

# Disqualification under the Childcare Act 2006

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## 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”) and 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
- paragraph 3 of the Schedule to the Education (Non-Maintained Special Schools) (England) Regulations 2011

This guidance replaces the statutory guidance that was issued by the Department for Education in June 2016 and the draft statutory guidance issued in July 2018.

Details of the changes to the childcare disqualification arrangements made by the 2018 regulations are provided in Annex A of [the appendices](#).

An explanation of how Ofsted waiver applications prior to 31 August 2018 are to be considered is set out in Annex B of [the appendices](#).

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 in this guidance.

## 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 should be directed to apply to Ofsted to waive disqualification

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.

## It also explains the responsibilities of:

- 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 setting
- agencies and third-party organisations employing staff to work in relevant childcare settings in a school

The meaning of childcare is provided at section 18 of the [Childcare Act 2006](#). The meaning of relevant childcare is explained further in [the staff covered section](#) of this guide.

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:

Please note that there are additional safeguarding arrangements, which are relevant in some settings. For example:

## Disqualification under the Childcare Act

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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.

Section 76(2) of the 2006 act, provides that a person who is disqualified under the 2018 regulations may not:

- provide relevant childcare provision
- be directly concerned in the management of such provision

See the [staff covered](#) section of this guidance for more details on which staff are covered by this legislation.

Under section 76(3) schools are prohibited from employing a disqualified person in connection with relevant childcare provision in the settings set out in the [relevant offences](#) and orders section of this guide, unless the individual in question has been granted a waiver by Ofsted for the role they wish to undertake. 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

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The criteria for disqualification under the 2006 act and the 2018 regulations include:

- inclusion on the Disclosure and Barring Service ( [DBS \(Disclosure and Barring Service\)](#) ) Children’s Barred List
- 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)
- 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
- refusal or cancellation of registration relating to childcare (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)), or children’s homes, or being prohibited from private fostering , as specified in paragraph 17 of Schedule 1 of the 2018 regulations
- 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 regulations (note that regulation 9 only applies where childcare is provided in domestic settings, defined as ‘premises which are used wholly or mainly as a private dwelling’ in section 98 of the act, or under a domestic premises registration, including non-domestic premises up to 50% of the time)
- being found to have committed an offence overseas, which would constitute an offence regarding disqualification under the 2018 regulations if it had been committed in any part of the United Kingdom

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

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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:

- being convicted of a relevant offence
- on or after 6 April 2007, being given a caution for a relevant offence
- on or after 8 April 2013, being given a youth caution for a relevant offence

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).

A list of the relevant offences and orders, as referred to in the [disqualification criteria](#) section of this guidance, that lead to the disqualification under the 2018 regulations is set out in the tables A and B in [the appendices](#). 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.

For new employees an up-to-date enhanced [DBS \(Disclosure and Barring Service\)](#) certificate will help schools establish whether offences committed by individuals are relevant offences.

For existing employees schools could consider using the [DBS \(Disclosure and Barring Service\)](#) Update Service to supplement any employee self-declaration. Details about the changes to disqualification by association requirements are in the [disqualification by association](#) section of this guidance.

## Staff covered and relevant settings

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### Staff covered

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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, that is 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 school settings, or if they are directly concerned with the management of such childcare. 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 children under 8.

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 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.

#### 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.

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.

In relation to staff employed by childcare providers (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.

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

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

Where the school engages a person who is self-employed (for example a 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.

These requirements also apply where training suppliers, such as initial teacher training providers, are placing trainees or students at the school, who are working or being trained in a relevant setting. Where trainee staff are salaried, for example on employment-based teacher training programmes, it's 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 (fee or self-funded students), it's 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 in the [application for an Ofsted waiver from disqualification of this guidance](#).

Volunteers and casual workers (including individuals on work experience) who are directly concerned with the management of childcare provision, 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

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Staff who are not employed to directly provide childcare, are not covered by the legislation. Similarly, most staff who are only occasionally engaged 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 human resources ([HR \(human resources\)](#)) provider, the authority's designated officer, safeguarding lead officer or adviser when appropriate. These arrangements must only be applied if an individual is in scope of them, and should not be used in a 'just in case' scenario or where an individual will not be undertaking a relevant childcare provision under the 2018 regulations, as referred

to in the [what this means for individuals, schools and other employers section](#) of this guidance. 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 staff
- office staff

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 \(Keeping children safe in education\)](#).

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 (being a governor in maintained schools) under regulation 17, Schedule 4 of the [School Governance \(Constitution\) \(England\) Regulations 2012](#).

## Staff not covered

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This means that staff employed who work in the following roles are not covered by the 2018 regulations and therefore these arrangements must not be applied to them. This includes staff who have no involvement in the management of relevant provision and only provide:

- education, childcare or supervised activity during school hours to children above reception age
- childcare or supervised activities out of school hours for children who are aged 8 or over

Staff 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
- education psychologists

## Disqualification by association

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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 (for example where childminding is provided in the home) or under registration on domestic premises, including where an assistant works on non-domestic premises up to 50% of the time under a domestic registration. Accordingly, schools are not entitled to ask their staff questions about cautions or convictions of someone living or working in their household. Schools should review their staffing policies and safer recruitment procedures, and make changes accordingly.

