

FOR INFORMATION ONLY. REVISED GUIDANCE WILL COMMENCE 31 AUGUST UNTIL THAT TIME EMPLOYERS SHOULD CONTINUE TO HAVE REGARD TO THE CURRENT VERSION OF [Disqualification under the Childcare Act 2006](#).



Department  
for Education

# **Disqualification under the Childcare Act 2006**

**Draft statutory guidance for local  
authorities, maintained schools,  
academies and free schools**

**July 2018**

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# Summary

## About this guidance

This is statutory guidance from the Department for Education on the application of:

- The Childcare (Disqualification) and Childcare (Early Years Provision Free of Charge) (Extended Entitlement) (Amendment) Regulations 2018 (“the 2018 Regulations”)
- obligations under the Childcare Act 2006 in schools.

Schools and local authorities must have regard to it when carrying out their duties to safeguard and promote the welfare of children under:

- section 175, of the Education Act 2002;
- paragraph 7(b) of Schedule 1 to the Education (Independent School Standards) Regulations 2014; and
- paragraph 3 of the Schedule to the Education (Non-Maintained Special Schools) (England) Regulations 2011.

On 31 August 2018, this guidance will replace the current version of *Disqualification under the Childcare Act 2006*, which was last issued by the Department for Education in June 2016. Until that time, employers should continue to follow the 2016 guidance at <https://www.gov.uk/government/publications/disqualification-under-the-childcare-act-2006>.

Details of the changes to the childcare disqualification arrangements made by the 2018 Regulations are provided in Annex A of this draft guidance. An explanation of how Ofsted will consider waiver applications up to 31 August is set out in Annex B.

It should be noted that these arrangements only form part of a schools obligations and that there are a number of wider safeguarding requirements which must be adhered to as set out below.

## Review date

This guidance will be reviewed in August 2019.

## What legislation does this guidance refer to?

- Childcare Act 2006.

- The Childcare (Disqualification) and Childcare (Early Years Provision Free of Charge) (Extended Entitlement) (Amendment) Regulations 2018.

## Who is this guidance for?

This guidance is for:

- local authorities;
- governing bodies of maintained schools, including maintained nursery schools;
- proprietors of non-maintained and independent schools (including academies, free schools and alternative provision academies);
- management committees of pupil referral units (PRUs); and
- it will also be relevant to employers in other non-domestic childcare settings and should be read in conjunction with the guidance provided in the *Statutory framework for early years foundation stage*, published at <https://www.gov.uk/government/publications/early-years-foundation-stage-framework--2>.

## Main points

The guidance sets out:

- the responsibilities of local authorities (in the exercise of their education functions) and schools;
- what they need to do to comply with the legislation;
- who is covered by the arrangements – including the changes to the arrangements for staff who live in the same household where a disqualified person lives or is employed;
- the circumstances where staff<sup>1</sup> should be directed to apply to Ofsted to waive disqualification.

It also explains the responsibilities of:

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<sup>1</sup> For the purpose of this guidance staff includes individuals employed by the school or local authority, those undertaking training in schools (both salaried and unsalaried), casual workers and volunteers.

- training suppliers, such as initial teacher training providers who place trainees or students at a school who are working and are being trained in a relevant childcare<sup>2</sup> setting; and
- agencies and third-party organisations employing staff to work in relevant childcare settings in a school.

The arrangements set out in the guidance are additional to the arrangements in place to safeguard and promote the welfare of all children set out in:

- Keeping children safe in education (KCSIE) - <https://www.gov.uk/government/publications/keeping-children-safe-in-education--2>;
- Statutory framework for early years foundation stage (EYFS) - <https://www.gov.uk/government/publications/early-years-foundation-stage-framework--2>; and
- Working together to safeguard children - <https://www.gov.uk/government/publications/working-together-to-safeguard-children--2>.

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<sup>2</sup> The meaning of childcare is provided at section 18 of the Childcare Act 2006 (<http://www.legislation.gov.uk/ukpga/2006/21/contents>). The meaning of relevant childcare is explained further at paragraph 9 below.

## Disqualification under the Childcare Act

1. 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.
2. Section 76(2) of the 2006 Act, provides that a person who is disqualified under the 2018 Regulations may not (see paragraphs 6 and 17 below):
  - provide relevant childcare provision; or
  - be directly concerned in the management of such provision
3. Under section 76(3) schools are prohibited from employing a disqualified person in connection with relevant childcare provision in the settings set out at paragraph 6<sup>3</sup>. 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

4. The criteria for disqualification under the 2006 Act and the 2018 Regulations include those set out in the list below:
  - a. inclusion on the Disclosure and Barring Service (DBS) Children’s Barred List;
  - b. 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);
  - c. 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;
  - d. refusal or cancellation of registration relating to childcare,<sup>4</sup> or children’s homes, or being prohibited from private fostering<sup>5</sup>, as specified in Schedule 1 of the 2018 Regulations;
  - e. 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

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<sup>3</sup> Unless the individual in question has been granted a waiver for Ofsted for the role they wish to undertake.

<sup>4</sup> 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).

<sup>5</sup> Pursuant to legislation references in paragraph 17 of Schedule 1 to the 2018 Regulations.

Regulations (note that regulation 9 only applies where childcare is provided in domestic settings<sup>6</sup>, or under a domestic premises registration<sup>7</sup>); or

- f. being found to have committed an offence overseas, which would constitute an offence regarding disqualification under the 2018 Regulations if it had been done in any part of the United Kingdom.

5. 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

6. 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:

- (a) being convicted of a relevant offence;
- (b) on or after 6 April 2007, being given a caution for a relevant offence; or
- (c) on or after 8 April 2013, given a youth caution<sup>8</sup> for a relevant offence.<sup>9</sup>

7. A list of the relevant offences referred to at paragraph 4(b) above and orders referred to at paragraph 4(c) above that lead to the disqualification under the 2018 Regulations is set out in the tables A & B included within this guidance. 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.

8. For new employees an up-to-date enhanced DBS certificate will help schools establish whether the offences committed by that individual are relevant offences. For existing employees schools could consider using the DBS Update Service to supplement employee self-declaration. Details about changes to the disqualification 'by association' requirements are provided at paragraph 21 below.

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<sup>6</sup> "Domestic premises" is defined in section 98 of the Act as "premises which are used wholly or mainly as a private dwelling".

<sup>7</sup> Including non-domestic premises up to 50% of the time.

<sup>8</sup> Youth reprimands and final warnings were abolished in 2013 and replaced with youth cautions, an individual issued with these disposals issued prior to 2013 in respect of a relevant offence is also disqualified (Regulation 2(2) of the 2018 Regulations).

<sup>9</sup> 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).

## Staff covered and relevant settings

### Staff covered

9. Staff are covered by this legislation if they are employed or engaged to provide early years childcare (this covers the age range from birth until 1 September following a child's fifth birthday i.e. up to and including reception year) or later years childcare (this covers children above reception age but who have not attained the age of 8) in nursery, primary or secondary<sup>10</sup> school settings, or if they are directly concerned with the management of such childcare. This includes:

- 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 the normal school day and outside of school hours for children in the early years age range; and
- Later years provision (for children under 8) - staff who are employed to work in childcare provided by the school outside of the normal school day 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.

10. Staff who are directly concerned in the management of early or later years provision are covered by the legislation. Schools will need to use their judgement to determine who is covered, but this will include the headteacher, and may also include other members of the school's leadership team and any manager, supervisor, leader or volunteer responsible for the day-to-day management of the provision.

11. In relation to staff employed by childcare providers (i.e. not employed by the school or local authority) who hire or rent school facilities or premises (for example a private, voluntary or independent childcare provider), schools should ensure that such providers have appropriate policies and procedures in place in regard to safeguarding children, including under the 2018 Regulations.

12. Where centrally employed local authority staff are deployed to work in relevant childcare settings in schools (for example peripatetic music teachers or special needs teachers) it is the responsibility of the local authority to ensure that such staff are compliant with the requirements of the legislation explained in this guidance.

13. Where schools or local authorities use staff from any agency, or third-party organisation (e.g. supply teacher, music teacher or sports coach) to work in relevant

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<sup>10</sup> Staff in secondary schools only come in to scope if they provide childcare, or manage the childcare provision for those children covered by these arrangements. For example if they host after-school childcare for the under 8's.



childcare provision, or contract out such childcare, they must obtain confirmation that the agency or organisation providing the staff has informed them that they will be committing an offence if they are deployed to work in relevant childcare, or are directly concerned in the management of such provision, if they are disqualified under the 2018 Regulations. This should include the provider requesting that their staff inform them if they consider that they could be disqualified under the legislation.

14. Where the school deploys a person who is self-employed (e.g. music teacher or sports coach) to work in relevant childcare provision, the school must ensure that they are compliant with the requirements of the legislation explained in this guidance.

15. The requirements in paragraph 13 also apply where training suppliers, such as initial teacher training providers, are placing trainees or students at the school, who are working and/or being trained in a relevant setting. Where trainee staff are salaried, for example on employment-based teacher training programmes, it is the responsibility of the school to ensure that they comply with the legislation. If a salaried trainee is disqualified from childcare, schools should inform the training provider of this. Where trainee staff are not on a salaried programme (i.e. fee or self-funded students), it is the responsibility of the training provider to conduct the relevant checks to ensure that trainees placed in schools are not disqualified from childcare or that they have obtained a waiver from Ofsted. Guidance on how to apply for a waiver can be found at paragraphs 38-44 of this guidance.

16. Volunteers and casual workers (including individuals on work experience) who are directly concerned with the management of childcare provision, and/or who work on a regular basis, whether supervised or not, in relevant childcare, are within the scope of the legislation and are covered by this guidance.

