



**St. Jérôme Church of England
Bilingual School**

**Disqualification
by Association**

Childcare Disqualification Checks

April 2016

Executive Headteacher.....
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Chair of the Governing Body.....
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Date:~

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1. Scope

The procedure applies to all staff directly employed by schools and academies.

For Academies, all reference to school should be taken to mean Academy, all reference to the Headteacher should, where appropriate, be taken to mean Executive Headteacher/Principal/Head of School, and all reference to the Governing Body should, where appropriate, be taken to mean the Academy Trust.

2. Background

The Department for Education (DfE) has issued supplementary advice to its "Keeping Children Safe in Education" statutory guidance which can be found at:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/362919/Keeping_children_safe_in_education_childcare_disqualification_requirements_-_supplementary_advice.pdf

Further guidance was issued in February 2015 clarifying which staff are covered by the Regulations:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/407788/disqual_stat-guidance_Feb_15.pdf

This advice details a requirement for childcare disqualification checks to be carried out on relevant staff working in schools.

These checks arise from the Childcare (Disqualification) Regulations 2009 and the Education Act 2006. **The Regulations prohibit anyone who is disqualified themselves under the Regulations, or who lives in the same household as a disqualified person, from working in a relevant setting, including in schools.**

3. Who is covered by the Regulations?

a) School staff

There is now a requirement for schools to check the following categories of staff in nursery, primary or secondary school settings covered by the Childcare (Disqualification) Regulations 2009:

- 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 and/or any supervised

activity (such as breakfast clubs, lunchtime supervision and after school care provided by the school) both during 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 school hours 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 such early or later years provision.

The Regulations refer to employing a person "in connection with" these provisions. The check will apply to the following staff employed in these settings who come into regular contact with children at these ages:

- In Nursery and Infant School settings - Staff should be covered if they work directly with children up to Reception age
- Primary and Junior Schools - Staff should be covered if they work directly with children up to Reception age or if they work in before-or-after school settings with children up to the age of 8.
- Secondary Schools - will need to undertake checks on relevant staff (including managers) where any services are provided where under 8s may be in attendance e.g. childcare facilities, before or after school clubs

This means that staff employed who work in the following roles are **not** covered by the Regulations:

- Staff who only provide education, childcare or supervised activity during school hours to children above reception age; or
- Staff who only provide childcare or supervised activities out of school hours for children who are aged 8 or over;
- Staff who have no involvement in the management of relevant provision.
- Staff such as caretakers, cleaners, drivers, transport escorts, catering and office staff, who are not employed to directly provide childcare, are not covered by the legislation.
- Most staff who are only occasionally deployed and are not regularly required to work in relevant childcare will not automatically come within the scope of the legislation.

Schools should exercise their judgement about when and whether the regulations apply to staff, evaluating and recording any risks and control measures put in place, and taking advice from the school's HR provider, Local Authority Designated Officer (LADO), safeguarding lead officer or adviser when appropriate. A record of the assessment should be retained on the employee's personnel file.

b) Volunteers

The DfE has confirmed that volunteers do not technically fall under the regulations as they are not employees.

However schools need to be mindful of their safeguarding obligations and we consider it would be a proportionate decision to apply the same level of safeguarding checks to volunteers that are being applied to their employees, if the volunteer is operating in one of the settings described above. That would mean asking the volunteer to sign the same declaration as a member of staff. The DfE has confirmed that they consider this to be the right approach.

c) Governors

The DfE has confirmed that this requirement only relates to those in employment in childcare and therefore does not apply to governors unless they also fall into one of the other categories.

d) Contractors / Agency staff

DfE advice is that it is a matter for individual employers to ensure that persons caring for children are suitable to do so. In the case of workers that are supplied by an agency or third-party organisation, schools must ensure that the agency or organisation has carried out the relevant checks. Where children fall into an age group covered by the Regulations, this will include checks to ensure that those agency workers are not disqualified, including by association.

Our recommendation is that wherever possible confirmation is obtained from a relevant agency or organisation that any agency worker employed at a school or Academy in a relevant setting has not been disqualified under the terms of the Regulations.