It's important that schools follow the safer recruitment procedures set out in part 3 of [KCSIE \(Keeping children safe in education\)](#). Schools and local authorities should also ensure that their safeguarding policies fully comply with [KCSIE \(Keeping children safe in education\)](#), and 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.

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's 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'll 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 (for example by putting arrangements in place to stop or restrict a person coming into school where a potential risk to children has been identified).

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

## What this means for individuals, schools and employers

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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.

Schools must ensure that they are not knowingly employing a person who is disqualified under the 2018 regulations in connection with relevant childcare provision. They must also ensure that they do not apply these arrangements to individuals who do not fall in scope or are specifically excluded (as per the [staff who may be covered](#) and [staff not covered](#) sections of this guidance). 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 personal information fairly and lawfully and take care not to breach:

- Data Protection Act 2018 ([DPA \(Data Protection Act\)](#))
- General Data Protection Regulation ([GDPR \(General Data Protection Regulation\)](#)) (EU) 2016/679
- Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (as amended in 2013) ('the Exceptions Order')
- Rehabilitation of Offenders Act 1974 ([ROA \(Rehabilitation of Offenders Act 1974\)](#))
- Human Rights Act 1998

Schools are responsible for ensuring that anyone who falls within the relevant categories of staff described in the [staff covered](#) and [staff who may be covered](#) sections is made aware of the legislation. Schools must make these staff aware of what information will be required of them and how it'll 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.

It's 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's important that the questions posed in the declaration are relevant and limited to the requirements of the legislation, (for example 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 (age 9 and above) 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 the [disclosing offences](#) section of this guidance for more information on which offences must be disclosed if their staff member is in scope of these regulations.

It's important that schools avoid asking for information that's 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 \(General Data Protection Regulation\)](#) 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 [KCSIE \(Keeping children safe in education\)](#) and the [Department's Data protection: toolkit for schools](#), for further advice on how to comply with data protection legislation, including GPDR and the 2018 [DPA \(Data Protection Act\)](#).

Under data protection laws schools must not ask for medical records, details about convictions of household members, or copies of a person's criminal record from the police (this is not the same as a [DBS \(Disclosure and Barring Service\)](#) certificate which can be obtained for the individual concerned) in relation to these regulations. 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 the 2018 [DPA \(Data Protection Act\)](#). Further information about data protection and [GDPR \(General Data Protection Regulation\)](#) is provided in the [Information Commissioner's Office \(ICO \(Information Commissioner's Office\)\) guidance for GDPR \(General Data Protection Regulation\)](#).

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. 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.

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](#), this is the UK's application of the General Data Protection Regulation ([GDPR \(General Data Protection Regulation\)](#)). 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 (in this case safeguarding and child protection). Additionally schools will need to review any historic data collected and destroy any information which is no longer required. This does not extend to records which contain information about allegations of sexual abuse or other such safeguarding concerns which schools have an obligation to preserve in line with the requirements of the inquiry into child sexual exploitation, and other child protection requirements.

Personal data, including any details of an individual's criminal record, should not be held without consent from the individual. In instances where an individual does not consent to their personal data being held, 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.

Guidance on data protection issues for employers carrying out criminal records checks is available on [the ICO \(Information Commissioner's Office\) website](#) including:

- employment practices code of practice
- employment practice code supplementary guidance

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 their routine school inspection process. These inspections do not extend to assessing compliance with [GDPR \(General Data Protection Regulation\)](#) and the Data Protection Act 2018.

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 email.

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

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The vast majority of roles in schools and relevant childcare settings are exempt from the Rehabilitation of Offenders Act 1974 ([ROA \(Rehabilitation of Offenders Act 1974\)](#)). The Ministry of Justice have [guidance on the ROA \(Rehabilitation of Offenders Act 1974\)](#). 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’](#)). 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 \(Disclosure and Barring Service\)](#) certificates.

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 \(Disclosure and Barring Service\)](#) certificate. The [DBS \(Disclosure and Barring Service\)](#) has produced [a list of specified offences that will never be filtered](#). All the offences listed in Table A in [the appendices](#) must always be disclosed, as should any offence involving death or bodily injury to a child (even if not specifically listed in the table).

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 by the DBS \(Disclosure and Barring Service\)](#) will help schools understand the old and minor cautions and convictions that do not need to be disclosed.

Schools may wish to consider obtaining professional advice from their [HR \(human resources\)](#) 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. These organisations are independent of government. The Department accepts no liability for the information given by any third party organisation.

## Application for an Ofsted waiver from disqualification

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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 \(human resources\)](#) provider, designated officer, safeguarding lead officer or adviser.

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 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
- a certified copy of the relevant order (in relation to an order, caution or conviction) - schools should not request [DBS \(Disclosure and Barring Service\)](#) 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

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.

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 \(early years foundation stage\)](#), [KCSIE \(Keeping children safe in education\)](#) guidance and any other relevant safeguarding guidance.

Whilst a waiver application is under consideration schools will need to decide whether it's 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.

Schools should consider taking advice from their [HR \(human resources\)](#) 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's 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.

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

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

Any enquiries about the waiver application process should be made to Ofsted by emailing [disqualification@ofsted.gov.uk](mailto:disqualification@ofsted.gov.uk), which is included in their [factsheet](#).

