



*Striving for Excellence*

# Ryefield Primary School

## Childcare Disqualification Checks

---

### 1. Scope

---

The procedure applies to all staff directly employed by Schools and Academies.

For Academies, all reference to School should be taken to mean Academy, all reference to the Headteacher should, where appropriate, be taken to mean Executive Headteacher/Principal/Head of School, and all reference to the Governing Body should, where appropriate, be taken to mean the Academy Trust.

---

### 2. Background

---

The Department for Education (DfE) has issued supplementary advice to its “Keeping Children Safe in Education” statutory guidance, published 26 March 2015, last updated 19 September 2018. This can be found at: <https://www.gov.uk/government/publications/keeping-children-safe-in-education--2>

This supplementary advice details the requirement for childcare disqualification checks to be carried out on relevant staff working in schools.

#### **What are the childcare disqualification requirements?**

People who've been convicted of certain offences are disqualified from providing childcare under the [Childcare \(Disqualification\) and Childcare \(Early Years Provision Free of Charge\) \(Extended Entitlement\) \(Amendment\) Regulations 2018](#).

Ryefield **must** make sure that it's not recruiting, or redeploying, someone who's disqualified into a role regulated by the childcare disqualification regulations. It's an offence to knowingly do so.

#### **Which offences result in disqualification?**

The list of offences and orders that result in disqualification is included in [guidance published by the Department for Education \(DfE\)](#)

The DfE's guidance is based on regulation 4 and schedule 1 of the 2018 regulations. Some of the offences listed have been repealed, but a person is still disqualified from working with children if they've at any time committed any of the offences under the specified legislation when it was in force.

---

### 3. Who is covered by the Regulations?

---

#### Who the regulations apply to:

The regulations apply to staff who work in, or are directly concerned with managing:

- **Early years provision (birth until 1 September following a child's fifth birthday)**
  - Covers staff who provide any care for a child up to and including reception age
  - Includes education in nursery and reception classes, and/or any supervised activity (such as breakfast clubs, lunchtime supervision and after-school care provided by the school) both during and outside school hours for children in the early years age range
- **Later years provision (for children under 8)**
  - Covers staff who work in childcare provided by a school **outside** school hours for children under 8, including before-school settings such as breakfast clubs, and after-school provision
  - Does **not** include education or supervision during school hours, or extended school hours for co-curricular learning activities, such as the school's choir or sports teams

School leaders will use their judgement to determine who's included in the management aspect of the criteria. Ryefield will always include the headteacher and members of the senior leadership team in leading the day-to-day management of the provision. It doesn't include governors or trustees.

The regulations **also apply** to:

- Volunteers and casual workers who regularly work at Ryefield, whether they're supervised or not
- Any self-employed contractors (such as music teachers or sports coaches)
- Any salaried trainee teachers (it's the training provider's responsibility for unsalaried trainees)

They **don't** apply to:

- Staff who only provide education, childcare or supervision for children above reception age during school hours
- Staff who only provide education, childcare or supervision out of school hours for children aged 8 or over
- Staff who are not employed to directly provide childcare such as caretakers, cleaners, catering and office staff
- People involved in any form of health care provision, including school nurses and speech and language therapists

#### **Third-party staff**

Where your school uses third-party staff, school leaders must obtain confirmation from the agency you use that they've:

- Informed their own staff it's an offence to work in a relevant setting, or be involved in its management, while disqualified from doing so

- Asked their own staff (where the staff will be working in a relevant setting in the school) to inform the agency if they consider that they could be disqualified

The LA is responsible for ensuring any of its staff who are deployed to work in settings covered by the regulations are not disqualified, including peripatetic music teachers and specialist special educational needs teachers.

### **Governors**

The DfE has confirmed that this requirement only relates to those in employment in childcare and therefore does not apply to governors unless they also fall into one of the other categories.

