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ISI UPDATE NOVEMBER 2014

As indicated earlier this term, we are providing guidance for schools and inspectors as and when clarification is available. The following information gives the current position on certain issues and will be reflected when the Regulatory Handbook is next updated.

Part 3 - Welfare, health and safety

Keeping Children Safe in Education (KCSIE) supplementary advice

Non-statutory [advice](#) has been issued by the DfE, to supplement KCSIE. It concerns how staff can be disqualified by association with others and explains the effect of the **Childcare (Disqualification) Regulations 2009**. The advice is expected to become statutory shortly when a new version of KCSIE is issued and schools need, therefore, to apprise themselves of the advice and make preparations now.

Scope: The advice applies to staff in schools who work in early years provision and to those who work in later years provision for children who have not attained the age of 8. It also applies to employees who are directly concerned in the management of such provision even though they may not work in the early years or relevant later years provision themselves.

Early years provision includes education and any supervised activity for a child from birth until the 1 September following their fifth birthday. It applies to all provision for children in that age range during and outside school hours, including in school nursery and reception classes.

Later years provision covers childcare that is provided outside of school hours including breakfast clubs and after school care.

Substance: The supplementary advice reminds schools that they may not allow people to work in these settings or to be directly concerned in their management, if they or others in their households are “disqualified”.

The grounds for disqualification are not only that a person is barred from working with children (included on the children’s barred list) but also include, in summary, that:

- They have been cautioned for, convicted of or charged with certain violent and sexual criminal offences against children and adults, at home or abroad
- Other orders have been made against them relating to their care of children

- They have had their registration cancelled in relation to childcare or children's homes or have been disqualified from private fostering
- **They are living in the same household where another person who is disqualified lives.**

Disqualification occurs as soon as the above criteria are met, for example, as soon as a caution or conviction occurs, even before the person is formally included on the children's barred list.

Action required: To identify people caught by the "by association" rule, schools should ask existing employees working in the early and later years provision and those who are directly concerned in the management of such provision to provide the relevant information about themselves or a person who lives or works in the same household as them. It is recommended by the supplementary advice that this is done by way of self-declaration. Schools should also ask for this information as part of the pre-employment checks they undertake on appointing new staff and it would be useful information for inspection for schools to keep a record for each that they have done so. This could of course vary from school to school depending on their management structures; it will be matter for individual schools to determine the appropriateness of undertaking these checks against their employees.

Staff caught by the 'by association' rule may be able to apply to Ofsted for a waiver of disqualification but such staff may not be used unless and until such waiver is confirmed.

Any questions on the above DfE guidance can be directed to support@isi.net.

Safeguarding Policies

Since 1989, the Children Act has imposed duties on local authorities towards both children in need (section 17) and children at risk (section 47). This has long been reflected in various successive editions of *Working Together to Safeguard Children* but now also filters down as a clear duty on schools in *Keeping Children Safe in Education 2014*. When carrying out pre-inspection policy analysis, our in-house Regulation and Policy Team, therefore, considers whether school safeguarding policies evidence a recognition of duties not only to children at risk of significant harm, but also to children in need. It is not necessary for schools to use the legal phrase "child in need"; the more traditional vocabulary in school is "pastoral care". But it is important for schools to show an understanding that their role includes recognising when a child needs support, preventing problems escalating and working with external agencies to this end if that is what is called for.

Preventing and tackling bullying

DfE has added [two helpful new documents](#) about cyberbullying to their non-statutory advice concerning bullying. One is advice to schools largely about how to deal with cyberbullying against staff. The other is for parents and concerns cyberbullying against both staff and pupils.

In addition, the main advice document was amended in October, which deleted the link to the services of BeatBullying which is no longer available.

Part 4 - Suitable persons

Vetting contractors

ISI is in touch with the DfE concerning the lack of clarity in this area and some linked technical issues.

Arrangements with “contractors” can take many forms. Some will be in regulated activity and some not. Paid contractors working in school will not be in regulated activity unless they are working frequently or regularly AND have opportunity to have contact with children. If they are not in regulated activity, it will not be possible to obtain a check of the children’s barred list for them.

