



Department
for Education

Amending the childcare disqualification arrangements in schools and non-domestic registered settings

Government consultation response

July 2018

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Introduction

The Government published an e-consultation paper on 6 May 2016 setting out options for making changes to the childcare disqualification arrangements for childcare workers in non-domestic settings.

Concerns had been raised with the Department for Education (DfE) about the fairness and proportionality of the arrangements on childcare workers in schools and other non-domestic registered settings, particularly in relation to the arrangement's 'disqualification by association' component. This provides that a childcare worker can be disqualified because someone who lives or works in their household is disqualified.

The DfE undertook extensive stakeholder engagement prior to undertaking the public consultation, during which widespread concern was expressed by employers and others about the impact and unfairness of disqualification by association. As a result, the consultation paper sought views on three options to address these concerns and improve the fairness of the arrangements:

- Option 1 - remove disqualification by association in schools and non-domestic registered settings
- Option 2 - retain disqualification by association, but introduce a new right to make representations to Ofsted before the disqualification takes effect
- Option 3 - retain disqualification by association, but reduce its scope and introduce a new right to make representations to Ofsted before the disqualification takes effect.

Additionally the consultation paper set out further proposals for making some minor technical changes in the Childcare (Disqualification) Regulations, which are addressed in the main findings of this response.

Summary of responses received

The consultation received 440 responses, the overwhelming majority of which (78%) indicated that the disqualification by association arrangements are unfair. A numerical breakdown of the responses to each question in the consultation paper is set out at page 6 of this report.

Respondent type	Number of respondents	Percentage of respondents
Local Authority	56	13%
School/Academy	175	40%
Trade union	13	3%
Nursery	116	26%
Individual/Other	80	18%

Main findings and the Government's response

It is clear from the consultation responses that there is a significant consensus that the current arrangements are widely considered unfair and that they represent a disproportionate response to the risk to children.

A high proportion of respondents who expressed dissatisfaction with the current arrangements indicated a preference for option 1. The Government agrees with the case made in support of this option and on that basis proposes to make the necessary legislative changes to implement the removal of disqualification by association in schools and registered non-domestic childcare settings. The proposed change will also apply to headteachers in respect of schools and the registered person in non-domestic childcare settings. Where registered childcare is provided on domestic premises the disqualification by association arrangements will continue to apply.

In contrast, the Government did not consider that support for either option 2 or 3 provided a compelling alternative. We do though want to ensure employers are aware of and are able to respond to safeguarding risks, including cases where providers and employees are at risk of undue influence from members of their household. We are committed to continuing to work with providers and other stakeholders to raise awareness of how to identify and mitigate potential risks.

We will support employers in this important area by strengthening our statutory guidance to address the changes we are making to the legislation. The guidance will reinforce the

importance of existing safeguarding policies, including the requirements on all employers to conduct safer recruitment checks, as required by our *Keeping children safe in education* statutory guidance. It will also encourage employers to consider whether their policies are clear about the expectations they place on staff, including where their relationships and associations outside of the workplace may have implications for the safeguarding of children. Our aim is to help employers create the right culture and environment, so they can safeguard their employees' welfare and help them manage children's safety.

In addition to these changes the Government intends to amend regulation 4(2) of the Childcare (Disqualification) Regulations 2009 in respect to childcare workers who are foster carers, who have adopted children in their household, or who themselves were once the subject of a care order, as signalled in the consultation. These changes, which received strong support in the consultation, will ensure that childcare workers who are carers, or who were previously the subject of a care order, are no longer automatically disqualified.

Statutory guidance will also be updated to reflect this change.

The Government agrees with the views of the majority of respondents who were confident that there would not be any significant financial implications associated with the consultation's proposals, in particular with the implementation of option 1. It is expected that the reduction in the time spent on having to determine and handle disqualification by association cases will require less resource, and therefore result in modest financial savings.

Question analysis

Question 1

Do you consider the current disqualification by association arrangements to be unfair and disproportionate to the risk to children?

	Total	Percent
Yes	343	78%
No	79	18%
Not answered	18	4%

Question 2

Which of the three options set out in this consultation, if any, do you think best achieves the objective of protecting children whilst making the regime fairer?

Option 1	Option 2	Option 3	Not answered
257	75	96	12
58%	17%	22%	3%

Question 3

Do you support the proposal in option 1, that we should remove completely disqualification by association for childcare workers in non-domestic registered settings?

Option 1	Total	Percent
Yes	254	58%
No	164	37%
Not answered	22	5%

Question 4

Do you support the proposal in option 2, to retain disqualification by association but allow representations from childcare workers disqualified by association in schools and on other non-domestic registered settings, or disqualified for having registration refused or cancelled in relation to childcare or children's homes, or disqualified from fostering, or on grounds relating to the care of children?