**The Childcare Disqualification Regulations were updated on 31 August 2018.** A summary of the key changes are as follows:

### **Changes from 31 August 2018: disqualification by association**

Previously, people working in schools could be disqualified by association if they lived with someone who was disqualified. Since 31 August 2018, disqualification by association **no longer applies** to schools. Schools **shouldn't** ask staff questions about cautions or convictions of someone living or working in their household.

Schools with pupils under the age of 8, need to ensure that all employees are not disqualified under the [Childcare \(Disqualification\) and Childcare \(Early Years Provision Free of Charge\) \(Extended Entitlement\) \(Amendment\) Regulations 2018](#)

It's an offence if any school knowingly employs someone who is disqualified.  
With this in mind, Ryefield Primary School:

- Ensures all employees know what information will be required of them and how it will be used to make decisions about disqualification
- Asks any new employees for an up-to-date enhanced DBS certificate
- Asks any existing employees if they are disqualified
- Uses the DBS Update Service to supplement any self-declarations by existing employees
- Keeps a record of when Ryefield Primary School completed the disqualification checks and processes these records in line with the Data Protection Act 2018
- Encourages staff members to be proactive in informing the Head Teacher of any changes to their circumstances

### **If someone is disqualified**

If the Head Teacher receives information that someone working at Ryefield is disqualified, he will:

- Inform Ofsted
- Tell the staff member if they can apply to Ofsted for a waiver, what information they'll need to share, and why
- Decide whether it's appropriate to redeploy staff elsewhere in the school, make adjustments to their role to avoid them working in the relevant settings, grant paid leave or suspend them if a waiver is applied for. Where alternative arrangements cannot be made, the Head Teacher will decide whether to grant paid leave or similar, or suspend the member of staff while waiting for the waiver
- Take advice from the Schools HR provider, designated officer, or safeguarding lead officer

**If they don't get a waiver**

If someone decides not to apply for a waiver, or a waiver is declined, the Head Teacher will consider and make decisions about:

- Whether the person can be permanently redeployed

---

**4. Disqualified Employees**

---

An employee may be disqualified if any of the following apply:

- They have been cautioned for or convicted of certain violent or sexual criminal offences against children and adults
- They are the subject of an Order, direction or similar in respect of childcare, including orders made in respect of their own children
- They have had registration refused or cancelled in relation to childcare or children's homes or have been disqualified from private fostering

Full details of what constitutes "disqualification" are in the Disqualification Under The Childcare Act 2006 Statutory Guidance for Local Authorities and Schools 31<sup>st</sup> August 2018:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/741597/APPENDICES-Disqualification under the childcare act statguidance 4 .pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/741597/APPENDICES-Disqualification_under_the_childcare_act_statguidance_4.pdf)

The outcome of the government consultation about 'Disqualification by Association' was published towards the end of the summer term 2018. The guidance was updated again on the 31st August 2018 and comes into force on 3rd September 2018. A change in the law means that Disqualification by Association will only apply on domestic premises. However, Disqualification under the Childcare Act 2006, still applies to staff themselves.

Schools must no longer ask about the cautions or convictions of someone living or working in their household. (It should be noted that other statutory guidance may be relevant where the third party lives on the school premises, such as in boarding schools.)

**Main Points**

Disqualification by Association now only applies in domestic settings, not schools. Disqualification under the Child Care Act still applies to staff themselves who work in a child care capacity, whether paid, volunteer or are on work placements. Relevant staff are those working in child care, or in a management role because they are: working with reception age children at any time; or working with children older than reception until age eight, outside school hours.

Ryefield will contact the School's HR Co-operative immediately if they:

- a. know of anyone in their employment who is or may be disqualified
- b. receive a positive declaration from any person

Schools HR Co-operative will support schools in dealing with a case where a disqualified person is identified.

---

## 5. Application for a waiver

---

A disqualified person can apply to Ofsted for a waiver. Further information is available at:

<http://www.ofsted.gov.uk/resources/applying-waive-disqualification-early-years-and-childcare-providers>

Ofsted may grant a full or partial waiver, including a waiver that would allow an individual to work in a relevant school setting. While a waiver application is under consideration the individual **must not continue to work in these settings**. Where a waiver is not granted, the employee will face dismissal on the grounds of disqualification.

