



ARBOR ACADEMY ORGANISATION
Childcare (Disqualification) Regulations
Supplementary FAQs Mar 15

- 1a) **Where staff who are only occasionally deployed and are not regularly required to work in relevant childcare they do not automatically come within the scope of the legislation.**

What is the definition of occasionally and when should staff come under the scope of the legislation?

A regular pattern of work/contact within the relevant early or later years childcare provision.

The Definition of Regulated Activity (DBS Guidance)

From September 2012 the definition of Regulated Activity is as follows:

Regulated Activity for Children

A person can be in Regulated Activity because of what they do (activities), where they work (establishments) or who they are (specified position):-

(a) Unsupervised activities: teach, train, instruct, care for or supervise children, or provide advice/guidance on wellbeing, moderate a public electronic interactive service or drive a vehicle only for children carried out on a frequent, intensive or overnight basis. **An individual carrying out activities as above, under reasonable day-to-day supervision by another person who is also engaging in Regulated Activity is not undertaking Regulated Activity.**

(b) Work for a limited range of establishments (schools, nursery schools, childcare premises, children's homes, children's centres) with the opportunity for contact with children carried out on a frequent, intensive or overnight basis. A volunteer carrying out supervised activities under reasonable day-to-day supervision by another person who is also engaging in Regulated Activity is not undertaking Regulated Activity. However, a supervised paid employee working for a specified establishment does come under Regulated Activity.

Supervision means day to day supervision as is reasonable in all the circumstances for the purpose of protecting any children concerned.

The Department for Education has produced [statutory guidance on supervision](#) to describe the considerations an organisation should make when determining whether or not an individual is supervised to a reasonable level for the role.

Work under (a) or (b) above is Regulated Activity only if done “regularly” i.e. carried out by the same person

- Frequently (once a week or more often) or
- On 4 or more days in a 30-day period or
- Overnight (anytime between 2am -6am)

(c) Activities by a person contracted (or volunteering) to provide occasional or temporary services (which are not teaching, training or supervision of children) is not Regulated Activity (e.g. maintenance contractors) but, as stated above, supervised paid employees in specified establishments are in Regulated Activity.

(d) Providing healthcare – provision by a healthcare professional or under the direction or supervision of one. This may include psychotherapy and counselling, first aid administered on behalf of an organisation established for the purposes of providing first aid. This does not include workplace first aiders, members of peer support groups or life coaching.

(e) Providing personal care – physical assistance (or prompting with supervision or training or providing advice or guidance) with eating or drinking because of illness or disability, physical assistance (or prompting with supervision or training or providing advice or guidance, with going to the toilet, washing or bathing or dressing because of age, illness or disability.

(f) Registered child-minders and foster carers

(g) Day to day management or supervision of individuals carrying out Regulated Activity relating to children.

1b Where centrally employed local authority staff are deployed to work in relevant childcare settings in schools (for example peripatetic music teachers or special needs teachers) it is the responsibility of the local authority to ensure that such staff are compliant with the requirements of the legislation explained in this guidance. What do I action do I need to take at my school?

The Headteacher needs to get reassurance from the service department that any local authority staff e. g. music teachers etc. that may work within the early years childcare provisions has filled in a declaration form. The school is not responsible for securing a check but should seek assurance that appropriate checks have been undertaken.

1c Where schools or local authorities use workers from any agency, or third-party organisation, to work in relevant childcare within schools, 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 2009 Regulations. This must include the provider requesting that their staff inform them if they consider that they could be disqualified under the legislation. What do I action do I need to take at my school?

It is the responsibility of the third party organisation to ensure that all their agency workers are compliant with the guidance when individuals will be working the early years childcare provision. However we would advise that Headteachers ensure they receive written confirmation from the organisation that they have undertaken appropriate checks (Waltham forest template communication attached).

- 1d 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, however 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. What do I action do I need to take at my school?**

Where Senior Leaders fall in to the above category we would advise that they fill in the declaration form.

- 1e How often are we required to carry out the checks?**

The Departmental guidance has been silent on the frequency of the compliance of the checks. In Waltham Forest we have taken the view that School's should mirror the same frequency of DBS rechecks i.e. every 3 years.

Where staff are moved in to the provision who have not previously worked in the early years childcare provision then a declaration form must be filled out immediately.

We will continue to review this in line with any further Departmental clarification and we will also see if a consensus develops amongst local authorities. If there is a need to review this guidance schools will be issued with revised and updated guidance.

- 1f Why are Waltham Forest recommending that staff complete a form when the guidance does not expressly require this?**

Waltham Forest guidance is that the declaration forms we have provided should be used. The local trade union representatives have agreed that where this recommended form is used they will advise/encourage their members to complete the form. It is the Council's view that a completed and signed declaration form provides evidence that an individual has effectively engaged with the declaration process.

- 1g Are new starters still required to fill out forms?**

This form should be completed alongside pre-employment checks for those staff that fall within the early years and education childcare provision and childcare in later years provision. If they declare relevant information which would mean they are disqualified or disqualified by association this would need to be considered and discussed with the applicant. The school could decide not to proceed with the application on the basis that the employee is disqualified or proceed and, if they become the preferred candidate a conditional offer made and a waiver applied for. If the waiver isn't granted, the conditional offer can be withdrawn.

- 1h How should completed declaration forms be stored?**

Completed forms should be securely stored on an individual's personnel file. We also recommend that an appropriate note is kept of the schools Single Central Record. This should be a note against posts where a declaration that a check has been undertaken and the date of the check.

- 1i What should we do with declaration forms completed by staff where it is not clear they did not need to complete a declaration?**

These should be securely destroyed.