## **Staff who may be covered**

17. 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, evaluating and recording any risks and control measures put in place, and taking advice from the school or authority's HR provider, the authority's designated officer, safeguarding lead officer or adviser when appropriate. A record of the assessment should be retained on the employee's personnel file and a copy supplied to the individual concerned. In general individuals undertaking the following roles would normally be excluded:

- caretakers;
- cleaners;
- drivers;
- transport escorts;
- catering; and
- office staff.

18. School governors and proprietors are not covered by the legislation, unless they volunteer to work in relevant childcare on a regular basis, or they are directly concerned with the day-to-day management of such provision. Further guidance on the safeguarding arrangements covering governors and the safeguarding responsibilities of governing bodies and proprietors is provided in KCSIE. Additionally it should be noted that, whilst out of scope of these regulations, school governors in maintained schools are also subject to additional arrangements and can also be disqualified from holding office (i.e. being a governor in maintained schools) under regulation 17, schedule 4 of the School Governance (Constitution) (England) Regulations 2012.

## Staff not covered

19. This means that staff employed who work in the following roles are not covered, i.e. 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.

20. Anybody involved in any form of health care provision for a child are specifically excluded from the statutory definition of childcare, and are therefore not covered by the legislation, this includes:

- school nurses;
- speech and language therapists; and
- education psychologists.

## Disqualification by association

21. 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 (e.g. where childminding is provided in the home) or under registration on domestic premises<sup>11</sup>. Accordingly, schools should not ask their staff questions about cautions or convictions of someone living or working in their household. Schools should

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<sup>11</sup> Including where an assistant works on non-domestic premises up to 50% of the time under a domestic registration.

review their staffing policies and safer recruitment procedures, and make changes accordingly.

22. It is important that schools follow the safer recruitment procedures set out in Part three of KCSIE. Schools and local authorities should also review their safeguarding policies, to ensure that they fully comply with KCSIE, and ensure that their policies are clear about the expectations they place on staff, including where their relationships and associations both within and outside of the workplace (including online) may have implications for the safeguarding of children in school.

23. In support of this schools should take an opportunity, for example through performance management or other staff discussions, to create the right culture and environment so that staff feel comfortable, where it is appropriate, to discuss matters outside of work, which may have implications for the safeguarding of children in the workplace. These discussions can help schools safeguard their employees' welfare and contribute to their duty of care towards their staff. Where appropriate, it will help schools identify whether arrangements are needed to support these staff. These discussions can also help schools manage children's safety, providing them with information that will help them consider whether there are measures that need to be put in place to safeguard children (e.g. by putting arrangements in place to stop or restrict a person coming into school where a potential risk to children has been identified).

24. Schools should consider providing training to governors and staff with management responsibilities in this important area.

## **What this means for individuals, schools and other employers<sup>12</sup>**

25. Schools must ensure that they are not knowingly employing a person who is disqualified under the 2018 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. Accordingly, schools must ensure that they handle 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); and
- Human Rights Act 1998.

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<sup>12</sup> For the purposes of this guidance, hereafter references to the requirements and recommendations for schools also apply to local authorities, teacher training providers, employment agencies and other organisations employing staff to work in relevant childcare, as well as their employees.

26. Schools are responsible for ensuring that anyone who falls within the relevant categories of staff described above at paragraphs 9-18 is made aware of the legislation. Schools must make these staff aware of what information will be required of them and how it will be used to make decisions about disqualification. Schools are free to decide how to bring these requirements to the attention of their staff. As a means of making staff aware of their duty to provide such information, they may for example choose to include a section in the school's safeguarding policy, or another policy document, or by means of an addition to new staff members' contracts of employment. Schools should draw this guidance to the attention of their staff and the information provided by Ofsted referenced in this guidance.

27. It is not necessary for schools to ask staff to complete a self-declaration form to obtain information about whether a staff member is disqualified. Where schools decide to adopt the approach of using a self-declaration form, 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; or whether a child has been made subject of a care order due to the care provided by the individual. This may mean that schools may not be able to use a generic self-declaration form for all employees, for example a teacher working solely with year 5 children (i.e. those aged 9) would be exempt from this legislation. Schools should inform their staff that when responding to questions about their cautions or convictions, they do not need to provide details about any convictions that are not relevant to the childcare disqualification legislation. See paragraphs 34-37 below for further guidance on which offences must be disclosed if their staff member is in scope of these regulations.

28. 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. However, it should be noted that data protection legislation, including GDPR does not prevent an employer from asking questions relating to the suitability of the individual employed on safeguarding grounds. Fears about sharing information cannot be allowed to stand in the way of the need to promote the welfare and protect the safety of children. Schools should refer to Keeping children safe in education and the Department's Data protection: toolkit for schools found here <https://www.gov.uk/government/publications/data-protection-toolkit-for-schools> for further advice on how to comply with data protection legislation, including GPDR and the 2018 DPA.

29. Under data protection laws schools must not ask for medical records, details about convictions of household members<sup>13</sup>, or copies of a person's criminal record from the police<sup>14</sup>. Similarly, schools must not ask staff or third parties to make requests for their criminal records in connection with employment, as this will amount to an enforced subject access request, which is an offence under section 184 of the 2018 DPA. Further information about section 184 is provided in the Information Commissioner's Office (ICO)

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<sup>13</sup> Following the implementation of the 2018 regulations and the removal of disqualification by association in non-domestic settings, schools can no longer ask questions regarding the criminal history of people who live with the individual.

<sup>14</sup> This is not the same as a DBS certificate which can be obtained for the individual concerned.

guidance for GDPR found here <https://ico.org.uk/for-organisations/guide-to-the-general-data-protection-regulation-gdpr/>.

30. Schools must keep a record of those staff who are employed to work in, or manage relevant childcare provision. They should record the date on which the information about disqualification was provided. Schools should ensure that in maintaining records they comply with the requirements of the Data Protection Act 2018 (<http://www.legislation.gov.uk/ukpga/2018/12/contents/enacted>), this is the UK's implementation of the General Data Protection Regulation (GDPR). This Act does not mean that information cannot be gathered where the failure to do so would result in a child being placed at risk of harm. When processing personal information it should be used fairly, lawfully and kept secure. It should be kept to a minimum, be accurate and kept up-to-date and stored for the minimum period necessary, restricted only to those who need it and for the purpose it was gathered (i.e. safeguarding). Additionally schools will need to review any historic data collected and destroy any information which is no longer required.

31. Personal data, including any details of the criminal record should not be held without consent from the individual. In instances where an individual does not consent, schools should only record the date the declaration was made, details of any additional safeguarding restrictions, and whether or not an Ofsted waiver has been granted.

32. Guidance on data protection issues for employers carrying out criminal records checks is provided in the ICO's employment practices code of practice published at [https://ico.org.uk/media/for-organisations/documents/1064/the\\_employment\\_practices\\_code.pdf](https://ico.org.uk/media/for-organisations/documents/1064/the_employment_practices_code.pdf). Schools may choose to keep details of their checks as part of the single central record, or they may retain a separate record. Ofsted and the Independent School Inspectorates will check this as part of the their routine school inspection process<sup>15</sup>.

33. Schools must ensure that their procedures make the requirements of the legislation clear and should explain to new and existing staff working in relevant childcare that they should inform the school if their circumstances change. Schools that choose to add information pertaining to disqualification into their policies should alert all staff to the addition, for example via a staff bulletin or an e-mail.

## **Disclosing offences – Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (as amended in 2013)**

34. The vast majority of roles in schools and relevant childcare settings are exempt from the Rehabilitation of Offenders Act 1974 (ROA). Guidance on the ROA is available at <https://www.gov.uk/government/publications/new-guidance-on-the-rehabilitation-of-offenders-act-1974>. Individuals working in these settings are therefore covered by the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (as amended in 2013) ('the Exceptions Order') which is available at

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<sup>15</sup> These inspections do not extend to assessing compliance with GDPR and or the Data Protection Act.

[http://www.legislation.gov.uk/ukxi/2013/1198/pdfs/ukxi\\_20131198\\_en.pdf](http://www.legislation.gov.uk/ukxi/2013/1198/pdfs/ukxi_20131198_en.pdf); as a result, they are normally required to disclose their convictions and cautions, including those that are spent. The exception is that certain minor cautions and convictions are 'protected' for the purposes of the Exceptions Order, which means they are not subject to disclosure to employers and they are removed or 'filtered' from standard or enhanced DBS certificates.

35. The majority of offences that lead to disqualification under the 2018 Regulations will never become protected, which means that they must always be disclosed by a member of staff employed to work in relevant childcare, and they will not be filtered from a DBS certificate. The DBS has produced a list of specified offences that will never be filtered, which can be found at <https://www.gov.uk/government/publications/dbs-list-of-offences-that-will-never-be-filtered-from-a-criminal-record-check>. All the offences listed in Annexes A and B below must always be disclosed, as should any offence involving death or bodily injury to a child (even if not specifically listed in the table).

36. Schools should inform their staff that when responding to questions about their criminal record, they do not need to provide details about any protected cautions or protected convictions. Staff working in childcare are entitled to respond to a question relating to their criminal record as though it only relates to cautions or convictions that are not protected. Guidance provided at <https://www.gov.uk/government/collections/dbs-filtering-guidance> by the DBS will help schools understand the old and minor cautions and convictions that do not need to be disclosed.

37. Schools may wish to consider obtaining professional advice from their HR provider, designated officer, or safeguarding lead officer or adviser to help them establish whether staff with relevant cautions or convictions are disqualified from working in relevant childcare. Individuals may also wish to consider contacting independent organisations for advice such as Nacro or Unlock<sup>16</sup>.