---

## 6. Actions Required by Schools

---

There are a number of actions which schools must take:

1. All relevant staff in relevant settings **must be asked to complete a declaration on an annual basis** affirming that they are not disqualified. A model letter is available at Appendix 1 to give to staff explaining why the declaration is necessary and the Declaration form is at Appendix 2. A date for the return of the form will need to be inserted into the letter. Staff will need to have access to information about the relevant offences and orders so schools should print the relevant schedules to the legislation which detail these and make these available to staff (either with each form or in a central place). The links can also be provided to staff and they are:

<http://www.legislation.gov.uk/ukxi/2009/1547/schedule/1/made>  
<http://www.legislation.gov.uk/ukxi/2009/1547/schedule/2/made>  
<http://www.legislation.gov.uk/ukxi/2009/1547/schedule/3/made>

Schools should look to provide staff with the explanatory letter and declaration form as soon as possible.

2. All new appointments in relevant settings must be required to complete the declaration prior to commencing work. You should also check the DBS certificate that they provide, with reference to the relevant list of offences in the Act (see links to schedules above).
3. Schools must ensure that any external agency providing relevant staff in

relevant settings carries out these checks prior to placing them in the school.

## Appendix 1 – Declaration Letter



*Striving for Excellence*

### **Ryefield Primary School** **Childcare Disqualification Requirements** IMPORTANT INFORMATION FOR ALL STAFF

The Department for Education (DfE) has issued supplementary advice to its “Keeping Children Safe in Education” statutory guidance. This supplementary advice details a requirement for childcare disqualification checks to be carried out on relevant staff working in schools and academies. Childcare Disqualification Regulations were updated on 31 August 2018.

These checks arise from the Education Act 2006 and updated Childcare Disqualification Regulations. The Regulations prohibit anyone who is disqualified themselves under the Regulations from working in a relevant setting, including in schools.

There is a DfE requirement, therefore, for Schools to check the following categories of staff in nursery, primary or secondary school settings who are covered by the Childcare (Disqualification) Regulations 2018.

The Regulations refer to employing a person ‘in connection with’ these provisions:

- Early years provision
  - Covers staff who provide any care for a child up to and including reception age
  - Includes education in nursery and reception classes, and/or any supervised activity (such as breakfast clubs, lunchtime supervision and after-school care provided by the school) both during and outside school hours for children in the early years age range

- Later years provision (for children under 8)
  - Covers staff who work in childcare provided by a school outside school hours for children under 8, including before-school settings such as breakfast clubs, and after-school provision
  - Does **not** include education or supervision during school hours, or extended school hours for co-curricular learning activities, such as the school's choir or sports teams

At Ryefield Primary School all staff should be covered as 'under 8s' are present in the setting.

A copy of the DfE Supplementary Advice is available on this link: [Childcare \(Disqualification\) and Childcare \(Early Years Provision Free of Charge\) \(Extended Entitlement\) \(Amendment\) Regulations 2018](#)

A Person may be disqualified if any of the following apply:

- They have been cautioned for or convicted of certain violent or sexual criminal offences against children and adults
- They are the subject of an Order, direction or similar in respect of childcare, including orders made in respect of their own children
- They have had registration refused or cancelled in relation to childcare or children's homes or have been disqualified from private fostering

All staff should be aware that this will affect you if you work in a relevant setting.

### What happens next?

All relevant staff in relevant settings must complete a declaration, affirming that they are not disqualified by completing and signing a declaration form. **You have been identified as being covered by these regulations and I would therefore ask that you complete the attached declaration form and return it to me by no later than \_\_\_\_\_**

- If the School is told by a member of staff that they are disqualified, or the School receives a positive declaration regarding any member of a staff's household then we will seek advice from HR Advisors
- Under the requirements of the DfE, any employee who is disqualified will need to be immediately removed from the relevant setting and Ofsted must be notified within 14 days.
- Ofsted may grant a full or partial waiver, including a waiver that would allow an individual to work in a relevant school setting, for an employee who is disqualified. While a waiver application is under consideration the individual must not continue to work in these settings. Where a waiver is not granted, the employee's employment will need to be terminated unless redeployment options are available.

