



BRIEFING

SUBJECT: Disqualification by Association	
RECIPIENT(S): Heads and Chairs of Governors	
SDBE CONTACT: Atia Williams	DATE: 16 January 2015

I INTRODUCTION

1.1 During the last term we received a number of queries from Headteachers anxious about the new disqualification checking arrangements published by Ofsted in the Autumn term:

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

1.2 The Disqualification by Association regulations are not new but, the arrangements for dealing with them have been recently strengthened in regard to schools.

1.3 The Department for Education have published supplementary advice to the ‘Keeping children safe in education’ statutory guidance to help schools understand the requirements placed on them under the Childcare Act 2006 and Childcare Disqualification Regulations 2009. There is now an onus on schools to ask staff who work with children up to the age of eight to disclose information with regard to a person who lives or works in the same household as them ‘Disqualification by Association’.

The link to this advice is:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/362919/Keeping_children_safe_in_education_childcare_disqualification_requirements_-_supplementary_advice.pdf

1.4 The disqualification criteria apply to all staff in schools who work in early years’ provision and child-care provision such as breakfast clubs and after-school care for children up to the age of eight.

Therefore please note that in:

- i) Infant and Nursery Schools – all staff will be covered
- ii) Primary/Junior Schools – all staff are covered as it is unlikely in such settings that staff are always exclusively working with those over the age of eight
- iii) Secondary Schools – will need to undertake checks on relevant staff where any services are provided where under eights may be in attendance eg childcare facilities, before or after school clubs

2 REASONS FOR DISQUALIFICATION

2.1 There are a number of reasons why a person may be disqualified from working with children, under the Childcare Act 2006 including amongst others:

- i) Grounds relating to the care of children
- ii) Offences against children
- iv) Living on or working on premises where a disqualified person lives or where a disqualified person is employed. **This includes a school employee/worker/volunteer providing services to children under eight, who is living in a household with a person who is disqualified.**

2.2 Although there is no duty on a school to monitor the ‘suitability’ of persons living in their staff’s households, you do need to check with your staff that they are not living with a person who is disqualified from working with children.

2.3 If a member of staff is living in a household with someone who is disqualified then they too are disqualified from working with children by association. This applies to household members including partners, children including foster children, house share colleagues and lodgers.

2.4 However there are two points to bear in mind:

- i) First the person is not guilty of an offence if they do not know a person they are living with is disqualified. For example, a member of staff may live in shared housing and may not have any knowledge about the people they live with including whether those people are disqualified. Neither the member of staff nor the provider has any legal requirement to seek this type of information.
- ii) Second the law is clear that this is about 'knowingly employing' someone who is disqualified. Therefore, schools that regularly ask staff to confirm there are no changes in their circumstances and act on any information received that brings into doubt a staff member's suitability are taking appropriate steps to make sure they do not knowingly employ someone who is disqualified.

2.5 If you become aware of information which may lead to the disqualification of a member of staff you must report it to Ofsted as soon as reasonably practicable but at the latest within 14 days. Failure to do so would be a breach of Early Years Foundation Stage (Safeguarding and Welfare Requirements) Regulations 2012.

3 NEXT STEPS

3.1 It is your duty as an employer to ask your staff whether they or anyone living in the same household have been disqualified from working with children or vulnerable people. This question should be asked during the recruitment process, when a candidate is going to be offered the position and then on a regular ongoing basis. Supervision/appraisal meetings should include a question about whether there have been any changes to personal circumstances. In addition you need to ensure employees are aware of their duty to disclose this to you if their circumstances change.

3.2 Where possible, employees who work in the specified early or later years provision should be asked to provide the following information to their employer about any person who lives in the same household as them:

- i) Details of any order, determination, conviction, or other ground for disqualification from registration under the Childcare (Disqualification Regulations 2009);
- ii) the date of the order, determination or conviction, or the date when the other ground for disqualification arose;
- iii) the body or court which made the order, determination or conviction, and the sentence (if any) imposed; and
- iv) a certified copy of the relevant order (in relation to an order or conviction).

4 APPLYING FOR A WAIVER

4.1 If a member of staff is disqualified from working with children (through an offence committed by themselves or because someone they live with is disqualified) then they would need to obtain a waiver from Ofsted to allow them to continue working with children. Application to have disqualification waived must be made by the disqualified person and not the employer.

4.2 Each waiver application will be considered on its own merits and a waiver may be granted with limitations, eg a waiver may apply to one particular type of employment or to particular premises. If a waiver is granted then the employer must make a decision as to whether they wish to employ/continue employing this person.

4.3 Whilst a waiver application is under consideration, the individual must not continue to work in these settings. Where a waiver is not granted, the employee will need to be dismissed unless redeployment options are available.