Option 2	Total	Percent
Yes	96	22%
No	290	66%
Not answered	54	12%

Question 5

Do you support the proposal in option 3, to retain disqualification by association, but reduce its scope so that it only applies to certain 'more serious' offences, and introduce a new right to make representations for certain workers (i.e. those disqualified by association in non-domestic registered settings where the qualifying offence is more serious, or those disqualified themselves for having registration refused or cancelled in relation to childcare or children's homes, or disqualified from fostering, or disqualified on grounds relating to the care of children)?

Option 3	Total	Percent
Yes	122	28%
No	271	61%
Not answered	47	11%

Question 6

If you support option 3 do you agree that offences should be categorised as more/less serious for the purpose of this option and which offences do you think should be categorised as more serious? The department's statutory guidance *Childcare Disqualification under the Childcare Act 2006* contains a list of offences under which childcare workers are currently disqualified.

Option 3	Total	Percent
Yes	120	27%
No	85	19%
Not answered	235	54%

Question 7

Do you agree that our proposals to remove automatic disqualification and/or allow representations to Ofsted (including in cases of disqualification by association) should include headteachers and the registered person in other relevant settings?

	Total	Percent
Yes	324	73%
No	61	14%
Not answered	55	13%

Question 8

Do you support the proposals to amend regulation 4(2) in respect to childcare workers who are foster carers or who have adopted children in their household and so that it no longer has the effect that childcare workers who themselves were once the subject of a care order are disqualified?

	Total	Percent
Yes	286	65%
No	73	16.5%
Not answered	81	18.5%

Question 9

Do you have any comments about the potential financial costs or benefits to businesses of these proposals?

	Total	Percent
Yes	159	36%
No	281	64%

Question 10

Do you have any other comments on the proposals in this consultation, or more generally about the childcare disqualification regime?

	Total	Percent
Yes	146	33%
No	294	67%

Next steps

The DfE will prepare changes to the Childcare (Disqualification) Regulations and to statutory guidance, *Disqualification under the Childcare Act 2006*, reflecting the proposed changes set out in this report. Our intention is to implement changes to the arrangements from September 2018.

Annex A: List of organisations that responded to the consultation

- GMB

- UNISON
- National Union of Teachers

- Association of Teachers and Lecturers
- Association of School and College Leaders

- Cumbria NUT
- NAHT

- NASUWT
- Voice the union for education professionals

- NHS
- Elaine Hook Education & Training Consultancy

- Instill Excellence Ltd
- University of St Mark & St John

- Social Care
- York St John University

- Staffordshire University
- Saffron Walden Community church

- Childcare & Business Consultancy Services
- Cgpg

- PACT HR
- Oxford Diocesan Schools Trust

- Pre-school Learning Alliance
- The Recruitment & Employment Confederation

- Bright Horizons Family Solutions UK
- Bright Kids

- Luton Adult Learning
- Pre-school Learning Alliance

- Ofsted
- Headteacher Support

- Coalway Junior School
- Hardwick Primary School

- Thetford Grammar School
- Fir Ends Primary School

- Widden Primary School
- Janet Duke Primary School

- The Shrubberies School
- Essex Primary Headteachers' Association

- Seaton Valley Federation of Schools
- ENGIE - North Tyneside Schools

- Skerton St Luke's CE Primary School
- Mildmay Junior Academy

- Millbrook Primary School
- George Hastwell School

- Arboretum Primary School
- St Margaret's School

- St Thomas of Canterbury Church of England Junior School
- The Quinta Primary School

- Bruton School for Girls
- Outwoods Primary School

- Junior vips nursery
- Kids Allowed

- Little Faces Childcare
- Acorn Childcare and Little Oaks Childcare (Spalding)

