

GMB

YOUR UNION IN
SCHOOLS

SCHOOL WORKFORCE NEWS

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...nursery nurses, classroom assistants, secretaries, bursars, school meals staff, TAs, learning support practitioners, sitekeepers, learning mentors, cover supervisors, administrators, cleaners, librarians, midday supervisors, personal care assistants, technicians, HLTAs, School Business Managers.....**GMB, your union in schools**

DfE issues new advice to schools on childcare disqualification regulations

THE DEPARTMENT FOR EDUCATION (DfE) has revised its advice to schools and local authorities about the childcare disqualification regulations. Its new statutory guidance is a lot more detailed than the three-page document it put out last October which created a lot of confusion.

As reported in the last *School Workforce News*, the childcare disqualification regulations prevent certain people from working in Early Years or in childcare provision for “later years” (i.e. children under the age of 8). The regulations apply to England only.

Individuals can fall within these disqualification regulations, for example, if they have been cautioned for or convicted of certain violent or sexual criminal offences against children or adults. Or if they live in a household in which another person who is disqualified lives or works (disqualification “by association”).

The new DfE guidance gives more information about which staff are covered by the regulations and which aren't. For example it says that “staff such as **caretakers, cleaners, drivers, transport escorts, catering and office staff**, who are not employed to directly provide childcare, are **not** covered by the legislation.”

The new guidance sets out what schools should and shouldn't do if they decide to ask staff to fill in a declaration form. It also includes a list of relevant offences, although it says the list isn't comprehensive.

Some extracts from the DfE guidance are shown below. You can find the DfE guidance itself at:

www.gov.uk/government/publications/disqualification-under-the-childcare-act-2006.

Importantly, if you have been asked by your school to make a disclosure in relation to the disqualification regulations and you feel worried about this, you can contact UNIONLINE on 0300 333 0303 or enquiry@unionline.co.uk.

GMB still believes that the regulations, coming on top of the usual checks that schools make, are disproportionate in a schools context. We continue to lobby the DfE for legislation that could disapply the regulations from state-funded schools. But as things stand, the regulations are still in force, so they have to be complied with.

GMB is encouraging employers to take a common-sense approach to fulfilling their legal duties. The new DfE guidance may help in this respect.

THE NEW DfE GUIDANCE: EXTRACTS

Who is covered by the regulations?

Staff who are covered include:

“EARLY YEARS PROVISION - staff who provide any care for a child up to and including reception age. **This includes education** in nursery and reception classes **and/or any supervised activity** (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; and

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“LATER YEARS PROVISION (FOR CHILDREN UNDER 8) - staff who are employed to work in childcare provided by the school **outside of school hours** for children who are above reception age but who have not attained the age of 8. This does **not** include education or supervised activity for children above reception age during school hours (including extended school hours for co-curricular learning activities, such as the school’s choir or sports teams) but it **does include before-school settings**, such as breakfast clubs, **and after-school provision**.”

Who isn't covered by the regulations?

According to the DfE, the following staff are **not** covered by the regulations. Staff who:

- “only provide education, childcare or supervised activity **during school hours** to children **above reception age**; or
- “only provide childcare or supervised activities **out of school hours** for children who are **aged 8 or over**; and
- “have no involvement in the management of relevant provision.”

The DfE guidance goes on to say that “Staff such as **caretakers, cleaners, drivers, transport escorts, catering and office staff**, who are not employed to directly provide childcare, are **not** covered by the legislation. Similarly most staff who are only occasionally deployed and are not regularly required to work in relevant childcare will not automatically come within the scope of the legislation. Schools and local authorities should exercise their judgement about when and whether such staff are within scope.”

Information-gathering by schools

The DfE guidance says that: “Schools must ensure that they are not knowingly employing a person who is disqualified under the 2009 Regulations in connection with relevant childcare provision. In gathering information to make these decisions **schools must ensure that they act proportionately and minimise wherever possible the intrusion** into the private lives of their staff and members of their household.”

If schools decide to ask staff to complete a self-declaration form, the DfE guidance says: “**It is important that the questions posed in the declaration are relevant and limited to the requirements of the legislation**, e.g. cautions or convictions for a relevant offence; whether the individual has been disqualified from caring for a child (including their own child); or whether they or anyone

living or employed in their household is named on the DBS Children’s Barred List.”

The DfE guidance also says: “It is important that schools avoid asking for information that is not relevant to ensure that they are not in breach of data protection legislation. **They should avoid asking for medical records, details about unrelated or spent convictions of household members, DBS certificates from third parties, or copies of a person’s criminal record.**”

The DfE guidance devotes several paragraphs to spent and protected cautions and convictions, among other issues.

The DfE guidance also says that: “In order to identify cases where a staff member working in relevant childcare settings may be **disqualified ‘by association’**, schools must ask only those staff to provide, **to the best of their knowledge**, information about someone who lives or is employed in their household... Schools must make sure that they do not require staff to breach the requirements of the DPA [Data Protection Act] or the ROA [Rehabilitation of Offenders Act].

What happens while I'm waiting for Ofsted to consider a waiver application?

Staff who are disqualified can usually apply to Ofsted for a waiver.

The DfE guidance says that: “Whilst a waiver application is under consideration schools will need to decide whether it is appropriate to redeploy staff elsewhere in the school, or make adjustments to their role to avoid them working in relevant childcare ... Where alternative arrangements cannot be made or it is not appropriate to do so, the school will need to consider whether to grant paid leave or similar, or **as a last resort** suspend the member of staff, while the waiver application is under consideration.

If you are suspended, GMB believes it should be on full pay. If you are in this situation, contact your GMB rep or GMB officer. Also contact your GMB office if you are refused a waiver by Ofsted.



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Section

Branch number

Membership number

Date of joining

GMB membership application form PLEASE USE BLOCK CAPITALS

1 TELL US ABOUT YOU

Surname First name Title Mrs / Miss / Ms / Mr Date of birth

Home address Postcode Home phone number Mobile number

Email

We ask for your ethnic origins as part of our equal opportunities policy of improving services to all members
 Bangladeshi / Black African / Black Caribbean / Black British / Chinese / Indian / Irish / Pakistani / White / Other:

National Insurance number I agree to abide by GMB rules Signed Date

2 TELL US ABOUT YOUR JOB

Employer Your job

Address where you work Postcode How many hours a week do you work? Pay number

Work phone number Pay date

CHOOSE EITHER 3 AUTHORISATION OF DEDUCTION OF YOUR UNION CONTRIBUTIONS FROM YOUR PAY

Section 68, Trade Union and Labour Relations (Consolidated) Act 1992 as amended

- I authorise my employer to deduct from my pay each week/month the sum of

£ or other amounts as may be fixed by GMB from time to time.

- Please start the deductions immediately and pay the amounts to GMB.
- I note that this agreement may be cancelled by one month's notice in writing.
- I give permission to my employer to notify GMB of any future change of address.

Cash

Signed Date

OR 4 INSTRUCTION TO YOUR BANK OR BUILDING SOCIETY TO PAY BY DIRECT DEBIT



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To the Manager of Bank/Building Society

Address

Postcode

Name(s) of account holder(s)

Bank/Building Society account number

Bank/Building Society Sort Code

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Service User Number

Instructions to your Bank or Building Society: Please pay GMB Direct Debits from the account detailed in this Instruction subject to the safeguards assured by the Direct Debit Guarantee. I understand that this Instruction may remain with GMB and, if so, details will be passed electronically to my Bank/Building Society.

Signature(s) Date

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Reference number (GMB use only)