Schools must handle and store all information in school carefully, in accordance with normal Data Protection rules.

### **WHAT IF AN EXISTING OR NEW STAFF MEMBER IS DISQUALIFIED?**

You must always consult with your Human Resources provider and / or seek independent legal advice if you become aware of any member of staff who is or may be disqualified. Decisions will need to be taken by schools on a case by case basis subject to their individual circumstances.

The 2018 Regulations require that anyone who is disqualified will need to be immediately removed from the relevant setting (either by temporary appropriate redeployment where possible or suspension if absolutely necessary).

An individual who is or becomes disqualified may apply to Ofsted for a waiver and schools should explain the implications to the relevant individual and advise them that they can usually apply to Ofsted for a waiver of disqualification. The school should provide the individual with information relating to how they can apply for a waiver.

Guidance on how to apply for a waiver can be found by following the link below:

<https://www.gov.uk/government/publications/applying-to-waive-disqualification-early-years-and-childcare-providers>