## Application for an Ofsted waiver from disqualification

38. Where schools, receive information and are satisfied that an individual working in a relevant setting falls within one of the disqualification criteria in the 2018 Regulations they must inform the individual of this and explain the implications of disqualification to them, including whether they can apply to Ofsted for a waiver of disqualification (for example, Ofsted cannot grant a waiver to an individual who is on the Children's Barred List) and make clear what information the individual will need to share with Ofsted and why. When communicating these matters to a staff member schools should consider taking advice from their HR provider, designated officer, safeguarding lead officer or adviser.

39. Schools should explain to the individual that details about how to make an application for a waiver, and a copy of the form, can be found in the Ofsted fact sheet: [Applying to waive disqualification: early years and childcare providers](#). Ofsted will need the individual to complete the waiver application accurately and fully and will need

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<sup>16</sup> These organisations are independent of government. The Department accepts no liability for the information given by any 3<sup>rd</sup> party organisation

information about the individual. This should include, where this information is available or known:

- details of any order, determination, caution, conviction, or other ground for disqualification from registration under the 2018 Regulations;
- the date of the order, determination, caution, conviction, or the date when the other ground for disqualification arose;
- the body or court which made the order, determination, caution or conviction, and the sentence/disposal (if any) imposed; and
- a certified copy of the relevant order (in relation to an order, caution or conviction). Schools should not request DBS certificates from third parties, or copies of a person's criminal record obtained directly from the police, prison service, probation service or courts, as this would be considered an enforced subject access request, which is a criminal offence.

40. A school must not continue to employ an individual who is disqualified in connection with early or later years childcare provision, nor should a disqualified individual provide or be directly concerned in the management of such provision unless they have received a waiver from Ofsted, which covers the role that they wish to undertake. This does not imply that individuals are prevented from working in a school in any other setting.

41. When making decisions about the redeployment of staff schools should take into account the risk of harm to children concerned and their obligations under the 2006 Act, the EYFS, KCSIE guidance and any other relevant safeguarding guidance.

42. 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. This means that a member of staff could be disqualified from working with children of reception age or under in a school, but could work with children aged 6 and 7, provided they were not working with them in childcare provision outside of normal school hours.

43. Schools should consider taking advice from their HR provider, designated officer, safeguarding lead officer or adviser on these matters. Local authorities and academy trusts may also be able to consider making alternative arrangements, including for example a temporary alternative job role in another school. 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.

44. Where an individual decides not to apply for a waiver, or a waiver is declined, schools will have to consider and make decisions about whether the individual could be permanently redeployed, the appropriateness of redeployment, or whether steps should be taken to legitimately terminate their employment.



## Further help

45. Further help on how the childcare disqualification arrangements should be applied in schools can be obtained from the Department for Education by email [mailbox.disqualification@education.gov.uk](mailto:mailbox.disqualification@education.gov.uk); or by telephone – 01325 340 409.

46. Any enquiries about the waiver application process should be made to Ofsted using the [disqualification@ofsted.gov.uk](mailto:disqualification@ofsted.gov.uk) mailbox, which is included in the factsheet referred to in paragraph 39.



## Table A – Relevant Offences

### **Offences mentioned in Regulation 4 of The Childcare (Disqualification) and Childcare (Early Years Provision Free of Charge) (Extended Entitlement) (Amendment) Regulations 2018 (“the 2018 Regulations”) that will lead to disqualification.**

This list was put together on 2 July 2018 and has not been updated since then. It is a list of offences that are mentioned in regulation 4 of the 2018 regulations and is not a comprehensive list of all offences that would lead to disqualification (note in particular that offences that would lead to disqualification under regulation 5 - Overseas offences are not covered in this list).

The majority of offences that lead to disqualification under the 2018 Regulations will never become protected, which means that they must always be disclosed by a member of staff employed to work in relevant childcare, and they will not be filtered (see paragraphs 34 & 35) from the DBS certificate.

All the offences listed in Table A<sup>17</sup> below must always be disclosed, as should any offence involving death or bodily injury to a child (even if not specifically listed in the table).

#### **Additional offences that would lead to disqualification not specifically listed:**

- any offence involving death or bodily injury to a child would also lead to disqualification; and
- convictions or cautions for aiding, abetting, counselling, procuring or inciting the commission of an offence or of conspiring or attempting to commit an offence listed in the table below, will also lead to disqualification under the 2018 Regulations.

There are three columns setting out:

- the statutory reference to the offence;
- a brief description of the offence (which may not be the official or only description); and;
- any conditions that apply in the disqualification regulations (e.g. that the offence will only lead to disqualification if it was committed against a child).

The table has been ordered by territory.

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<sup>17</sup> Except: Section 127, Communications Act 2003 (Improper use of public electronic communications network), and Section 1 Malicious Communications Act 1988 (Sending letters etc. with intent to cause distress or anxiety), which at time of publication may be filtered and considered non-discloseable if spent.

| Statutory Provision/ Common Law Offence | Description of Offence | Comments and any conditions which apply in respect of disqualification under the Childcare (Disqualification) Regulations 2009 |
|---|------------------------|--|
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**Any offence (including any not listed below) involving death or bodily injury to a child.**

Convictions or cautions for aiding, abetting, counselling, procuring or inciting the commission of an offence or of conspiring or attempting to commit an offence listed in the table below, will also lead to disqualification under the 2018 Regulations.

The legislation can be found in full at [www.legislation.gov.uk/](http://www.legislation.gov.uk/)

### RELEVANT OFFENCES - ENGLAND - *Note these may extend to other jurisdictions*

| <b>COMMON LAW</b>  |   |   |
|--|---|---|
| Aiding, abetting, counselling or procuring the suicide of a child or young person (Northern Ireland) | Common Law                                |   |
| False Imprisonment (England and Wales)   | Common Law                                | Towards an adult or a child               |
| Infanticide (contrary to the common law of Northern Ireland)   | Common Law                                |   |
| Lewd, indecent or libidinous behaviour or practices (Contrary to the common law of Scotland)         | Common Law                                | Towards a child under the age of 17 years |
| Manslaughter (England and Wales)   | Common Law                                | Towards an adult or a child               |
| Murder (contrary to the common law of England & Wales)   | Common Law                                | Towards an adult or a child               |
| Kidnapping (contrary to the common law of England & Wales)   | Kidnapping                                | Towards an adult or a child               |
| Murder or manslaughter of a child or young person (contrary to the common law of Northern Ireland)   | Common Law                                |   |
| Plagium (contrary to the common law of Scotland)   | Theft of a child below the age of puberty |   |

| <b>ASYLUM AND IMMIGRATION (TREATMENT OF CLAIMANTS, ETC.) ACT 2004</b> |                                     |  |
|---|-------------------------------------|--|
| Section 4   | Trafficking people for exploitation |  |

| <b>CARE STANDARDS ACT 2000</b> |   |  |
|--------------------------------|---|--|
| Section 11(1)                  | Failure to register                               |  |
| Section 24                     | Failure to comply with conditions                 |  |
| Section 25                     | Contravention of regulations                      |  |
| Section 26                     | False descriptions of establishments and agencies |  |
| Section 27                     | False statements in applications                  |  |

| <b>CHILD ABDUCTION ACT 1984 (ENGLAND AND SCOTLAND)</b> |   |  |
|--|---|--|
| Section 1  | Offence of abduction of child by parent, etc.                                     |  |
| Section 2  | Offence of abduction of child by other persons                                    |  |
| Section 6  | Offence in Scotland of parent, etc. taking or sending child out of United Kingdom |  |

| <b>CHILDREN ACT 1958</b> |  |  |
|--------------------------|--|--|
| Section 14               | Offences relating to private fostering |  |

| <b>CHILDREN ACT 1989</b> |  |  |
|--------------------------|--|--|
| Schedule 5, para 1(5)    | Offences relating to voluntary homes and children's homes  |  |
| Schedule 6, para 2(3)    | Offences relating to voluntary homes and children's homes  |  |
| Section 49               | Abduction of child in care   |  |
| Section 50(9)            | Abduction of child in care (obstruction of recovery)   |  |
| Section 63(10)           | Where any child is at any time cared for and accommodated in a children's home which is not a registered children's home |  |
| Section 70               | Offences relating to private fostering   |  |

| <b>CHILDREN AND YOUNG PERSONS ACT 1933</b> |                                  |  |
|--|----------------------------------|--|
| Section 1                                  | Cruelty to persons under sixteen |  |

| <b>CHILDREN AND YOUNG PERSONS ACT 1969</b> |                        |  |
|--|------------------------|--|
| Section 32(3)                              | Detention of absentees |  |

| <b>COMMUNICATIONS ACT 2003</b> |  |  |
|--------------------------------|--|--|
| Section 127                    | Improper use of public electronic communications network |  |

| <b>CORONERS AND JUSTICE ACT 2009</b> |  |  |
|--------------------------------------|--|--|
| Section 62                           | Possession of prohibited images of children        |  |
| Section 71                           | slavery, servitude and forced or compulsory labour |  |

| <b>CRIMINAL JUSTICE AND COURTS ACT 2015</b> |  |  |
|---|--|--|
| Section 20                                  | Care worker ill-treat /wilfully neglect an individual                              |  |
| Section 21 (1)                              | Care provider breach duty of care resulting in ill-treatment/neglect of individual |  |