In some cases, it may also be difficult to identify whether the school or the contractor is the regulated activity provider and responsible for carrying out a check of the barred list.

If schools experience difficulty obtaining checks of the barred list for contractors who are working regularly in school and who do have opportunity for contact with children, they should provide ISI with precise details of problems encountered to support our dialogue with the DfE. This should include information about why they believe the work to be regulated activity.

Pending clarification, schools should continue to follow the guidance in paragraphs 85-88 of *Keeping Children Safe in Education* and note in their records the action they have taken.

Vetting staff on zero hours contracts

The DfE has confirmed the ISI view that the types of formal checks required will depend on the provisions of each individual contract.

If there is a contractual ‘break’ each time the employee ceases work, a new barred list check would be required when work is re-commenced and, where the gap in employment is longer than three months, an enhanced DBS check will be required.

Where the employment contract provides that the contract continues for the period when the member of staff is not working, even if the gap in work exceeds three months, a barred list and enhanced DBS check would not be required when the staff member works again. It is for schools to determine if they wish to obtain a further barred list check and schools may wish to suggest the member of staff subscribes to the DBS update service in order to facilitate those checks.

Prohibition checks

We continue to receive queries about checks of the prohibition list.

- **A check of the prohibition list is not the same as a check of the barred list**

A prohibition order is an order made by the National College of Teaching and Leadership (NCTL) on behalf of the Secretary of State barring a person from carrying out “teaching work”. This is a new check (required from April 2014) and is in addition to the check of the children’s barred list, DBS check and other checks set out in the Independent School Standards. It can be made against anyone undertaking teaching work regardless of whether they have qualified teacher status.

- **Teaching work includes:**

- planning and preparing lessons and courses for pupils
- delivering and preparing lessons to pupils
- assessing the development, progress and attainment of pupils
- reporting on the development, progress and attainment of pupils.

“Delivering” includes delivering lessons through distance learning or computer aided techniques.

However, none of these activities is “teaching work” if the person carrying out the activity does so (other than for the purposes of induction) subject to the direction and supervision of a qualified teacher or other person nominated by the head teacher.

- **Teaching Assistants**

The DfE has confirmed that **teaching assistants are unlikely to need a prohibition check** as it is likely that their work is carried out under direction and supervision. Schools should, therefore, decide on a case by case basis, in the light of their own practice relating to teaching assistants, whether their assistants require prohibition checks.

- **Checking teachers without qualified teacher status (QTS)**

Without QTS, a teacher will not have a reference number. This continues to cause some schools difficulty. This is what to do. Checks of the prohibition list are done through Employer Access Online. A webpage within the Employer Access Online site requests the date of birth and reference number of the person being searched. To the right of that page is a list of three links. The bottom-most link takes the searcher to the prohibition list. Click on that link. On the prohibition list, 923 prohibited teachers are currently listed alphabetically by surname. Scroll down the list to find (or otherwise) the name sought. Clicking on the reference number adjacent to the name would then take the searcher to more information about the sanctions that have been imposed.

If a teacher without a reference number has been sanctioned, the NCTL will have generated a number for them for the purpose of the disciplinary process. That is why it appears that only people with QTS are on the list.

Repeating DBS checks when a member of staff changes role

It is no longer necessary to obtain a new DBS disclosure for a member of staff who changes role in a school. This is because when the updating service was brought in last year, the DBS changed the relevancy test which they use for releasing non-conviction information about an individual. A DBS disclosure now includes all information relevant to the workforce to which the DBS check is related (e.g. child workforce, adult workforce, both or other). Previously, to balance the demands of other legislation, only information relevant to a single position or role would have been released.

The change supports the use of the DBS updating service. Here is the source of this information: <https://www.gov.uk/government/publications/dbs-update-service-employer-guide>.

Query of the week

“What is a Single Central Register?” This just pipped: “How many Single Central Registers should we have?”