As you can see this is a very important matter for Schools and their staff.

Please be assured that this School understands that this is a sensitive issue. If any member of staff has concerns, then they may wish to speak to me in confidence. We must, however, apply the DfE requirements.

Headteacher

Mr C Tucker

## Appendix 2 – Childcare Disqualification Requirements: Employee and Volunteer Declaration Form



*Striving for Excellence*

**School Name**

### Childcare Disqualification Requirements Employee and Volunteer Declaration Form

--

Please refer to the accompanying letter for detailed information about the requirement for you to make this decision.

In accordance with the legislation you are required to sign the declaration below confirming that you are not disqualified from working in, or being concerned in the management of, the above settings.

If you fail to complete and return the form, this will be regarded as a disciplinary matter for staff, which may result in dismissal, and, in the case of volunteers, will mean that you can no longer work at this establishment.

A disqualified person is not permitted to continue to work in the above settings unless they apply for and are granted a waiver from Ofsted.

Reference: Childcare (Disqualification) and Childcare (Early Years Provision Free of Charge) (Extended Entitlement) (Amendment) Regulations 2018

<http://www.legislation.gov.uk/ukxi/2018/794/part/2/made>

**Name of Person signing the Declaration:**

**Post Held:**

**Please tick one option for every question:**



<b>Section 1 – Orders or other restrictions</b>				
<p>Have any orders relating to the care of children, as set out in schedule 1 of the Childcare (Disqualification) and Childcare (Early Years Provision Free of Charge) (Extended Entitlement) (Amendment) Regulations 2018, been made in respect of you?</p> <p>This includes, but is not limited to:</p> <ul style="list-style-type: none"> <li>• Orders disqualifying you from caring for children</li> <li>• Orders disqualifying you from private fostering</li> <li>• Any refusal of an application for you to be registered in relation to a children's home</li> </ul> <p>Care/child protection orders issued in respect of a child in your care</p>	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
<p>Have you been convicted of committing, or been given a caution, reprimand or warning since 6 April 2007 for, any offences set out in regulation 4 and schedules 2 and 3 of the Childcare (Disqualification) and Childcare (Early Years Provision Free of Charge) (Extended Entitlement) (Amendment) Regulations 2018?</p> <p>This includes, but is not limited to:</p> <ul style="list-style-type: none"> <li>• Any offence against or involving a child</li> <li>• Any sexual offence</li> </ul> <p>Any violent offence, i.e. murder, manslaughter, kidnapping, false imprisonment, actual bodily harm (ABH), or grievous bodily harm (GBH)</p>	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
<p>Have you been barred from working in regulated activity with children (i.e. are you included on the Disclosure and Barring Service Children's Barred List)?</p>	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
<p>Are there any other relevant orders, restrictions or prohibitions in respect of you as set out in the Schedule 1 of the Regulations? Please note that you are not required to disclose convictions or cautions that are 'protected' as defined by the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (as amended in 2013). Available at the link below:</p>	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
<p>Have you committed an offence overseas which would have resulted in disqualification if it had occurred in the UK?</p>	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
<p><b>Teachers Only</b> – Are you prohibited from Teaching?</p>	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>

<b>Section 4 – Provision of Information</b>	
<p>If you have answered YES to any of the questions above you should provide details below in respect of yourself. You may supply this information separately if you so wish, but you must do so without delay.</p>	
<p>Details of the order, restriction, conviction, caution or other ground for disqualification under the Childcare (Disqualification) Regulations 2009 etc.:</p>	
<p>The date(s) of these:</p>	
<p>The relevant court(s) or body(ies) and the sentence (if any) imposed:</p>	
<p>You should also provide a copy of the relevant order, caution, conviction etc. In relation to</p>	

cautions/convictions a DBS Certificate may be provided.

