

Childcare Disqualification Regulations – Early Years Staff

Revised Statutory Guidance

As a result of the challenges by UNISON and other unions, the Department for Education (DfE) has published revised statutory guidance on the application of the regulations. This replaces the supplementary advice published last October. The revised statutory guidance can be found here:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/407788/disqualification_stat-guidance_Feb_15.pdf

The revised guidance sets out in much greater detail than the previous guidance the scope of the regulations and the responsibilities of schools to abide by the Data Protection Act. There are some important clarifications for UNISON branches. These are summarised below:

Scope of the Regulations

The guidance makes it clear that the regulations only apply to staff directly supplying or managing childcare. This means that during school hours, the regulations only apply to those staff whose principle role is care for children up to the age of five. The guidance confirms that staff in other occupations such as; cleaning, catering and caretaking staff are not covered by the regulations even if they have contact with children up to age five.

The guidance makes it clear that staff working with children aged six to eight during school hours are not covered by the regulations and schools should not be seeking any declarations from these staff.

Any staff involved in children's health services, educational psychologists, speech therapy and children's social care are not covered by the regulations and again schools should not seek declarations from these staff.

Staff working in afterschool and breakfast clubs are likely to be covered by the regulations if they care for children up to the age of eight as this is considered childcare in law. However, the guidance identifies that not all afterschool activities are covered by the regulations. For example, supervision of learning activities and sports teams is not considered childcare and therefore not covered by the regulations.

List of offences relevant to the legislation

The revised guidance contains a list of offences that are relevant to the Childcare Disqualification Regulations. This is attached at table A of the guidance. The offences are generally any violent or sexual offences against a child or serious offences against an adult. The guidance makes it clear that for disqualification purposes, schools should only be asking for information about offences that are relevant to the regulations. If schools are asking for information about non-relevant

offences the guidance makes it clear that they are in breach of their duties under the Data Protection Act.

Application of the Rehabilitation of Offenders Act (ROA)

The guidance makes it clear that although school staff are generally exempted from the implications of the ROA, household members of school staff are covered by the act. This means that in 'disqualification by association' cases staff are only required to declare unspent convictions in relation to household members.

A link to the NACRO guidelines on whether a conviction is considered spent or not is attached.

<http://www.nacro.org.uk/what-we-do/resettlement-advice-service/support-for-individuals/getting-a-job/disclosing-criminal-records-to-employers,1658,NAP.html>

Also attached is a link to advice on the filtering of minor offences and cautions that also applies to school staff when making disclosures about previous cautions and convictions.

<http://www.nacro.org.uk/data/files/practical-guidance-on-dbs-filtering-1032.pdf>

Responsibilities for Schools under the Data Protection Act

The guidance sets out the responsibilities for schools in handling sensitive personal data. It makes it clear that schools are only permitted to retain data relating to those staff covered by the regulations and to relevant offences. It specifically states that schools are not to seek information about medical records of staff or of their household members. It also makes it clear that if schools have collected any data relating to either; staff not covered by the regulations, information that is not relevant to the regulations or any data relating to spent or non-relevant offences, that they must take steps to destroy these records. It also states that it is a criminal offence for schools to seek to obtain the criminal records for a third party as this is considered a forced access request.

We are aware that many schools and local authorities have sought irrelevant data and information about staff that are not covered by the regulations. Where branches are aware that this has occurred, we would encourage them to write to schools asking them what steps they have taken to destroy the data that they have wrongly collected.

If schools refuse to destroy the data collected, they should be reported to the Information Commissioner.

Redeployment whilst awaiting a waiver

The guidance makes it clear that schools are able to redeploy staff in roles that are not relevant to the regulations whilst they await the outcome of their waiver application from Ofsted. We are aware that in some cases schools or staff members have been told that by Ofsted that this is not allowed. The DfE has confirmed to

Ofsted that this is not the case and we understand that future correspondence from Ofsted will reflect this.

The guidance states that if it is not possible to redeploy a member of staff whilst they await their Ofsted waiver, staff should be granted additional paid leave rather than be suspended during this period. It states that suspension should only be considered as a last resort.

UNISON response

Whilst UNISON welcomes the clarifications provided in the new guidance, we are still disappointed about that so many staff have been needlessly suspended as a result of the vagueness of the original advice.

We continue to press for legislative changes to the Childcare Act as we do not believe that these regulations are fair for staff working in childcare and add little to good safeguarding practice.

If you have any further questions about the application of these regulations, please contact the [branch office](#).