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| Section 33 | Disclose private sexual photographs with intent to cause distress |  |
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| <b>CRIMINAL JUSTICE ACT 1988</b> |  |  |
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| Section 160 | Summary offence of possession of indecent photograph of child |  |
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| <b>CRIMINAL LAW ACT 1977</b> |  |  |
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| Section 54 | Inciting girl under sixteen to have incestuous sexual intercourse |  |
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| <b>CUSTOMS AND EXCISE MANAGEMENT ACT 1979</b> |  |  |
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| Section 170 | Penalty for fraudulent evasion of duty, etc. | In relation to goods prohibited to be imported under Section 42 of the Customs Consolidation Act 1876 (prohibitions and restrictions) where the prohibited goods included indecent photographs of a child. (S.I. 2009/1547 Reg4(7) and Sch.3 para 7(1)) |
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| <b>DOMESTIC VIOLENCE, CRIME AND VICTIMS ACT 2004</b> |  |  |
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| Section 5 | Causing or allowing the death of a child or vulnerable adult |  |
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| <b>FEMALE GENITAL MUTILATION ACT 2003</b> |  |  |
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| Section 1 | Female genital mutilation  |  |
| Section 2 | Assisting a girl to mutilate her own genitalia                   |  |
| Section 3 | Assisting a non-UK person to mutilate overseas a girls genitalia |  |

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| <b>FOSTER CHILDREN ACT 1980</b> |  |  |
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| Section 16 | Offences relating to private fostering |  |
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| <b>INDECENCY WITH CHILDREN ACT 1960</b> |  |  |
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|-----------|--------------------------------------|--|
| Section 1 | Indecent conduct towards young child |  |
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| <b>INFANTICIDE ACT 1938</b> |  |  |
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|-----------|------------------------------------|--|
| Section 1 | Manslaughter of child under 1 year |  |
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| <b>MALICIOUS COMMUNICATIONS ACT 1988</b> |  |  |
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| Section 1 | Sending letters etc. with intent to cause distress or anxiety |  |
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| <b>MENTAL HEALTH ACT 1959</b> |                                  |  |
|-------------------------------|----------------------------------|--|
| Section 127                   | Intercourse with defective       |  |
| Section 128                   | Sexual intercourse with patients | Committed against or involving a child |

| <b>MISUSE OF DRUGS ACT 1971</b> |                 |  |
|---------------------------------|-----------------|--|
| Section 4(3)                    | Supply of drugs | Supplying or offering to supply a Class A drug to a child or being concerned in the supplying of such a drug to a child, or being concerned in the making to a child of an offer to supply such a drug. (CJCSA 2000 - Sch.4 para 3(s)) |

| <b>MODERN SLAVERY ACT 2015</b> |   |  |
|--------------------------------|---|--|
| Section 1 (1) (a)              | Hold person in slavery or servitude   |  |
| Section 1 (1) (b)              | Require person to perform forced or compulsory labour   |  |
| Section 2 (1)                  | Arrange or facilitate travel of another person with a view to exploitation  |  |
| Section 30 (1) & (3)           | Do act prohibited by slavery and trafficking risk or prevention order   |  |
| Section 4 & 5 (2)              | Commit offence other than kidnapping or false imprisonment with intention of arranging travel with view to exploitation |  |
| Section 4 & 5 (3)              | Commit offence of kidnapping or false imprisonment with intention of arranging travel with view to exploitation         |  |

| <b>OFFENCES AGAINST THE PERSON ACT 1861</b> |   |   |
|---|---|---|
| Section 16                                  | Threats to Kill   | Threat to kill a child                      |
| Section 18                                  | Shooting or attempting to shoot, or wounding with intent to do grievous bodily harm (GBH) | Towards an adult or a child                 |
| Section 20                                  | Inflicting bodily injury, with or without weapon  |   |
| Section 27                                  | Exposing child, whereby life is endangered, or health permanently injured                 |   |
| Section 42                                  | Persons committing any common assault or battery  | Any offence against a child or young person |
| Section 43                                  | Persons convicted of aggravated assaults on females and boys under fourteen years of age  | Any offence against a child or young person |

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| Section 47 | Assault occasioning actual bodily harm (ABH) | Towards an adult or a child                 |
| Section 52 | Indecent assault upon a female               | Any offence against a child or young person |
| Section 55 | Assaults                                     | Any offence against a child or young person |

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| <b>PROTECTION FROM HARRASSMENT ACT 1997</b> |  |  |
| Section 4                                   | Putting people in fear of violence                               |  |
| Section 4A                                  | Stalking involving fear of violence or serious alarm or distress |  |

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| <b>PROTECTION OF CHILDREN ACT 1978</b> |                                  |  |
| Section 1                              | Indecent photographs of children |  |

|   |                                 |   |
|---|---------------------------------|---|
| <b>PSYCHOACTIVE SUBSTANCES ACT 2016</b> |                                 |   |
| Section 5 (1)                           | Supply a psychoactive substance | Supplying or offering to supply a substance to a child or, or being concerned in the making to a child of an offer to supply such a drug. |

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| <b>SERIOUS CRIME ACT 2015</b> |   |  |
| Section 69                    | Possess a paedophile manual   |  |
| Section 76                    | Engage in controlling/coercive behaviour in an intimate / family relationship |  |

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|---|----------------------------|--|
| <b>SEXUAL OFFENCES (AMENDMENT) ACT 2000</b> |                            |  |
| Section 3                                   | Abuse of position of trust |  |

|                                 |  |  |
|---------------------------------|--|--|
| <b>SEXUAL OFFENCES ACT 1956</b> |  |  |
| Section 1                       | Rape of woman or man   |  |
| Section 2                       | Procurement of woman by threats or intimidation                  |  |
| Section 3                       | Procurement of woman by false pretences or false representations |  |
| Section 4                       | Administering drugs to obtain or facilitate intercourse          |  |
| Section 5                       | Intercourse with girl under thirteen                             |  |
| Section 6                       | Intercourse with girl between thirteen and sixteen               |  |
| Section 7                       | Intercourse with defective                                       | Committed against or involving a child |
| Section 9                       | Procurement of defective   | Committed against or involving a child |
| Section 10                      | Incest by a man  | Committed against or involving a child |

|            |  |   |
|------------|--|---|
| Section 11 | Incest by a woman  | Committed against or involving a child  |
| Section 12 | Buggery  | Committed against or involving a child and except if the other party to the act of buggery was aged 16 or over and consented to the act         |
| Section 13 | Gross Indecency between men  | Committed against or involving a child and except if the other party to the act of gross indecency was aged 16 or over and consented to the act |
| Section 14 | Indecent assault on a woman  |   |
| Section 15 | Indecent assault on a man  |   |
| Section 16 | Assault with intent to commit Buggery  |   |
| Section 17 | Abduction of women by force or for the sake of her property  |   |
| Section 19 | Abduction of unmarried girl under eighteen from parent or guardian                                   |   |
| Section 20 | Abduction of unmarried girl under sixteen from parent or guardian                                    |   |
| Section 21 | Abduction of defective from parent or guardian   | Committed against or involving a child  |
| Section 22 | Causing prostitution of women.   | Committed against or involving a child  |
| Section 23 | Procuration of girl  | Committed against or involving a child under twenty-one.  |
| Section 24 | Detention of woman in brothel or other premises  |   |
| Section 25 | Permitting girl under thirteen to use premises for intercourse                                       |   |
| Section 26 | Permitting girl between thirteen and sixteen to use premises for intercourse                         |   |
| Section 27 | Permitting defective to use premises for intercourse   | Committed against or involving a child  |
| Section 28 | Causing or encouraging prostitution of, intercourse with, or indecent assault on, girl under sixteen |   |
| Section 29 | Causing or encouraging prostitution of defective   | Committed against or involving a child  |
| Section 30 | Man living on earning of prostitution  | Committed against or involving a child  |
| Section 31 | Woman exercising control of prostitution   | Committed against or involving a child  |

| <b>SEXUAL OFFENCES ACT 1967</b> |  |  |
|---------------------------------|--|--|
| Section 4                       | Procuring others to commit homosexual acts | Committed against or involving a child |
| Section 5                       | Living on earnings of male prostitution    | Committed against or involving a child |

| <b>SEXUAL OFFENCES ACT 2003</b> |  |   |
|---------------------------------|--|---|
| Section 1                       | Rape   | Towards an adult or a child                       |
| Section 2                       | Assault by penetration   | Towards an adult or a child                       |
| Section 3                       | Sexual assault   | Towards an adult or a child                       |
| Section 4                       | Causing a person to engage in sexual activity without consent                        | Towards an adult or a child                       |
| Section 5                       | Rape of a child under 13   |   |
| Section 6                       | Assault of a child under 13 by penetration   |   |
| Section 7                       | Sexual assault of a child under 13   |   |
| Section 8                       | Causing or inciting a child under 13 to engage in sexual activity                    |   |
| Section 9                       | Sexual activity with a child   |   |
| Section 10                      | Causing or inciting a child to engage in sexual activity                             |   |
| Section 11                      | Engaging in sexual activity in the presence of a child                               |   |
| Section 12                      | Causing a child to watch a sexual act  |   |
| Section 14                      | Arranging or facilitating commission of a child sex offence                          |   |
| Section 15                      | Meeting a child following sexual grooming etc.                                       |   |
| Section 15 A                    | Engage in sexual communication with a child  | (As Amended by Serious Crime Act 2015 Section 67) |
| Section 16                      | Abuse of position of trust: sexual activity with a child                             |   |
| Section 17                      | Abuse of position of trust: causing or inciting a child to engage in sexual activity |   |
| Section 18                      | Abuse of position of trust: sexual activity in the presence of a child               |   |
| Section 19                      | Abuse of position of trust: causing a child to watch a sexual act                    |   |
| Section 20                      | Abuse of position of trust: acts done in Scotland                                    |   |
| Section 25                      | Sexual activity with a child family member   |   |
| Section 26                      | Inciting a child family member to engage in sexual activity                          |   |