### Section 5 - Declaration

In signing this form, I confirm that the information provided is true to the best of my knowledge and that:

- I understand my responsibilities to safeguard children.
- I understand that I must notify my Headteacher immediately if anything that affects my suitability including any cautions, warnings, convictions, orders or other determinations made in respect of me or a member of my household that would render me disqualified from working with children.

Signed		Print Name		Date	
--------	--	------------	--	------	--

### Appendix 3 – Notification of Suspension Letter



*Striving for Excellence*

## Ryefield Primary School Notification of Suspension Letter

Dear

I am writing to confirm the decision taken to suspend you from work with effect from ..... until further notice. Your suspension is without prejudice and on full pay. The reason for your suspension is that you are disqualified from working in school pending your application for a waiver from Ofsted. You must now contact Ofsted immediately at [disqualification@ofsted.gov.uk](mailto:disqualification@ofsted.gov.uk). Please let me know as soon as you receive a decision from Ofsted.

(Name of designated person) will be your designated point of contact at the school during the period that you are away from the school. He/she will keep you informed of general activities and news at the school. If you wish to contact the school for any reason please telephone (name of designated person) on (insert telephone number). I must ask you not to contact any other member of staff, pupil at the school or any member of the Governing Body whilst the suspension is in force.

If you wish to collect any personal belongings at the school please contact (name of designated person) who will make the appropriate arrangements.

I appreciate that this will be a difficult time for you and would like to inform you that the school's free employee counselling service is available if you require support at this time. You can contact them on *(insert contact details)* and/or I enclose a leaflet....

Yours sincerely

## Appendix 4 – Frequently Asked Questions

- 1. For existing staff, is the advice that a self-declaration is sufficient or is any declaration expected to be verified wherever possible, for example by viewing a current DBS check or obtaining a new one, and are employers expected to verify the absence of any Orders or restrictions?** There is no requirement to check DBS certificates for existing staff and there is no evident process for verifying if someone has a childcare order or other restriction against them. It seems that self-declarations are acceptable. For new staff, the employee should sign a declaration and the DBS certificate should be checked against the list of offences in the Schedules. Of course, other offences may also lead to non-employment under normal DBS assessment processes.

- 2. Where are the disclosable offences set out?**

The relevant offences are listed in Schedules 2 and 3 in the Schedules to the Regulations - although it is appreciated that these are complex to understand. The key offences are those that result in a caution (including reprimands/ warnings/ youth cautions) issued post 2007 (see below) or conviction and relate to:

- any offences by an adult against or involving children
- any sexual offence by an adult or a child against an adult or a child
- murder, manslaughter, kidnapping, false imprisonment, ABH or GBH

The DfE have clarified that anyone who was issued with a relevant caution (including reprimands/warnings) before 6 April 2007 is **NOT** disqualified.

- 3. The reference to Burglary in Schedule 2 seems anomalous – why is it there?**

This refers to Burglary under the 1968 Theft Act which was actually Burglary involving rape so would only be applicable if someone was charged with this specific offence – which in turn comes under key offences outlined above.

**4. Schedule 2 refers to repealed statutory offences – does this mean they do not apply?**

No – “repealed” does not mean these no longer apply, it means they have been superseded by other legislation but would still be a cause for disqualification if someone has been convicted of, cautioned etc. for any of these offences.

**5. What if a person is not sure whether they have a relevant offence?**

We would advise declaration of anything that they think may be relevant and schools can check with the DfE ([mailbox.disqualification@education.gsi.uk](mailto:mailbox.disqualification@education.gsi.uk)) or schools can seek advice from HR.

