

Practice Guidance for Schools and Settings.

Child Care Act 2006 – Disqualification Regulations 2009

1. Following the publication of supplementary 'advice' to *Keeping Children safe in Education* by the Department for Education in October 2014, Primary schools have become increasingly concerned about the impact that the Disqualification Regulations are having on their schools, which has raised anxiety levels about possible failure to comply as this is something that Ofsted will be monitoring during inspections from January 2015.
2. In response to the concerns raised by schools, local authorities and settings to this supplementary advice the DfE has now published revised guidance after a small scale consultation – ***Disqualification Under the Childcare Act 2006 (Feb 2015)***
3. It is an offence for a school or a registered setting to employ an individual who has committed an offence that meets the disqualification criteria (these are listed as part of the regulations). The Regulations only technically apply to staff working directly with children under 5 within the Early Years Foundation Stage or 'wrap around' care (after school and breakfast clubs) with children up to 8 years of age. The DfE has been challenged on this anomaly as Kent has been advising on assessing and managing risk by association and related suitability issues since 2007 via the LADO for **all** staff employed in regulated activity, regardless of the ages of the children receiving a service. If it is perceived that a member of staff poses a risk of harm to children then this will be considered within the LADO allegations management framework in line with KSCB operational guidance. The ages of the children should be immaterial in these circumstances as risk is based on presenting evidence with management strategies being applied with reason, proportionality and transparency.
4. Disqualification offences relate to (a) staff member has a relevant criminal conviction, (b) questions of suitability of staff whose own children have been subject of a care order and (c) those who might pose a risk of harm to children by association due to living in the same household as an offender who meets the criteria.
5. When aspects of the criteria are met, the regulations state that the member of staff should be removed from their role in regulated activity with advice on how to apply to Ofsted for a waiver. There remains some confusion about Ofsted making suitability decisions on staff employed in schools when such decisions have been the domain of Headteachers, who have increasing responsibility to use their discretion and professional judgement on employment issues as advocated in national guidance and safer recruitment training material approved by the DfE.
6. Schools need to be aware that advice is available on the NUT website. In addition the NAHT has produced a formal questionnaire that schools can ask staff to complete and some schools have chosen to use this format which is very formal but does provide an audit trail. However schools and early years settings may choose to outline the requirements of the guidance to staff via a whole staff meeting.
7. The approach taken within Kent, which has considered legal advice, is based on what is reasonable to comply with the Disqualification Regulations to keep children safe without causing undue anxiety for those involved in the process. KCC is in ongoing dialogue with the DfE as part of the consultation process as revised

guidance is due to be reviewed in September 2015. Note: Children's Centre staff are outside of disqualification criteria.

8. The following flow chart should provide a quick and simple overview of the issues to consider and the process to follow to ensure that schools and settings are adopting robust vetting checks, complying with the requirements and keeping children safe.

Flow-Chart (Process of managing risk) – Disqualification Regulations 2009