|            |   |  |
|------------|---|--|
| Section 30 | Sexual activity with a person with a mental disorder impeding choice  |  |
| Section 31 | Causing or inciting a person, with a mental disorder impeding choice, to engage in sexual activity                            |  |
| Section 32 | Engaging in sexual activity in the presence of a person with a mental disorder impeding choice                                |  |
| Section 33 | Causing a person, with a mental disorder impeding choice, to watch a sexual act   |  |
| Section 34 | Inducement, threat or deception to procure sexual activity with a person with a mental disorder                               |  |
| Section 35 | Causing a person with a mental disorder to engage in or agree to engage in sexual activity by inducement, threat or deception |  |
| Section 36 | Engaging in sexual activity in the presence, procured by inducement, threat or deception, of a person with a mental disorder  |  |
| Section 37 | Causing a person with a mental disorder to watch a sexual act by inducement, threat or deception                              |  |
| Section 38 | Care workers: sexual activity with a person with a mental disorder  |  |
| Section 39 | Care workers: causing or inciting sexual activity   |  |
| Section 40 | Care workers: sexual activity in the presence of a person with a mental disorder  |  |
| Section 41 | Care workers: causing a person with a mental disorder to watch a sexual act   |  |
| Section 47 | Paying for sexual services of a child   |  |
| Section 48 | Causing or inciting child prostitution or pornography   |  |
| Section 49 | Controlling a child prostitute or a child involved in pornography   |  |
| Section 50 | Arranging or facilitating child prostitution or pornography   |  |
| Section 52 | Causing or inciting prostitution for gain   |  |
| Section 53 | Controlling prostitution for gain   |  |

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|-------------|---|--|
| Section 57  | Trafficking into the UK for sexual exploitation                       |  |
| Section 58  | Trafficking within the UK for sexual exploitation                     |  |
| Section 59  | Trafficking out of the UK for sexual exploitation                     |  |
| Section 59A | Trafficking people for sexual exploitation                            |  |
| Section 61  | Administering a substance with intent                                 |  |
| Section 62  | Committing an offence with intent to commit a relevant sexual offence |  |
| Section 63  | Trespass with intent to commit a relevant sexual offence              |  |
| Section 64  | Sex with an adult relative: penetration                               |  |
| Section 65  | Sex with an adult relative: consenting to penetration                 |  |
| Section 66  | Exposure  |  |
| Section 67  | Voyeurism   |  |
| Section 69  | Intercourse with an animal  |  |
| Section 70  | Sexual penetration of a corpse  |  |
| Section 72  | Offences outside the United Kingdom                                   |  |

| <b>TERRORISM ACT 2000</b> |   |  |
|---------------------------|---|--|
| Section 11                | Belonging or professing to belong to a Proscribed Organisation (P.O.)                               |  |
| Section 12(1)(a)          | Support.- he invites support for a proscribed organisation  |  |
| Section 54                | Weapons Training  |  |
| Section 58A               | Eliciting, publishing or communicating information to assist commission or preparation of terrorism |  |
| Section 59                | Inciting terrorism overseas   |  |
| Section 63                | Commit an act of terrorism  |  |

| <b>TERRORISM ACT 2006</b> |   |  |
|---------------------------|---|--|
| Section 1                 | Publish/cause another to publish a statement intending to/recklessly encouraging terrorism. |  |
| Section 2(2)(a) & 11      | Distribute/circulate a terrorist publication  |  |
| Section 2(2)(b)(c) & 11   | Give/sell/lend/offer for sale/offer for loan a terrorist publication                        |  |
| Section 2(2)(d) & 11      | Provide service re reading/listening to a terrorist publication                             |  |

|                      |  |  |
|----------------------|--|--|
| Section 2(2)(e) & 11 | Transmit contents of a terrorist publication   |  |
| Section 2(2)(f) & 11 | Possess terrorist publication with view to distribution/sale/loan/read/listen to/seen etc  |  |
| Section 5            | Preparation of terrorist acts. With intent that self/to assist another to commit act of terrorism engage in preparation            |  |
| Section 6(1)(5)      | Provide instruction/training for terrorism   |  |
| Section 8            | attendance at place used for terrorism training  |  |
| Section 9(1)         | making and possession of devices or materials  |  |
| Section 13           | Wear, carry or display any article in a public place belonging to a P.O.   |  |
| Section 15           | Invites another to provide money or other property and intends its use for the purposes of terrorism; this extends to use by P.Os. |  |
| Section 56           | Directing terrorist organisation   |  |

|                                 |          |  |
|---------------------------------|----------|--|
| <b>THEFT ACT 1968</b>           |          |  |
| Theft Act 1968, Section 9(1)(a) | Burglary | Committed against or involving a child |

## RELEVANT OFFENCES - NORTHERN IRELAND

| <b>CHILD ABDUCTION (NORTHERN IRELAND) Order 1985</b> |  |  |
|--|--|--|
| Article 3  | Offence of abduction of child by parent, etc   |  |
| Article 4  | Offence of abduction of child by other persons |  |

| <b>(THE) CHILDREN (NORTHERN IRELAND) ORDER 1995</b> |  |   |
|---|--|---|
| Article 68  | Abduction of children in care                                  |   |
| Article 69(9)                                       | Obstructing recovery of abducted child                         |   |
| Article 79(3)                                       | Carrying on a home when not registered                         |   |
| Article 81(4)                                       | Non-compliance with registration conditions (children's homes) |   |
| Article 95(3)                                       | Caring for / accommodating child in non-registered home        |   |
| Article 117   | Offences in relation to private fostering                      |   |
| Article 132   | Offences in relation to provision of day care / childminding   |   |
| Article 97(4)                                       | Non-compliance with registration conditions (children's homes) |   |
| Article 147(2)                                      |  | Any offence under Article 147(2) of the Children Order in respect of a contravention of Article 141 of that Order |

| <b>CHILDREN AND YOUNG PERSONS ACT (NORTHERN IRELAND) 1968</b> |  |  |
|---|--|--|
| Section 127(5)  |  |  |
| Section 129(3)  |  |  |
| Section 14  |  |  |
| Section 20  | Cruelty to persons under 16                                      |  |
| Section 23  | Allowing children or young persons to be in brothels             |  |
| Section 24  | Causing or allowing persons under sixteen to be used for begging |  |
| Section 29  | Exposing children under twelve to risk of burning                |  |
| Section 9(1)  |  |  |

| <b>CRIMINAL JUSTICE (EVIDENCE ETC) (NORTHERN IRELAND) ORDER 1988</b> |  |  |
|--|--|--|
| Article 15   | Possession of indecent photographs of children |  |

| <b>CRIMINAL JUSTICE (NORTHERN IRELAND) ORDER 1980</b> |  |  |
|---|--|--|
| Article 9   | Inciting girl under 16 to have incestuous sexual intercourse |  |

| <b>CRIMINAL JUSTICE (NORTHERN IRELAND) ACT 1966</b> |                                  |  |
|---|----------------------------------|--|
| Section 13(1)                                       | Encouraging or assisting suicide | Where the relevant act is an act capable of, and done with the intention of, encouraging or assisting the suicide of a child or young person |

| <b>HUMAN TRAFFICKING AND EXPLOITATION (CRIMINAL JUSTICE AND SUPPORT FOR VICTIMS) ACT (NORTHERN IRELAND) 2015</b> |  |  |
|--|--|--|
| Section 1  | Slavery, servitude and forced or compulsory labour |  |
| Section 2  | Human trafficking                                  |  |

| <b>JUSTICE ACT (NORTHERN IRELAND) 2016</b> |   |  |
|--|---|--|
| Section 51                                 | Disclosing private sexual photographs and films with intent to cause distress (revenge pornography) |  |

| <b>PROTECTION OF CHILDREN (Northern Ireland) ORDER 1978</b> |                                  |  |
|---|----------------------------------|--|
| Article 3   | Indecent photographs of children |  |

| <b>SEXUAL OFFENCES (NORTHERN IRELAND) ORDER 2008</b> |   |  |
|--|---|--|
| Sexual Offences (Northern Ireland) Order 2008        | All offences  | Any offence against or any attempt to commit such an offence against a child or young person (S.I. 2009/1547 Reg 4(7) Sch.3 para 3(4)) |
| Article 5  | Rape  | Towards an adult or a child  |
| Article 12   | Rape of a child under 13  |  |
| Article 13   | Assault of a child under 13 by penetration                              |  |
| Article 14   | Sexual assault of a child under 13                                      |  |
| Article 15   | Causing or inciting a child under 13 to engage in sexual activity       |  |
| Article 16   | Sexual activity with a child  |  |
| Article 17   | Causing or inciting a child to engage in sexual activity                |  |
| Article 18   | Engaging in sexual activity in the presence of a child                  |  |
| Article 19   | Causing a child to watch a sexual act                                   |  |
| Article 20   | Sexual offences against children committed by children or young persons |  |
| Article 21   | Arranging or facilitating commission of a sex offence against a child   |  |
| Article 22   | Meeting a child following sexual grooming etc                           |  |

