

## **THE CHILDCARE ACT 2006 AND THE CHILDCARE (DISQUALIFICATION) REGULATIONS 2009**

**Supply teachers have a vital role in raising and maintaining high educational standards in schools. Campaigning to secure professional entitlements for supply teachers is a key priority of the NASUWT, together with securing decent pay and working conditions for all supply teachers.**

### **Background**

There are longstanding, detailed provisions concerning safeguarding of children in schools and the checks that schools are required to make before appointing teachers and other school staff. The NASUWT is fully committed to such arrangements for the effective safeguarding of all children.

The Childcare Act provisions require that anyone wishing to provide childcare must register with Ofsted. This requirement to register was therefore never intended to apply to schools or teachers as they are already subject to stringent disclosure and barring arrangements. This was the case until the Department for Education (DfE) issued statutory guidance on Disqualification under the Childcare Act 2006 in February 2015.

### **Disqualification and Disqualification by Association**

The DfE has also published supplementary guidance which also refers to 'disqualification by association' and raises the possibility of teachers being disqualified from teaching due to offences committed by people who live in the same household as them. The provision applies to all schools and to all teachers, including supply teachers. It is a criminal offence for a school to employ anyone to provide childcare who is disqualified from registration. In broad terms, this includes persons who have committed serious violent and sexual offences and offences against children.

The list of offences is set out in the Childcare (Disqualification) Regulations 2009. The list of specified offences is long and detailed. In broad terms, it includes serious violent and sexual offences and offences against children.

The list of offences is set out in the Childcare (Disqualification) Regulations 2009. The list of specified offences can be found at [www.nasuw.org.uk/Disqualification](http://www.nasuw.org.uk/Disqualification).

Schools must ensure that they are not knowingly employing a disqualified person.

**Staff, including supply teachers, who are covered by the legislation and regulations:**

- **Early Years Provision:**
  - Staff who provide any care for a child up to and including reception age;
  - Staff in nursery and reception classes and/or any supervised activity (such as breakfast clubs, lunchtime supervision and after-school care provided by the school);
  - Staff involved in both school and out-of-school hours for children in the early years range.
- **Later Years Provision for children under 8:**
  - Childcare provided by the school outside of school hours for children above reception age but who have not yet attained the age of 8;
  - Includes before-school settings and after-school provision.
- Staff concerned with the management of early or later years provision – primary, infant and nursery headteachers.
- Volunteers and casual workers.
- Trainee staff – for salaried trainee staff, the provider must provide confirmation of compliance.

**Staff who are NOT covered by the legislation and regulations:**

- Staff who only provide education, childcare or supervised activity during school hours to children above reception age;
- Staff who only provide childcare or supervised activities out of school hours for children who are aged 8 or over;
- Staff who have no involvement in the management of relevant provision;
- Staff who are not employed to directly provide childcare – caretakers, cleaners, drivers, transport escorts, catering and office staff;
- Staff who are not employed to directly provide childcare and who are only occasionally and not regularly required to work in childcare activities – they will not automatically fall within the scope of the Regulations;
- Staff who provide health care, including school nurses;
- Staff who are school governors and proprietors, providing that they are not concerned with management of childcare provision.

## **Additional risk management measures**

- Schools must obtain confirmation from supply agencies which provide staff for childcare provision that they are following the same processes as the school;
- Schools must ensure that self-employed contractors which work in relevant childcare provision are compliant with the legislation;
- Staff who are occasionally deployed to work in childcare provision should be risk assessed following Human Resources (HR) and Local Authority Designated Officer (LADO) advice.

## **Self-declaration forms and disqualification by association**

Where a supply teacher is employed directly by a school, it is not necessary for schools to ask teachers to complete a self-declaration form. If a school does decide to use one, then it should be relevant and limited only to the requirements of the legislation. It should therefore avoid asking for medical records, details about unrelated or spent convictions of household members and Disclosure and Barring Service (DBS) certificates from third parties or copies of criminal records. In addition to this, teachers do not need to provide details of their protected convictions and cautions.

Staff do not need to provide details of spent cautions or convictions of members of their household.

Schools must only ask teachers to provide information to the best of their knowledge.

## **What is the process when a disqualification occurs?**

When an individual is disqualified they will need to apply to Ofsted for a waiver. This can only be done by e-mailing [disqualification@ofsted.gov.uk](mailto:disqualification@ofsted.gov.uk). The e-mail should include, if available, a certified copy of the relevant order (in relation to an order or conviction).

Disqualification does not imply that individuals are prevented from working in a school in any other setting. For example, a member of staff could be disqualified from working with children of reception age or under, but could work with children aged 6 or 7, provided they were not working with them in childcare provision outside of normal school hours.

When alternative arrangements cannot be made or are inappropriate, the school will need to consider whether to grant paid leave or similar, or, as a last resort, suspend the member of staff during the waiver application process.

Schools should not request, in connection with the waiver application, DBS certificates from third parties or copies of a person's criminal record obtained directly from the police, prison, probation service or courts.

## **The implications for NASUWT supply teachers and those registered with supply agencies**

The NASUWT believes that it is reasonable to expect the following:

- If directly employed by a school or local authority, supply teachers should be subject to the same disqualification process as other teachers.
- Employment agencies have to confirm to schools that they are implementing the regulations for agency workers, so it is important that this is clarified when commencing work with the agency and the school. It is therefore reasonable for a supply teacher to expect their agency to fulfil their statutory obligations when they place them in a role.
- If a supply teacher is disqualified from teaching children of reception age or younger, and is in the process of applying for a waiver, they can continue to teach older children. This includes children aged 6 or 7, provided they are not working with them in childcare provision outside of normal school hours.
- Supply teachers should therefore not be ‘suspended’ from all work by employment agencies when applying for a waiver – this is unnecessary under the regulations.
- If an employer or the supply teacher agency decides that they need to ask a supply teacher to apply to Ofsted for a waiver, the NASUWT would strongly advocate that they seek assistance from their union.

The NASUWT continues to argue that the Childcare Act 2006 and Childcare (Disqualification) Regulations 2009 are inappropriate for schools. The NASUWT continues to argue that the legislation should be changed, if necessary, to exempt teachers.

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# **NASUWT**

**The Teachers' Union**

Hillscourt Education Centre, Rose Hill, Rednal, Birmingham B45 8RS

Tel: 03330 145550 E-mail: [advice@mail.nasuwt.org.uk](mailto:advice@mail.nasuwt.org.uk)

Website: [www.nasuwt.org.uk](http://www.nasuwt.org.uk)