4. Disqualified employees

An employee may be disqualified if any of the following apply:

- They have been cautioned for or convicted of certain violent or sexual criminal offences against children and adults
- They are the subject of an Order, direction or similar in respect of childcare, including orders made in respect of their own children

- They have had registration refused or cancelled in relation to childcare or children's homes or have been disqualified from private fostering
- They live in the same household where another person who is disqualified lives or works (disqualification by association)

Full details of what constitutes "disqualification" are in the schedules to the Regulations <http://www.legislation.gov.uk/ukxi/2009/1547/contents/made>

Schools should contact the Schools HR Co-operative immediately if they:

- a. know of anyone in their employment who is or may be disqualified
- b. receive a positive declaration from any person

Schools HR Co-operative will support schools in dealing with a case where a disqualified person is identified.

Anyone who is disqualified (including by association) will need to be immediately removed from the relevant setting (through suspension in the case of employees) and the school must notify Ofsted within 14 days at disqualification@ofsted.gov.uk

5. Application for a waiver

A disqualified person can apply to Ofsted for a waiver. Further information is available at:

<http://www.ofsted.gov.uk/resources/applying-waive-disqualification-early-years-and-childcare-providers>

Ofsted may grant a full or partial waiver, including a waiver that would allow an individual to work in a relevant school setting. While a waiver application is under consideration the individual **must not continue to work in these settings**. Where a waiver is not granted, the employee will face dismissal on the grounds of disqualification.

6. Actions required by schools

The guidance requires schools to ensure that staff are made aware of the legislation. Schools are now able to determine the most appropriate way to do this. All relevant staff in relevant settings can be asked to complete a declaration on an annual basis affirming that they are not disqualified. A model letter is available at Appendix 1 to give to staff explaining why the declaration is necessary and the Declaration form is at Appendix 2. A date for the return of the form will need to be inserted into the letter. The declaration form is our recommended approach.

Alternatively a staff briefing can be held. In your briefing you should explain:

- that you are required to get them to confirm they are not disqualified;
- what disqualification means and how staff become disqualified (both in relation to the staff member and those covered 'by association');
- the 'best of your knowledge' test; and
- that if they have concerns, they should come to you to discuss them confidentially.

Having done so, ask them to sign an attendance sheet so you can evidence that staff have been told.

For both approaches, staff will need to have access to information about the relevant offences and orders so schools should print the relevant schedules to the legislation which detail these and make these available to staff (either with each form or in a central place). The links can also be provided to staff and they are:

<http://www.legislation.gov.uk/ukxi/2009/1547/schedule/1/made>

<http://www.legislation.gov.uk/ukxi/2009/1547/schedule/2/made>

<http://www.legislation.gov.uk/ukxi/2009/1547/schedule/3/made>

If following this route, schools should look to provide staff with the explanatory letter and declaration form as soon as possible.

1. All new appointments in relevant settings must be required to complete the declaration prior to commencing work. You should also check the DBS certificate that they provide with reference to the relevant list of offences in the Act (see links to schedules above).
2. Schools must ensure that any external agency providing relevant staff in relevant settings carry out these checks prior to placing them in the school.

Appendix 1

Declaration letter

IMPORTANT INFORMATION FOR ALL SCHOOL STAFF

Childcare Disqualification Requirements

The Department for Education (DfE) has recently issued supplementary advice to its "Keeping Children Safe in Education" statutory guidance. This supplementary advice details a new requirement for childcare disqualification checks to be carried out on relevant staff working in schools and academies.

These checks arise from the Childcare (Disqualification) Regulations 2009 and the Education Act 2006. **The Regulations prohibit anyone who is disqualified themselves under the Regulations, or who lives in the same household as a disqualified person, from working in a relevant setting, including in schools.**

There is now a DfE requirement, therefore, for Schools to check the following categories of staff in nursery, primary or secondary school settings who are covered by the Childcare (Disqualification) Regulations 2009.

- 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 and/or any supervised activity (such as breakfast clubs, lunchtime supervision and after school care provided by the school) both during 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 school hours 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 such early or later years provision.

