

Applying to waive disqualification: early years and childcare provision

Published: Updated Oct 2018

Reference no: 080054



Corporate member of
Plain English Campaign
Committed to clearer communication

361

Contents

What a disqualified person must not do	3
How do I know if I am disqualified?	3
Who can apply to us to waive their disqualification?	5
Information for applicants for registration who are disqualified	5
Information for employers/potential employees who are, or who become, disqualified	6
Information for those who are disqualified, joining an organisation which provides early years and childcare provision	6
Information for early years and childcare providers on people living or working on the premises where early years or childcare takes place	7
Applying to us to waive your disqualification	7
What do we do to consider a request to waive a disqualification?	7
How to appeal if we refuse to waive your disqualification	8
The Tribunal's decision	8
More information	8
Useful addresses and contacts	8
Acts of Parliament and supporting legislation	8
Other Information	9

Introduction

Some people are disqualified from registration by Ofsted on the early years register or the general childcare register. These people may, in some circumstances, apply to Ofsted for a decision to waive their disqualification. This factsheet sets out how we deal with requests to waive disqualification. In particular, it sets out:

- when people may apply to us to waive their disqualification
- the process for doing this and;
- how to appeal if we refuse an application to waive disqualification.

What a disqualified person must not do

A person who is disqualified must not:

- provide, or be directly concerned in the management of, any early years or childcare provision; this includes childminders, childcare providers such as nurseries and pre-schools and those who deliver early years and childcare provision which are exempt from registration such as schools and creches
- register, manage, have a financial interest in or be employed at a children's home
- foster a child privately.

It is an offence for someone to knowingly employ a person who is disqualified in connection with early years or childcare provision.

How do I know if I am disqualified?

The circumstances in which you, or a person who lives with you, **may** be disqualified from registration include where you/they have been:

- found to have committed a relevant offence against a child¹
- made subject to an order or determination removing a child from your care or preventing a child from living with you

¹ Found to have committed means a person has been a) convicted of an offence; b) found not guilty of an offence by reason of insanity; c) found to be under a disability and to have done the act charged against them in respect of such an offence; or d) on or after 6 April 2007, given a caution in respect of an offence by a police officer after admitting that offence. A person is found to have committed an offence that is 'related to' an offence if that person has been found to have committed an offence of a) attempting, conspiring or incitement to commit that offence; or b) aiding, abetting, counselling or procuring the commission of that offence (The Childcare (Disqualification) Regulations 2018)

- found to have committed certain offences against an adult; for example, murder, kidnapping, rape, indecent assault, or assault causing actual bodily harm
- included on the list of those who are barred from working with children, held by the Disclosure and Barring Service
- made the subject of a disqualifying order
- previously refused registration as a childcarer or have had registration cancelled, unless the cancellation was only for non-payment of fees for continued registration after 1 September 2008
- refused registration as a provider or manager of children's homes or have had registration cancelled.

You are disqualified if we refuse your application to register with us, or we cancel your registration, for any reason other than not paying your annual fee for continued registration. In these circumstances, you or any person making up the organisation that provides or intends to provide early years and childcare, will be disqualified, regardless of any waiver that we have previously granted. You can apply again to us to waive your disqualification, at any time, if you wish to register or perform other activities in the future from which you are otherwise disqualified in connection with childminding or childcare.

You are also disqualified if you live in the same premises as another person who is disqualified or if you live in a household where a disqualified person is employed, and you intend to provide childcare in a domestic setting. This is known as 'disqualification by association' and the other person is, for these purposes, your 'associate'. Normally the effect of the Rehabilitation of Offenders Act 1974 is that the convictions, cautions, reprimands and warnings for household members or employees are considered as 'spent' and do not therefore disqualify them. This rule does not apply to the associates of childminders.² Further information on spent convictions can be found at: www.gov.uk/government/publications/new-guidance-on-the-rehabilitation-of-offenders-act-1974.

A full list of all the circumstances that disqualify people from working with children is available in the Childcare (Disqualification) and Childcare (Early Years Provision Free of Charge) (Extended Entitlement) (Amendment) Regulations 2018.³ If you think that you, or a person connected to your provision (including potential employees), may be disqualified, you can contact us by email at disqualification@ofsted.gov.uk.⁴

² See Article 3 of the Rehabilitation of Offenders Act (Exceptions) Order 1974.

³ The Childcare (Disqualification) and Childcare (Early Years Provision Free of Charge) (Extended Entitlement) (Amendment) Regulations 2018 are available from: www.legislation.gov.uk/uksi/2018/794/contents/made.

⁴ This email address is only for queries about disqualification; please do not use it to talk to us about anything else.

Depending on your circumstances, we may ask you to fill in one of the following forms⁵:

- Childminders: waiver application form
- Childcare on non-domestic premises: waiver application form
- Waiver application form: early years provision in schools⁶

Who can apply to us to waive their disqualification?