**6. The DfE guidance refers to “staff who work in the relevant provision” - does this include all staff employed e.g. including the caretaker or only those directly involved in care and supervision? If the latter, in a Primary/Junior School, does this include the Year 6 teacher/LSA who may on not teach under 8s but may at any time be involved in their care or supervision (e.g. trips, playground duty etc.)?**

The DfE says: The Childcare Act stipulates that a disqualified person should not be employed in connection with early or later year’s childcare and that they should not be directly concerned in the management of that provision. A person who sometimes works in the relevant childcare provision would be included in this definition.

**7. How long will it take to process an application for a disqualification waiver?**

It is a matter for Ofsted who have the responsibility for granting a waiver or not. The time it will take to process a waiver application will undoubtedly vary from case-to case; whilst many should be straightforward, others will unfortunately be more complex and take time to resolve.

**8. What constitutes childcare outside of the normal school day?**

Child care includes breakfast clubs, homework clubs, nursery and crèche provision provided by the school. Where activities are run by other providers on school premises but not managed by the school (e.g. lettings, football clubs), these are not covered as they are not child care provision.

**9. What should we do with the declaration forms once an employee has returned it?**

These forms should be placed on the employee’s personal file as these are kept in a secure place. If required for volunteers, these forms should be retained in the same single central location that you store all the other papers.

**10. How do these Regulations sit with the Data Protection Act, particularly in respect of sensitive personal data relating to someone not employed in the school (i.e. a householder) and the school passing information to Ofsted?**

The DfE indicates that information must be processed in accordance with the Data Protection Act. The Childcare (Disqualification) Regulations require employers to pass information to Ofsted and such statutory duties are allowed

under the Data Protection Act. Schools must handle and store all information in school carefully, in accordance with normal Data Protection rules.

**11. Does this check need to be on the Single Central Record (SCR)?**

There is no statutory requirement that the check should be recorded on the Single Central Record. However, it is advisable for schools to keep a record that all the checks have been completed and Ofsted Inspectors are reported as expecting it to appear on the SCR. Therefore, our advice is that schools should record that a check has been satisfactorily completed on their SCR. Satisfactorily completed means no relevant information is declared or that a waiver has been obtained where relevant.

**12. Who is going to check that schools comply?**

This is unclear but it is anticipated that Ofsted will include this as part of their overall safeguarding/Single Central Record checks.

**13. How is it that it has only just been decided to apply these Regulations in schools?**

The DfE has confirmed that the Regulations have always applied to schools but it was only following requests to clarify that application that the DfE identified that some supplementary advice would be helpful for schools. It is for this reason that they have issued guidance now and the expectations on schools became clear.

## **Appendix 5 – Summary of Relevant Offences**

Please note that this is a summary. Full details of what constitutes “disqualification” are in the schedules to the Regulations

<http://www.legislation.gov.uk/ukxi/2009/1547/contents/made>

- Abduction of a child
- Abuse of a position of trust
- Assault by penetration
- Assault occasioning actual bodily harm
- Burglary with intent to rape
- Causing a person to engage in sexual activity without consent
- Causing or allowing the death of a child or vulnerable adult
- Certain offences under the Mental Health Act 1983:
  - Forgery and making false statements
  - Ill treatment of patients.
  - Assisting patients to absent themselves without leave etc
  - Obstruction
- Cruelty to children
- Exposure
- False imprisonment

- Incest
- Intercourse with an animal
- Kidnapping
- Making threats to kill a child
- Manslaughter
- Meeting a child after grooming
- Murder
- Murder of an infant
- Offences related to female genital mutilation
- Offences related to prostitution
- Offences related to the supply of Class A drugs to a child
- People trafficking
- Possession of extreme pornographic images
- Possession of indecent images of children
- Rape
- Sexual assault
- Sexual offences against a person with a mental disorder
- Sexual offences against children
- Sexual offences against children outside the UK
- Sexual penetration of a corpse
- Supply of a controlled drug to another
- Voyeurism
- Wounding and causing grievous bodily harm

<b>Date:</b>	April 2020
<b>Next review due by:</b>	April 2021