The Regulations refer to employing a person "in connection with" these provisions. The check will apply to the following staff employed in these settings who come into regular contact with children at these ages:

- In Nursery and Infant School settings - Staff should be covered if they work directly with children up to Reception age
- Primary Schools - Staff should be covered if they work directly with children up to Reception age or if they work in before-or-after school settings with children up to the age of 8.
- Secondary Schools - will need to undertake checks on relevant staff (including managers) where any services are provided where under 8s may be in attendance e.g. childcare facilities, before or after school clubs

A copy of the DfE Supplementary Advice is available on this link: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/362919/Keeping_children_safe_in_education_childcare_disqualification_requirements_-_supplementary_advice.pdf

and at:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/407788/disqual_stat-guidance_Feb_15.pdf

A Person may be disqualified if any of the following apply:

- They have been cautioned for or convicted of certain violent or sexual criminal offences against children and adults
- They are the subject of an Order, direction or similar in respect of childcare, including orders made in respect of their own children
- They have had registration refused or cancelled in relation to childcare or children's homes or have been disqualified from private fostering
- They live in the same household where another person who is disqualified lives or works (disqualification by association)

Full details of what constitutes "disqualification" are in the schedules to the Regulations <http://www.legislation.gov.uk/ukxi/2009/1547/contents/made>

All staff should be aware that this will affect you if you work in a relevant setting.

What happens next?

- All relevant staff in relevant settings should complete a declaration, affirming that they are not disqualified by completing and signing a declaration form. **You have been identified as being covered by these regulations and I would therefore ask that you complete the attached declaration form and return it to me by no later than xxxx**

- If the School is told by a member of staff that they are disqualified, or the School receives a positive declaration regarding any member of a staff's household then we will seek advice from our HR advisers at the Schools HR Co-operative.
- Under the requirements of the DfE, any employee who is disqualified (including by association) will need to be immediately removed from the relevant setting and Ofsted must be notified within 14 days.
- Ofsted may grant a full or partial waiver, including a waiver that would allow an individual to work in a relevant school setting, for an employee who is disqualified. While a waiver application is under consideration the individual must not continue to work in these settings. Where a waiver is not granted, the employee's employment will need to be terminated unless redeployment options are available.

As you can see this is a very important matter for Schools and their staff.

Please be assured that this School understands that this is a sensitive issue. If any member of staff has concerns then they may wish to speak to me in confidence. We must, however, apply the DfE requirements.

Headteacher

Appendix 2

Childcare Disqualification Requirements: Employee and Volunteer Declaration form

School Name		
Please refer to the accompanying letter for detailed information about the requirement for you to make this declaration.		
<u>In accordance with the legislation you are asked to sign the declaration below confirming that you are not disqualified from working in, or being concerned in the management of, the above settings.</u>		
If you fail to complete and return the form, this will be regarded as a disciplinary matter for staff, which may result in dismissal, and, in the case of volunteers, will mean that you can no longer work at this establishment.		
A disqualified person is not permitted to continue to work in the above settings unless they apply for and are granted a waiver from Ofsted.		
Reference: http://www.ofsted.gov.uk/resources/applying-waive-disqualification-early-years-and-childcare-providers		
Name of Person signing the Declaration	Post Held	
Please circle one option for every question		
Section 1 – Orders or other restrictions		
Have any orders or other determinations related to childcare been made in respect of you ?	YES / NO	
Have any orders or other determinations related to childcare been made in respect of a child in your care?	YES / NO	
Have any orders or other determinations been made which prevents you from being registered in relation to child care, children’s homes or fostering?	YES / NO	
Are there any other relevant orders, restrictions or prohibitions in respect of you as set out in the Schedule 1 of the Regulations? Available at the link below: http://www.legislation.gov.uk/ukxi/2009/1547/schedule/1/made	YES / NO	
Are you barred from working with Children (Disclosure and Barring (DBS))?	YES / NO	
Teachers only - Are you prohibited from Teaching?	YES / NO	