- Little Gryphons Nursery School
- Bovey Busy Bees Preschool

- All Saints Pre-school Runcorn
- North Cheshire Jewish Nursery

- Harrow Early Years
- Treetop

- Paintpots Nurseries Southampton
- Park Road Under Fives Preschool

- St Berteline's Pre-school
- The Old Station Nursery Group

- Bordesley Green East Nursery School and Children's Centre
- Finches Preschool

- Dinnington Pre-School Ltd
- Twinkle Toes

- The Ark Pre-school
- Le Monde Petit Ltd

- Riverside nursery school
- First School

- NHD Ltd
- The Childcare Corporation

- Marple Childcare Company
- Hillyfields Ltd

- Ashridge Nursery
- St Edmund's Nursery School & Children's Centre Services

- Wise Owls Club Ltd
- New Directions

- RSL (Rockschool Ltd)
- Wyvern Nursery Ltd

- Holy Family Playgroup
- Octavo Partnership

- The Haven 2000 Nursery and Preschool
- St George's Nursery School

- Thornbury Play & Learn Nursery
- Happy Valley Preschool Ltd

- Kinderland Day Nursery
- Puffins

- Fiveways Playcentre
- Bramcote Pre-School

- Rosy Apple Childcare Ltd
- North Lincolnshire Early Years Team

- Aclet Close Nursery School
- PVI

- UCS Pre-Prep
- Bottesford Bunnies Ltd

- Sprowston Nursery Playgroup
- Caterpillar Day Nursery Ltd

- Woodland pals preschool
- Yellow Wellies

- Weavers Fields Community Nursery
- Highfields Hoppers Ltd Pre-School

- Sandy Lane Kindergarten
- Piccolo Pre-school Nursery

- Toy Box Day Nursery
- Ivegill Nursery

- PAP - Charity Early Years Provider
- Penny Bridge Nursery

- South Cave Bears Day Nursery
- Dorset County Council

- Redcar and Cleveland Borough Council
- Kirklees LA

- West Berkshire Council
- Sensory Team Nottingham City

- Wokingham Borough Council
- Southampton city council

- Leicester City Council
- KMBC

- Surrey County Council
- Bedford Borough Council

- Wolverhampton City Council
- LADO Bolton Council

- Essex County Council EES for schools
- Leeds City Council

-
- Peterborough City Council
 - East Sussex County Council

-
- London Borough of Camden
 - London Borough of Islington

-
- Swindon Borough Council
 - North Tyneside Council

-
- London Borough of Enfield
 - Birmingham City council

-
- Halton Borough Council
 - Warrington Borough Council

-
- Doncaster Council
 - Wakefield Council

-
- Starting Life Well
 - Blackpool Council

-
- Ealing Council
 - Northamptonshire County Council

-
- North Yorkshire County Council
 - Southend on Sea Borough Council

-
- Cornwall Council
 - Portsmouth Council

-
- Kent County Council
 - Tameside Council

-
- Leicestershire County Council
 - Bury Council

-
- London Borough of Tower Hamlets
 - Nottinghamshire County Council

-
- Cheshire East
 - Wiltshire Council

-
- Local Government Association
 - St Peter's School

-
- Mountjoy School
 - Buckland Newton CE Primary School/Little Adventurers pre school

-
- Westbury House School
 - Miles Coverdale Primary School

-
- Chagford CE Primary School
 - Brackenbury Primary School

-
- Frome Valley First School
 - Little Acorns PS

-
- Newland House School
 - Upton House School Ltd
-

- Mill Hill Primary School
- Ferndown First School

- Greswold Primary
- Garretts Green Nursery School

- Water Hall Primary School
- St Mary's Catholic Primary School

- Upton Infant School
- Crossways Schools

- Abbot's Hill School
- Hambrook Primary School

- Tudhoe Learning Trust
- Menston Primary School

- Somerford Primary School
- Oxford Diocesan Board of Education

- James Brindley School
- Orchard Head J. I & N School

- Mereside Primary School
- Broadfield Primary School

- St Benedict's Infant School
- Gateways School

- Halewood Academy Knowsley
- Prince Bishop School

- Bedford Modern School
- Hollybank Trust

- St Christopher's School
- St. Gerard's Catholic Voluntary Academy

- Independent Schools Council
- Oakwood Primary School

- The Maynard School
- Hamilton Northwood Federation

- Cardinal Wiseman Catholic School
- Stamford Endowed Schools

- Withington Girls' School
- Walthamstow Hall School

- St. Mary's Catholic Primary School
- Streatham & Clapham High School

- Clifton College
- South Hampstead High School

- St Helen's School
- St. Stephens CE Primary

- St Clare's Catholic Primary School
- Shebbear Community School

- Devon Hospitals Short Stay School
- Allerton Primary School & Nursery

- St Philip's Primary Academy
- Brackenhill Primary School

- Cromer Junior School Governing Body
- Highgate Primary school

- The Hill School
- Scarborough College

- Northern Saints CofE VA Primary School
- Pipers Corner School

- Ipswich High School
- Merchant Taylors' Girls' School

- Headington School
- Abbots Hill School

- Channing School
- Cobham Hall

- Edgbaston High School
- Aspirations Academies Trust

- Felsted School
- Montessori Schools Association

- The Girls' Day School Trust
- Southwark Council - Schools

- Hillview School for Girls
- Stamford Endowed Schools

- Whitley Park School
- Enough Abuse UK - charity

- Independent Schools Inspectorate
- Universities Council for the Education of Teachers

- www.educationsafeguarding.co.uk
- Girls' School Association

- National Association of Independent Schools and Non-Maintained Special Schools (NASS)

- The Independent Schools Association
- National Day Nurseries Association
- Information Commissioner's Office
- National Governors' Association
- Catholic Education Service

- EFL (English Football League)
- Independent Schools' Bursars Association

- Unlock - for people with convictions
- West Yorkshire Police

- NSPCC National Society for the Prevention of Cruelty to Children

- Professional Association for Childcare and Early Years (PACEY)
 - Lucy Faithfull Foundation
-
- Office for Standard in Education, Children's Services and Skills (Ofsted)
 - NACRO
-



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