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|------------|--|--|
| Article 23 | Abuse of position of trust:<br>sexual activity with a child                                |  |
| Article 24 | Abuse of position of trust:<br>causing or inciting a child to<br>engage in sexual activity |  |
| Article 25 | Abuse of position of trust:<br>sexual activity in the<br>presence of a child               |  |
| Article 26 | Abuse of position of trust:<br>causing a child to watch a<br>sexual act                    |  |
| Article 27 | Abuse of position of trust   |  |
| Article 32 | Sexual activity with a child<br>family member  |  |
| Article 33 | Inciting a child family<br>member to engage in sexual<br>activity                          |  |
| Article 34 | Family relationships   |  |
| Article 35 | Articles 32 and 33: exception<br>for spouses and civil partners                            |  |
| Article 36 | Articles 32 and 33: sexual<br>relationships which pre-date<br>family relationships         |  |
| Article 37 | Paying for sexual services of<br>a child   |  |
| Article 38 | Causing or inciting child<br>prostitution or pornography                                   |  |
| Article 39 | Controlling a child prostitute<br>or a child involved in<br>pornography                    |  |
| Article 40 | Arranging or facilitating child<br>prostitution or pornography                             |  |
| Article 42 | Indecent photographs of<br>persons aged 16 or 17   |  |
| Article 70 | Exposure   |  |
| Article 73 | Intercourse with an animal   |  |
| Article 74 | Sexual penetration of a<br>corpse  |  |

## RELEVANT OFFENCES - SCOTLAND

| <b>CHILD ABDUCTION ACT 1984 (ENGLAND AND SCOTLAND)</b> |   |  |
|--|---|--|
| Section 1  | Offence of abduction of child by parent, etc.                                     |  |
| Section 2  | Offence of abduction of child by other persons                                    |  |
| Section 6  | Offence in Scotland of parent, etc. taking or sending child out of United Kingdom |  |

| <b>CHILDREN (SCOTLAND) ACT 1995</b> |  |  |
|-------------------------------------|--|--|
| Section 81                          | Offences in connection with orders etc. for protection of children               |  |
| Section 83                          | Offences relating to harbouring a child in care / inciting that child to abscond |  |
| Section 89                          | Offences in relation to parental responsibilities orders                         |  |

| <b>CHILDREN AND YOUNG PERSONS ACT (SCOTLAND) 1937</b> |   |  |
|---|---|--|
| Section 12  | Cruelty to persons under sixteen  |  |
| Section 15  | Causing or allowing persons under sixteen to be used for begging                          |  |
| Section 22  | Exposing children under seven to risk of burning  |  |
| Section 33  | Prohibition of persons under sixteen taking part in performances endangering life or limb |  |

| <b>CHILDREN'S HEARINGS (SCOTLAND) ACT 2011</b> |                                |  |
|--|--------------------------------|--|
| Section 171                                    | Offences related to absconding |  |
| Section 59(1)                                  | Offences - obstruction         |  |

| <b>CHILDREN'S HEARINGS (SCOTLAND) ORDER 2013</b> |                                    |  |
|--|------------------------------------|--|
| Article 10(2)                                    | Offences relating to absconding    |  |
| Article 11(1)                                    | Offence of intentional obstruction |  |

| <b>CIVIC GOVERNMENT (SCOTLAND) ACT 1982</b> |  |  |
|---|--|--|
| Section 52                                  | Indecent photographs etc. of children          |  |
| Section 52A                                 | Possession of indecent photographs of children |  |

| <b>CRIMINAL LAW (CONSOLIDATION) (SCOTLAND) ACT 1995</b> |        |  |
|---|--------|--|
| Section 1   | Incest |  |

|             |   |  |
|-------------|---|--|
| Section 10  | Seduction, prostitution, etc., of girl under 16                       |  |
| Section 11  | Trading in prostitution and brothel-keeping                           |  |
| Section 12  | Allowing child to be in brothel                                       |  |
| Section 13  | Living on earnings of another from male prostitution                  |  |
| Section 16A | Conspiracy or incitement to commit certain sexual acts outside the UK |  |
| Section 16B | Commission of certain sexual acts outside the United Kingdom          |  |
| Section 2   | Intercourse with step-child   |  |
| Section 3   | Intercourse of person in position of trust with under 16              |  |
| Section 5   | Intercourse with girl under 16  |  |
| Section 6   | Indecent behaviour towards girl between 12 and 16                     |  |
| Section 7   | Procuring   |  |
| Section 8   | Abduction and unlawful detention                                      |  |
| Section 9   | Permitting girl to use premises for intercourse                       |  |

|  |                                |  |
|--|--------------------------------|--|
| <b>FOSTER CHILDREN (SCOTLAND) ACT 1984</b> |                                |  |
| Section 15                                 | Offences relating to fostering |  |

|   |  |  |
|---|--|--|
| <b>HUMAN TRAFFICKING AND EXPLOITATION (SCOTLAND) ACT 2015</b> |  |  |
| Section 1   | Human trafficking                                  |  |
| Section 4   | Slavery, servitude and forced or compulsory labour |  |

|   |  |  |
|---|--|--|
| <b>PROHIBITION OF FEMALE GENITAL MUTILATION (SCOTLAND) ACT 2005</b>                 |  |  |
| Any offence under the Prohibition of Female Genital Mutilation (Scotland) Act 2005. | Any Offence  | where the person mutilated or, as the case may be, proposed to be mutilated, is a child under the age of 17 years. (S.I. 2009/1547 Reg 4(5)(b), Sch.3 para 2(2)) |
| Section 1   | Female genital mutilation                          |  |
| Section 3   | Aiding and abetting female genital mutilation      |  |
| Section 4   | Female genital mutilation - extra-territorial acts |  |

|   |   |  |
|---|---|--|
| <b>PROTECTION OF CHILDREN AND PREVENTION OF SEXUAL OFFENCES (SCOTLAND) ACT 2005</b> |   |  |
| Section 1   | Meeting a child following certain preliminary contact | In respect of a child under the age of 17 years. (S.I. 2009/1547 Reg 4(5)(b), Sch.3 para 2(2)) |



|            |  |  |
|------------|--|--|
| Section 10 | Causing or inciting provision by child of sexual services or child pornography       | In respect of a child under the age of 17 years. (S.I. 2009/1547 Reg 4(5)(b), Sch.3 para 2(2)) |
| Section 11 | Controlling a child providing sexual services or involved in pornography             | In respect of a child under the age of 17 years. (S.I. 2009/1547 Reg 4(5)(b), Sch.3 para 2(2)) |
| Section 12 | Arranging or facilitating provision by child of sexual services or child pornography | In respect of a child under the age of 17 years. (S.I. 2009/1547 Reg 4(5)(b), Sch.3 para 2(2)) |
| Section 9  | Paying for sexual services of a child  | In respect of a child under the age of 17 years. (S.I. 2009/1547 Reg 4(5)(b), Sch.3 para 2(2)) |

| <b>PUBLIC SERVICES REFORM (SCOTLAND) ACT 2010</b> |  |  |
|---|--|--|
| Section 78  | Regulations: care services                           |  |
| Section 80  | Offences in relation to registration under Chapter 3 |  |
| Section 81  | False statements in application under Chapter 3      |  |

| <b>REGULATION OF CARE (SCOTLAND) ACT 2001</b> |                                      |  |
|---|--------------------------------------|--|
| Section 21                                    | Offences in relation to registration |  |
| Section 22                                    | False statements in applications     |  |
| Section 29(10)                                | Offences under regulations           |  |

| <b>SEXUAL OFFENCES (SCOTLAND) ACT 2009</b> |  |   |
|--|--|---|
| Section 5                                  | Coercing a person into being present during a sexual activity                    | Towards a child under the age of 17 years |
| Section 6                                  | Coercing a person into looking at a sexual image                                 | Towards a child under the age of 17 years |
| Section 7                                  | Communicating indecently etc   | Towards a child under the age of 17 years |
| Section 8                                  | Sexual exposure  | Towards a child under the age of 17 years |
| Section 9                                  | Voyeurism  | Towards a child under the age of 17 years |
| Section 18                                 | Rape of a young child  |   |
| Section 19                                 | Sexual assault on a young child by penetration                                   |   |
| Section 20                                 | Sexual assault on a young child  |   |
| Section 20(1) and (2)(b)to(e)              | sexual assault on a young child involving sexual activity other than penetration |   |
| Section 21                                 | Causing a young child to participate in a sexual activity                        |   |
| Section 22                                 | Causing a young child to be present during a sexual activity                     |   |
| Section 23                                 | Causing a young child to look at a sexual image                                  |   |

|            |  |   |
|------------|--|---|
| Section 24 | Communicating indecently with a young child                            |   |
| Section 25 | Sexual exposure to a young child                                       |   |
| Section 26 | Voyeurism towards a young child  |   |
| Section 28 | Having intercourse with an older child                                 |   |
| Section 29 | Engaging in penetrative sexual activity with or towards an older child |   |
| Section 30 | Engaging in sexual activity with or towards an older child             |   |
| Section 31 | Causing an older child to participate in a sexual activity             |   |
| Section 32 | Causing an older child to be present during a sexual activity          |   |
| Section 33 | Causing an older child to look at a sexual image                       |   |
| Section 34 | Communicating indecently with an older child etc.                      |   |
| Section 35 | Sexual exposure to an older child                                      |   |
| Section 36 | Voyeurism towards an older child                                       |   |
| Section 37 | Older children engaging in sexual conduct with each other              |   |
| Section 42 | Sexual abuse of trust  | Towards a child under the age of 17 but only if the condition set out in Section 43(6) of that Act is fulfilled |

| <b>SOCIAL WORK (SCOTLAND) ACT 1968</b> |  |  |
|--|--|--|
| Section 17(8)                          | Effect of assumption by local authority of parental rights |  |
| Section 60(3)                          | Control of residential and other establishments            |  |
| Section 61(3)                          | Restriction on carrying on of establishments               |  |
| Section 62(6)                          | Registration   |  |
| Section 71                             | Harbouring   |  |