Section 2 – Specified and Statutory Offences	
Have you ever been cautioned, reprimanded, given a warning for, or convicted of:	
• Any offence against or involving a child? (A child is a person under the age of 18)?	YES / NO
• Any violent or sexual offence against an adult?	YES / NO
• Any offence under the Sexual Offences Act?	YES / NO
• Any other relevant offence?	YES / NO
Available at the links below: http://www.legislation.gov.uk/ukxi/2009/1547/schedule/2/made http://www.legislation.gov.uk/ukxi/2009/1547/schedule/3/made	
Have you ever been cautioned, reprimanded, given a warning for or convicted of any similar offence in another country?	
YES / NO	
Section 3 – Disqualification by Association	
To the best of your knowledge, is anyone who lives or works in the same household* where you live disqualified from working with children under the Regulations? <i>*household – includes family, lodgers, house-sharers, household employees</i> This means does anyone in your household have an Order or Restriction against them as set out in Section 1 or have they been cautioned, reprimanded, given a warning for or convicted of any offence in Section 2.	
YES / NO	
Section 4 – Provision of Information	
If you have answered YES to any of the questions above you should provide details below in respect of yourself, or, where relevant, the member of your household. You may supply this information separately if you so wish, but you must do so without delay.	
Details of the order, restriction, conviction, caution or other ground for disqualification under the Childcare (Disqualification) Regulations 2009 etc:	
The date(s) of these:	
The relevant court(s) or body(ies) and the sentence (if any) imposed:	
You should also provide a copy of the relevant order, caution, conviction etc. In relation to cautions/convictions a DBS Certificate may be provided.	
Section 4 - Declaration	

In signing this form, I confirm that the information provided is true to the best of my knowledge and that:

- I understand my responsibilities to safeguard children.
- I understand that I must notify my head teacher immediately of anything that affects my suitability including any cautions, warnings, convictions, orders or other determinations made in respect of me or a member of my household that would render me disqualified from working with children

Signed			
Print Name		Date	

Appendix 3

Notification of Suspension letter

Dear

I am writing to confirm the decision taken to suspend you from work with effect from until further notice. Your suspension is without prejudice and on full pay.

The reason for your suspension is that you are disqualified from working in school pending your application for a waiver from Ofsted. You must now contact Ofsted immediately at disqualification@ofsted.gov.uk. Please let me know as soon as you receive a decision from Ofsted.

(Name of designated person) will be your designated point of contact at the school during the period that you are away from the school. He/she will keep you informed of general activities and news at the school. If you wish to contact the school for any reason please telephone (name of designated person) on (insert telephone number). I must ask you not to contact any other member of staff, pupil at the school or any member of the Governing Body whilst the suspension is in force.

If you wish to collect any personal belongings at the school please contact (name of designated person) who will make the appropriate arrangements.

I appreciate that this will be a difficult time for you and would like to inform you that the school's free employee counselling service is available if you require support at this time. You can contact them on *(insert contact details) and/or I enclose a leaflet....*

Yours sincerely

Headteacher/Chair of Governors

Frequently asked questions

- 1. For existing staff, is the advice that a self-declaration is sufficient or is any declaration expected to be verified wherever possible, for example by viewing a current DBS check or obtaining a new one, and are employers expected to verify the absence of any Orders or restrictions?**

There is no requirement to check DBS certificates for existing staff and there is no evident process for verifying if someone has a childcare order or other restriction against them. It seems that self-declarations are acceptable. For new staff, the employee should sign a declaration and the DBS certificate should be checked against the list of offences in the Schedules. Of course, other offences may also lead to non-employment under normal DBS assessment processes.

- 2. How can we do checks on "householders"?**

It is not the employer's role to carry out a check on individuals other than those they employ, however employers should have effective systems in place to ensure that staff are suitable to work in childcare. Employees who work in the specified early and later years provision should be asked to provide the necessary information about any person who lives or works in the same household as them.

- 3. Are school staff required to ask their householders if they are disqualified?**

There is no requirement for this. Staff are required to declare "to the best of their knowledge" and schools can accept declaration at face value.

- 4. Where a care order was put in place in respect of someone's children because of the actions of their partner, and the care order is no longer in place or the partner is no longer living in the household – is this covered by the Regulations?**

If the care order has been removed or the partner is no longer living at the household then these individuals would not be covered by the regulations. If the partner moved back into the household then the regulations would apply again.

