



OWEN

Open Water Education Network

Safer recruitment policy.

Disqualification under the Childcare Act

The 2018 regulations are made under section 75 of the Childcare Act 2006 ("the 2006 act"). They set out the circumstances in which an individual will be disqualified for the purposes of section 75 of the act.

Section 76(2) of the 2006 act, provides that a person who is disqualified under the 2018 regulations may not:

- provide relevant childcare provision
- be directly concerned in the management of such provision

Under section 76(3) schools are prohibited from employing a disqualified person in connection with relevant childcare provision in the settings set out in the relevant offences and orders section of this guide, unless the individual in question has been granted a waiver by Ofsted for the role they wish to undertake. An employer commits an offence if they contravene section 76(3), except if they prove that they did not know, and had no reasonable grounds for believing, that the person they employed was disqualified.

Disqualification criteria

The criteria for disqualification under the 2006 act and the 2018 regulations include:

- 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

- living in the same household where another person who is disqualified lives or is employed (disqualification 'by association') as specified in regulation 9 of the 2018 regulations (note that regulation 9 only applies where childcare is provided in domestic settings, defined as 'premises which are used wholly or mainly as a private dwelling' in section 98 of the act, or under a domestic premises registration, including non-domestic premises up to 50% of the time)
- 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.

Relevant offences and orders

Under the legislation a person is disqualified if they are found to have committed an offence which is included in the 2018 regulations (a 'relevant offence') this includes:

- being convicted of a relevant offence
- on or after 6 April 2007, being given a caution for a relevant offence
- on or after 8 April 2013, being given a youth caution for a relevant offence

A person who is found not guilty of a relevant offence by reason of insanity or found to be under a disability and to have committed the act for which they have been charged in respect of a relevant offence is also disqualified (regulation 2(2) of the 2018 regulations).

A list of the relevant offences and orders, as referred to in the disqualification criteria section of this guidance, that lead to the disqualification under the 2018 regulations is set out in the tables A and B in the appendices. Additionally, any offence resulting in the death of or bodily injury of a child is considered a relevant offence under the legislation and must be disclosed.

For new employees an up-to-date enhanced DBS certificate will be completed to establish whether offences committed by individuals are relevant offences.

For existing employees OWEN Open Water Education Network could consider using the DBS Update Service to supplement any employee self-declaration. Details about the changes to disqualification by association requirements are in the disqualification by association section.

Disqualification by association

Under the 2018 regulations, schools are no longer required to establish whether a member of staff providing, or employed to work in childcare, is disqualified by association. Regulation 9 does not apply to staff in a relevant school setting. Disqualification by association is only relevant where childcare is provided in domestic settings (for example where childminding is provided in the home) or under registration on domestic premises, including where an assistant works on non-domestic premises up to 50% of the time under a domestic registration. Accordingly, schools are not entitled to ask their staff questions about cautions or convictions of someone living or working in their household.

In gathering information to make these decisions we ensure that we act proportionately and minimise wherever possible the intrusion into the private lives of our staff/volunteers.

We will ensure we handle personal information fairly and lawfully and take care not to breach:

- Data Protection Act 2018 (DPA)
- General Data Protection Regulation (GDPR) (EU) 2016/679
- Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (as amended in 2013) ('the Exceptions Order')
- Rehabilitation of Offenders Act 1974 (ROA)
- Human Rights Act 1998