|   |
|---|
| <b>RELEVANT OFFENCES - ISLE OF MAN, JERSEY &amp; GUERNSEY</b> |
|---|

|  |   |  |
|--|---|--|
| <b>CHILDREN AND YOUNG PERSONS ACT 2001 (ISLE OF MAN)</b>   |   |  |
| Schedule 8   | Various offences listed inc. murder of child, infanticide, and sexual offences against children |  |
| <b>CHILDREN JERSEY LAW 1969</b>  |   |  |
| Part 7   | All offences in part  |  |
| <b>CHILDREN JERSEY LAW 2002</b>  |   |  |
| Schedule 4   | All offences in schedule  |  |
| <b>DAY OF CARE OF CHILDREN (JERSEY) LAW 2002</b>   |   |  |
| All offences   |   |  |
| <b>CHILDREN AND YOUNG PERSONS (GUERNSEY) LAW 1967</b>  |   |  |
| All offences   |   |  |
| <b>LOI RELATIVE A LA PROTECTION DES FEMMES ET DES FILLES MINEURES (LAW FOR THE PROTECTION OF WOMEN AND YOUNG GIRLS) 1914 (GUERNSEY)</b>                      |   |  |
| All Offences   |   |  |
| <b>'LOI POUR LA PUNITION D'INCESTE' (LAW FOR THE PUNISHMENT OF INCEST) 1909 (GUERNSEY)</b>   |   |  |
| All Offences   |   |  |
| <b>'LOI RELATIVE A LA SODOMIE' (LAW RELATING TO SODOMY) 1929 (GUERNSEY)</b>  |   |  |
| All Offences   |   |  |
| <b>'LOI AYANT RAPPORT A LA PROTECTION DES ENFANTS ET DES JEUNES PERSONNES' LAW RELATING TO THE PROTECTION OF CHILDREN AND YOUNG PERSONS 1917, (GUERNSEY)</b> |   |  |
| Article 7  |   |  |
| Article 9  |   |  |
| Article 10   |   |  |
| Article 11   |   |  |
| Article 12   |   |  |
| Article 41(1)  |   |  |
| Article 51(1,2,3,4)  |   |  |
| <b>PROTECTION OF CHILDREN (BAILIWICK OF GUERNSEY) LAW 1985</b>   |   |  |
| All Offences   |   |  |

## Table B – Relevant Orders

### Orders and Determinations mentioned in Regulation 4(2) (Schedule 1) of The Childcare (Disqualification) and Childcare (Early Years Provision Free of Charge) (Extended Entitlement) (Amendment) Regulations 2018 (“the 2018 Regulations”) that will lead to disqualification.

The list of orders and determinations that will lead to disqualification under the 2018 Regulations pursuant to Regulation 4(2) are set out at Schedule 1 to the 2018 Regulation.

This list was put together on 2 July 2018 and has not been updated since then.

| <b>ORDERS ETC. RELATING TO THE CARE OF CHILDREN (ENGLAND) - <i>note these may extend to other jurisdictions</i></b>   |
|---|
| An order under section 31(1)(a) of the 1989 Act (care order).   |
| Any order that would have been deemed to be a care order by virtue of paragraph 15 of Schedule 14 to the 1989 Act (transitional provisions for children in compulsory care) had it been in force immediately before the day on which Part 4 of the 1989 Act came into force.  |
| A supervision order which imposes a residence requirement under paragraph 5 of Schedule 6 to the Powers of Criminal Courts (Sentencing) Act 2000 or section 12AA of the Children and Young Persons Act 1969 (requirement to live in local authority accommodation).   |
| In relation to registration of a children’s home -<br>(i) a refusal of P’s application for registration under section 13 of the Care Standards Act 2000;<br>(ii) cancellation of P’s registration under section 14 or 20(1) of the Care Standards Act 2000; or<br>(iii) cancellation of the registration of any person under section 14 or 20(1) of the Care Standards Act 2000 in relation to a children’s home which P has been concerned in the management of, or has any financial interest in. |
| Refusal at any time of P’s application for registration in relation to a voluntary home or a children’s home, or cancellation of the registration of a voluntary home or children’s home which was carried on by P or which P was otherwise concerned with the management of, or had any financial interest in, under, as the case may be -<br>(i) paragraph 1 of Schedule 5 to the 1989 Act;<br>(ii) paragraph 1 or 4 of Schedule 6 to the 1989 Act.   |
| A prohibition imposed at any time under Section 69 of the 1989 Act, section 10 of the Foster Children Act 1980 or section 4 of the Children Act 1958 (power to prohibit private fostering).   |
| Refusal at any time of registration in respect of the provision of nurseries, day care, child minding or other provision of childcare, disqualification from such registration or cancellation of any such registration under—<br>(i) section 1 or section 5 of the Nurseries and Child-Minders Regulation Act 1948;<br>(ii) Part 10 or Part 10A of the 1989 Act;<br>(iii) Chapter 2, 3 or 4 of Part 3 of the Act.  |
| <b>ORDERS ETC. RELATING TO THE CARE OF CHILDREN (NORTHERN IRELAND)</b>  |
| An order under article 50(1)(a) of the Children (Northern Ireland) Order 1995 (care order).   |
| A parental responsibility order made under article 7 of the Children (Northern Ireland) Order 1995.   |
| A fit person order, parental rights order or a training school order under the Children and Young Persons Act (Northern Ireland) 1968.  |
| In relation to registration of a children’s home - refusal of P’s application for registration or cancellation of P’s registration under the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003.   |
| Refusal at any time of P’s application for registration in relation to a voluntary home or a children’s home, or cancellation of the registration of a voluntary home or children’s home which was carried on by P or which P was otherwise concerned with the management of, or had any financial interest in, under, as the case may be -   |

|   |
|---|
| (i) section 127 of the Children and Young Persons Act (Northern Ireland) 1968;  |
| (ii) article 80, 82, 96 or 98 of the Children (Northern Ireland) Order 1995.  |
| A prohibition imposed at any time under - article 110 of the Children (Northern Ireland) Order 1995 (power to prohibit private fostering).  |
| Refusal at any time of registration in respect of the provision of nurseries, day care, child minding or other provision of childcare, disqualification from such registration or cancellation of any such registration under -   |
| (i) Part XI of the Children (Northern Ireland) Order 1995;  |
| (ii) section 11(5) or section 15 of the Children and Young Persons Act (Northern Ireland) 1968.   |
| Inclusion of P's name at any time on a list of persons unsuitable to work with children under article 3 of the Protection of Children and Vulnerable Adults (Northern Ireland) Order 2003 or disqualification from working with children under Chapter II of Part II of that Order. |

|   |
|---|
| <b>ORDERS ETC. RELATING TO THE CARE OF CHILDREN (SCOTLAND)</b>  |
| A child protection order under section 57 of the Children (Scotland) Act 1995 or section 37 of the Children's Hearings (Scotland) Act 2011.   |
| An exclusion order under section 76 of the Children (Scotland) Act 1995.  |
| An order made at any time imposing a supervision requirement with respect to a child so as to remove that child from P's care, under -  |
| (i) section 44 of the Social Work (Scotland) Act 1968;  |
| (ii) section 70 of the Scotland Act 1995.   |
| A compulsory supervision order, within the meaning of section 83 of the Children's Hearings (Scotland) Act 2011, or interim compulsory supervision order, within the meaning of section 86 of that Act, made at any time with respect to a child so as to remove that child from P's care.  |
| An order made at any time vesting P's rights and powers with respect to a child in a local authority in Scotland -  |
| (i) under section 16 of the Social Work (Scotland) Act 1968; or   |
| (ii) pursuant to a parental responsibilities order under section 86 of the Children (Scotland) Act 1995.  |
| A permanence order made, or treated as being made, under section 80 of the Adoption and Children (Scotland) Act 2007.   |
| Refusal at any time of P's application for registration in relation to a voluntary home or a children's home, or cancellation of the registration of a voluntary home or children's home which was carried on by P or which P was otherwise concerned with the management of, or had any financial interest in, under, as the case may be - |
| (i) Part 1 of the Regulation of Care (Scotland) Act 2001 (care home services);  |
| (ii) Part 5 of the Public Services Reform (Scotland) Act 2010.  |
| A prohibition imposed at any time under section 10 of the Foster Children (Scotland) Act 1984 (power to prohibit the keeping of foster children).   |
| Refusal at any time of registration in respect of the provision of nurseries, day care, child minding or other provision of childcare, disqualification from such registration or cancellation of any such registration under Part 1 of the Regulation of Care (Scotland) Act 2001.   |
| Disqualification from working with children at any time under the Protection of Children (Scotland) Act 2003.   |
| Refusal at any time of P's application for registration or cancellation of P's registration under section 62 of the Social Work (Scotland) Act 1968 (registration of residential and other establishments).   |
| Refusal at any time of P's application for registration as a provider of a child care agency under section 7 of the Regulation of Care (Scotland) Act 2001 or cancellation of any such registration under section 12 or 18 of that Act.   |
| Refusal at any time of P's application for registration as a provider of a child care agency under section 59 of the Public Services Reform (Scotland) Act 2010 or cancellation of any such registration under section 64 or 65 of that Act.  |

|   |
|---|
| <b>ORDERS ETC. RELATING TO THE CARE OF CHILDREN (WALES)</b>   |
| Refusal at any time of registration in respect of the provision of nurseries, day care, child minding or other provision of childcare, disqualification from such registration or cancellation of any such registration under Part 2 of the Children and Families (Wales) Measure 2010. |