If you are disqualified, you can apply to us to waive the disqualification, if (but for the disqualification) you:

- will or provide early years or childcare provision such as childminding, childcare on domestic or non-domestic premises, or such provision in a maintained or independent school or in an academy or other provision which is exempt from registration
- will be or are an employee of such a person
- will be or are directly concerned in the management of an organisation providing early years and childcare such as being a committee member, director, partner, or member of a school governing body.

You cannot apply if you:

- are included on the relevant list of those barred from working with children and vulnerable adults held by the Disclosure and Barring Service
- have committed an offence against a child within the meaning of section 26(1) of the Criminal Justice and Courts Services Act 2000 **and** the court has ordered that you are disqualified from working with children (under sections 28 (4) and 29, of the same Act).

We do not have the power to waive disqualification in these circumstances.

Information for applicants for registration who are disqualified

If you know that you are disqualified and want to apply for registration as a childminder or childcare provider, we will only consider your application for registration if we have already decided to waive your disqualification. You must submit an application for registration at the same time as an application to have your disqualification waived.

⁵ The first two forms listed can be found here: www.gov.uk/government/publications/applying-to-waive-disqualification-early-years-and-childcare-providers

⁶ www.gov.uk/government/publications/early-years-provision-in-schools-apply-for-disqualification-waiver

If we decide to waive your disqualification, this does not automatically mean that we will grant your registration or that you are suitable to look after, or be in regular contact, with children. We will refuse to grant registration if, after carrying out our checks, we do not think you are suitable to provide childcare. This may be because of other factors or information unconnected with your disqualification.

Information for employers/potential employees who are, or who become, disqualified

If you are intending to take up employment with an organisation running early years or childcare provision, and you are disqualified, you must apply to us to waive your disqualification before you can start work.

If you are an employer who wishes to employ someone who is disqualified, or you discover that an employee has become disqualified, then the disqualified person, not you as their employer, must apply to us to have their disqualification waived.

If you are an employee and we decide to waive your disqualification, it is then still your employer's decision whether or not to employ you. Your potential employer may decide not to employ you because of other factors relating to their own recruitment and staff retention procedures.

It is an offence for a person to employ someone whom they know to be disqualified from working with children. If you think that you, or a person you are considering employing, may be disqualified, you can contact us by email at disqualification@ofsted.gov.uk.

We take action to safeguard children where we find a disqualified person is providing or working in early years or childcare. Where the provision is registered with Ofsted, this can include taking steps to suspend a childminder's or childcare provider's registration or cancel a registration.

Information for those who are disqualified, joining an organisation which provides early years and childcare provision

If you want to join an organisation that is already providing early years and childcare and you are disqualified, for example, if you want to be a committee member, director or partner, you must apply to us for your disqualification to be waived. You should try to do so before you join the body, otherwise we may have to tell the person who represents the organisation to us that you are disqualified, but we will not tell them why. We will tell them of any decision we make about your application to waive disqualification. The organisation must then decide about your future role. If you continue to be part of the organisation, and we have not agreed to waive your disqualification then this will affect the organisation's suitability to provide early years and childcare.

Information for early years and childcare providers on people living or working on the premises where early years or childcare takes place

We are responsible for making suitability decisions about those living or working on premises where childminding or childcare on domestic premises takes place, including those who work directly with children.

We expect early years and childcare providers on other premises to have similar robust vetting and recruitment procedures in place to ensure those who are employed on the premises where that provision takes place are suitable to work with, or be in regular contact, with children. Providers must ensure that any person not vetted is never left alone with children.

Applying to us to waive your disqualification

If you are disqualified, you can request a form to apply to us to waive your disqualification by emailing disqualification@ofsted.gov.uk. This is a voluntary process. If you decide to apply for a waiver then you should complete the form to the best of your knowledge and belief and submit it to us in writing with the requested relevant information. We cannot agree to waive your disqualification on the strength of information you give over the telephone.

You must read the declaration and consent section of the form carefully and then sign and date the form to confirm your consent.

Please note that you, and any associate, are not required to make a subject access request under section 7 of the Data Protection Act 1998 in order to complete the form. Additionally, in making an application to waive disqualification, we do not require you to supply all or part of any record or copy record that you or your associate have or obtain.

What do we do to consider a request to waive a disqualification?

We consider each request on its own merits, taking into account matters such as the reasons for your disqualification, the length of time since the matter took place that disqualifies you, the reasons why you believe we should waive your disqualification and any risks to children from allowing you to provide or work in early years and childcare provision. We may ask you for more information, or ask you or your associate to obtain a criminal conviction certificate, a criminal record certificate or an enhanced criminal record certificate, as appropriate, from the DBS or we may ask you to attend an interview before making our decision. We will notify you in writing of our decision.