|  |
|--|
| <b>ORDERS ETC. RELATING TO THE CARE OF CHILDREN (JERSEY)</b>   |
| An order or determination specified in Schedule 4 to the Children (Jersey) Law 2002.   |
| <b>ORDERS ETC. RELATING TO THE CARE OF CHILDREN (GUERNSEY)</b>   |
| An order under section 3(3) of the Children and Young Persons (Guernsey) Law 1967 (fit person order or special care order).  |
| An order made further to an application as permitted under section 48(3) of the Children (Guernsey and Alderney) Law 2009 (community parenting order).   |
| Refusal at any time of registration in respect of the provision of nurseries, day care, child minding or other provision of childcare, disqualification from such registration or cancellation of any such registration under Part III of the Child Protection (Guernsey) Law 1972.  |
| <b>ORDERS ETC. RELATING TO THE CARE OF CHILDREN (ISLE OF MAN)</b>  |
| An order under section 31(1)(a) of the Children and Young Persons Act 2001 (an Act of Tynwald).  |
| A supervision order which imposes a residence requirement under paragraph 5 of Schedule 9 to the Children and Young Persons Act 2001 (an Act of Tynwald) (requirement to live in accommodation provided by the Department of Health and Social Security).  |
| Refusal at any time of P's application for registration in relation to a voluntary home or a children's home, or cancellation of the registration of a voluntary home or children's home which was carried on by P or which P was otherwise concerned with the management of, or had any financial interest in, under, as the case may be - Paragraph 2 or 4 of Schedule 2 to the Children and Young Persons Act 2001 (an Act of Tynwald). |
| A prohibition imposed at any time under section 59 of the Children and Young Persons Act 2001 (an Act of Tynwald) (power to prohibit or impose restrictions upon private fostering).   |
| Refusal at any time of registration in respect of the provision of nurseries, day care, child minding or other provision of childcare, disqualification from such registration or cancellation of any such registration under -<br>(i) section 1 of the Nurseries and Child Minders Regulation Act 1974 (an Act of Tynwald);<br>(ii) section 65 or 66 of, or Schedule 7 to, the Children and Young Persons Act 2001 (an Act of Tynwald).   |

## Further information

### Useful resources and external organisations

- The Childcare (Disqualification) and Childcare (Early Years Provision Free of Charge) (Extended Entitlement) (Amendment) Regulations 2018 **[To Be Published]**
- [Childcare Act 2006](#)
- [Rehabilitation of Offenders Act 1974 \(Exceptions\) Order 1975 \(as amended in 2013\) \('the Exceptions\)](#)
- [Rehabilitation of Offenders Act 1974](#)
- [DBS - Never Filtered List](#)
- [DBS - Filtering guide](#)
- [DBS - Referral Guidance](#)
- [Ofsted – Compliance and Enforcement handbook](#)
- [Ofsted – Waiver Procedures](#)
- [Information Commissioner's Office](#)
- [Data Protection Act 2018](#)
- [Data Protection Toolkit for Schools](#)
- [General Data Protection Regulation \(GDPR\)](#)
- [Guide to the General Data Protection Regulation \(GDPR\)](#)
- [Nacro](#)
- [Unlock](#)

### Other relevant departmental advice and statutory guidance

- [Keeping children safe in education](#)
- [The early years foundation stage](#)
- [Working together to safeguard children](#)

# Annex A

## Summary of changes to the arrangements

### **Removal of disqualification by association**

1. By amendment of regulation 9 of the Childcare (Disqualification) and Childcare (Early Years Provision Free of Charge) (Extended Entitlement) (Amendment) Regulations 2018 (“the 2018 Regulations”), we are removing disqualification by association for individuals working in childcare in non-domestic settings (e.g. schools and nurseries).
2. Disqualification by association will continue to apply for individuals providing and working in childcare in domestic settings (e.g. where childcare is provided in a childminder’s home).

### **Technical changes to the arrangements**

3. Paragraph 4(c) of this guidance references that there are certain orders, made in relation to the care of children, which can lead to disqualification. These are set out at regulation 4(2) and listed at Schedule 1 of the 2018 Regulations, and are relisted at Table B of this draft guidance.
4. The 2018 Regulations amended the arrangements, which currently disqualify foster carers and those who have adopted children in their household, as well as childcare workers who themselves were once subject to a care order, from working in childcare. Regulation 4(2) exempts these individuals from disqualification, thereby improving the fairness of the arrangements.

### **Additions to qualifying offences**

5. The 2018 Regulations bring up-to-date the offences by which an individual can be disqualified under the childcare disqualification arrangements. The relevant offences are set out at Schedules 2 and 3 of the 2018 Regulations and are relisted at Table A of this draft guidance.



## Annex B

### Making a waiver application to Ofsted: transitional arrangements

1. This part of the guidance explains how the changes we are making to the childcare disqualification arrangements will impact on waiver applications to Ofsted. It is designed to help employers and staff understand the waiver application process between now and 31 August 2018.

#### **Changes to the childcare disqualification arrangements**

2. There are no substantive changes to the childcare disqualification arrangements for individuals who have committed a relevant offence that leads to disqualification. School staff covered by paragraphs 6 to 17 of the existing guidance (paragraphs 9 to 18 of this draft guidance), who have committed a relevant offence, should apply to Ofsted for a waiver against disqualification, as explained at paragraphs 35 to 36 of the existing guidance (paragraphs 38 to 39 of this draft).

#### **Disqualification by association**

3. There are no changes to the disqualification by association arrangements for individuals working in childcare provided on domestic premises<sup>18</sup>. Individuals working in domestic settings, who are disqualified on the basis of someone living or working in their household having committed a relevant offence (i.e. disqualification by association) should apply to Ofsted for a waiver against disqualification, as explained at paragraphs 35 and 36 of the current statutory guidance (paragraphs 38 and 39 of this draft guidance).

#### **Waiver applications**

4. Any member of staff working in a relevant school setting, or similar setting within a private, voluntary, or independent (PVI) nursery, who is disqualified by association under the current arrangements, should apply for a waiver from Ofsted, as explained at paragraphs 35 and 36 of the current statutory guidance. A waiver against disqualification is necessary because the law currently prohibits individuals disqualified by association from working in childcare in these settings. Ofsted will consider and make a decision on waiver applications where it is able to do so before 31 August 2018. Where it is unable to determine an application for a waiver before this date, Ofsted will write and inform the individual (and their employer) of their disqualification status on or after 31 August 2018.

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<sup>18</sup> Including those working on non-domestic premises up to 50% of the time under domestic premises registration.

## No review of existing Ofsted waiver decisions

5. Where Ofsted has previously made a decision on an application for a waiver individuals should not ask Ofsted to review that decision. Ofsted will not revisit waiver applications made under the existing *arrangements*. Whilst a number of the waivers issued by Ofsted will, from 31 August 2018, no longer be necessary in order to allow individuals to work in childcare, Ofsted does not need to review an individual's disqualification status in order to enable them to work in childcare. Accordingly, Ofsted will not review decisions it has previously made on waiver applications submitted under the current legislation.

## Status of existing waivers post 31 August 2018

6. The tables below explain how the changes to the Regulations will impact on an individual's requirement to hold a waiver against disqualification in order to work in childcare from 31 August 2018.

### Disqualified due to an offence the individual has committed

| Current waiver/disqualification status        | Post September waiver/disqualification status |
|---|---|
| Waiver granted – able to work in childcare    | No change                                     |
| Waiver declined – unable to work in childcare | No change                                     |
| Waiver granted 'with conditions'              | No change                                     |

### Disqualified due to an offence an associate has committed (by association)

| Setting (Individual works in a....) | Current waiver/disqualification status        | Post September waiver/disqualification status   |
|-------------------------------------|---|---|
| Domestic setting <sup>19</sup>      | Waiver granted – able to work in childcare    | No change   |
| Domestic setting <sup>19</sup>      | Waiver declined – unable to work in childcare | Unable to work in childcare in a domestic setting <sup>19</sup> but able to work in a school or PVI |
| Domestic setting <sup>19</sup>      | Waiver granted 'with conditions'              | No change   |
| School/PVI setting                  | Waiver granted – able to work in childcare    | Waiver no longer required – able to work in childcare in a school or PVI                            |

<sup>19</sup> Including non-domestic premises up to 50% of the time under a domestic registration.

|                    |   |   |
|--------------------|---|---|
|                    |   | but not able to work in childcare in a domestic setting <sup>19</sup>   |
| School/PVI setting | Waiver declined – unable to work in childcare | Waiver no longer required - able to work in childcare in a school or PVI, but not able to work in childcare in a domestic setting <sup>19</sup> |
| School/PVI setting | Waiver granted ‘with conditions’              | Waiver no longer required. Able to work in childcare in a school or PVI, but not able to work in childcare in a domestic setting <sup>19</sup>  |

7. Any waivers which have been granted “with conditions” may need to be considered on a case-by-case basis, as individuals may still be disqualified from certain settings, particularly those in domestic settings. Please contact [disqualification@ofsted.gov.uk](mailto:disqualification@ofsted.gov.uk) for further advice regarding waivers with conditions.

#### **Other sources of help**

8. Individuals with questions about the operation of the childcare disqualification arrangements, including the requirement to obtain a waiver in order to work in childcare between now and 31 August 2018, or with questions about waivers with conditions should contact the DfE’s disqualification helpline 01325 340 409 or email: [mailbox.disqualification@education.gov.uk](mailto:mailbox.disqualification@education.gov.uk).



Department  
for Education

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