If we decide to waive your disqualification, the letter we send you will explain the circumstances that apply to our decision. We may limit the decision to waive disqualification to one type of employment or to particular premises. You will need to

keep this letter safe in case you need to show it to an inspector or to a new employer. This also applies to anyone connected with your application.

How to appeal if we refuse to waive your disqualification

You can appeal to an independent body, the First-Tier Tribunal (Health, Education and Social Care Chamber) ('the Tribunal') against our decision to refuse an application to waive your disqualification. You must make an appeal in writing within 28 days of the date of our decision letter. You can obtain guidance on how to appeal from the tribunal by:

- writing to the secretary of the Tribunal at: First-tier Tribunal: Care Standards Tribunal. HM Courts and Tribunals. 1st Floor, Darlington Magistrates Court, Parkgate DL1 1RU
- telephoning 01325 289 350
- faxing 01264 785 013
- emailing cst@hmcts.gsi.gov.uk
- website www.justice.gov.uk/contacts/hmcts/tribunals/care-standards

The Tribunal's decision

The Tribunal's decision takes immediate effect. The Tribunal will confirm its decision in writing and tell you the reasons for the decision, including any right to review or appeal you may have against its decision, and how to do this.

More information

Useful addresses and contacts

- Ofsted
Piccadilly Gate
Store Street
Manchester
M1 2WD

Email: disqualification@ofsted.gov.uk
Website: www.ofsted.gov.uk/
- Family Information Services national helpline: 0800 298 9121:
www.familyinformationservices.org.uk/index.php?option=com_comprofiler&task=userslist&listid=7&Itemid=72

Acts of Parliament and supporting legislation

You can find the Acts and other legislation mentioned in this leaflet online at www.opsi.gov.uk.

The Childcare Act 2006 and supporting regulations set out the requirements for registration for childminders and childcare:

www.legislation.gov.uk/ukpga/2006/21/contents.

Section 68 of the Children Act 1989 and the Disqualification from Caring for Children (England) Regulations 2002: www.legislation.gov.uk/uksi/2002/635/contents/made.

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

www.legislation.gov.uk/uksi/2018/794/contents/made.

Section 33 of the Criminal Justice and Court Services Act 2000 gives the power of a senior court (Crown court and above) to make an individual the subject of a disqualification order if the court believes that a convicted individual will continue to be a risk to children: www.legislation.gov.uk/ukpga/2000/43/contents

Other Information

The Compliance handbook: www.gov.uk/government/collections/ofsteds-compliance-investigation-and-enforcement-handbooks.

If you are applying to be registered with us you can find out more information in:

- Guide to registration on the Early Years Register, Ofsted, 2014; www.gov.uk/government/publications/how-to-register-on-the-early-years-register.
- Guide to registration on the Childcare Register, Ofsted, 2014; www.gov.uk/government/publications/guide-to-registration-on-the-childcare-register.

The Disclosure and Barring Service is responsible for holding information about those who are barred from working with children and young people. More information is available from the authority's website:

www.gov.uk/government/organisations/disclosure-and-barring-service.

The First-Tier Tribunal (Health, Education and Social Care Chamber) is an independent body established under section 3 of the Tribunals, Courts and Enforcement Act 2007.

The Department for Education is responsible for guidance on how the disqualification provisions affect schools. The Department's guidance is available at:

www.gov.uk/government/publications/disqualification-under-the-childcare-act-2006.



The Office for Standards in Education, Children's Services and Skills (Ofsted) regulates and inspects to achieve excellence in the care of children and young people, and in education and skills for learners of all ages. It regulates and inspects childcare and children's social care, and inspects the Children and Family Court Advisory and Support Service (Cafcass), schools, colleges, initial teacher training, further education and skills, adult and community learning, and education and training in prisons and other secure establishments. It assesses council children's services, and inspects services for children looked after, safeguarding and child protection.

If you would like a copy of this document in a different format, such as large print or Braille, please telephone 0300 123 1231, or email enquiries@ofsted.gov.uk.

You may reuse this information (not including logos) free of charge in any format or medium, under the terms of the Open Government Licence. To view this licence, visit www.nationalarchives.gov.uk/doc/open-government-licence, write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or email: psi@nationalarchives.gsi.gov.uk.

This publication is available at www.gov.uk/government/organisations/ofsted.

Interested in our work? You can subscribe to our monthly newsletter for more information and updates: <http://eepurl.com/iTrDn>.

Piccadilly Gate
Store Street
Manchester
M1 2WD

T: 0300 123 1231
Textphone: 0161 618 8524
E: enquiries@ofsted.gov.uk
W: www.gov.uk/ofsted

No. 080054

© Crown copyright 2018