- 5. Where are the disclosable offences set out?**

The relevant offences are listed in Schedules 2 and 3 in the Schedules to the Regulations - although it is appreciated that these are complex to understand. The key offences are those that result in a caution (including reprimands/ warnings/ youth cautions) issued post 2007 (see below) or conviction and relate to:

- any offences by an adult against or involving children
- any sexual offence by an adult or a child against an adult or a child
- murder, manslaughter, kidnapping, false imprisonment, ABH or GBH

The DfE have clarified that anyone who was issued with a relevant caution (including reprimands/warnings) before 6 April 2007 is **NOT** disqualified.

6. The reference to Burglary in Schedule 2 seems anomalous – why is it there?

This refers to Burglary under the 1968 Theft Act which was actually Burglary involving rape so would only be applicable if someone was charged with this specific offence – which in turn comes under key offences outlined above.

7. Schedule 2 refers to repealed statutory offences – does this mean they do not apply?

No – “repealed” does not mean these no longer apply, it means they have been superseded by other legislation but would still be a cause for disqualification if someone has been convicted of, cautioned etc. for any of these offences.

8. What if a person is not sure whether they have a relevant offence?

We would advise declaration of anything that they think may be relevant and schools can check with the DfE (mailbox.disqualification@education.gsi.uk) or schools can seek advice from HR.

9. How long will it take to process an application for a disqualification waiver?

It is a matter for Ofsted who have the responsibility for granting a waiver or not. The time it will take to process a waiver application will undoubtedly vary from case-to case; whilst many should be straightforward, others will unfortunately be more complex and take time to resolve.

10. What constitutes childcare outside of the normal school day?

Child care includes breakfast clubs, homework clubs, nursery and crèche provision provided by the school. Where activities are run by other providers on school premises but not managed by the school (e.g. lettings, football clubs), these are not covered as they are not child care provision.

11. What should we do with the declaration forms once an employee has returned it?

These forms should be placed on the employee’s personal file as these are kept in a secure place. If required for volunteers, these forms should be retained in the same single central location that you store all the other papers.

12. How do these Regulations sit with the Data Protection Act, particularly in respect of sensitive personal data relating to someone not employed in the school (i.e. a householder) and the school passing information to Ofsted?

The DfE indicates that information must be processed in accordance with the Data Protection Act. The Childcare (Disqualification) Regulations require employers to pass information to Ofsted and such statutory duties are allowed under the Data Protection Act. Schools must handle and store all information in school carefully, in accordance with normal Data Protection rules.

13. Does this check need to be on the Single Central Record (SCR)?

There is no statutory requirement that the check should be recorded on the Single Central Record. However, it is advisable for schools to keep a record that all the checks have been

completed and Ofsted Inspectors are reported as expecting it to appear on the SCR. Therefore our advice is that schools should record that a check has been satisfactorily completed on their SCR. Satisfactorily completed means no relevant information is declared or that a waiver has been obtained where relevant.

14. Who is going to check that schools comply?

This is unclear but it is anticipated that Ofsted will include this as part of their overall safeguarding/Single Central Record checks.

15. How is it that it has only just been decided to apply these Regulations in schools?

The DfE has confirmed that the Regulations have always applied to schools but it was only following requests to clarify that application that the DfE identified that some supplementary advice would be helpful for schools. It is for this reason that they have issued guidance now and the expectations on schools became clear.

Summary of Relevant Offences

Please note that this is a summary. Full details of what constitutes “disqualification” are in the schedules to the Regulations <http://www.legislation.gov.uk/uksi/2009/1547/contents/made>

- Abduction of a child
- Abuse of a position of trust
- Assault by penetration
- Assault occasioning actual bodily harm
- Burglary with intent to rape
- Causing a person to engage in sexual activity without consent
- Causing or allowing the death of a child or vulnerable adult
- Certain offences under the Mental Health Act 1983:
 - Forgery and making false statements
 - Ill treatment of patients.
 - Assisting patients to absent themselves without leave etc
 - Obstruction
- Cruelty to children
- Exposure
- False imprisonment
- Incest
- Intercourse with an animal
- Kidnapping
- Making threats to kill a child
- Manslaughter
- Meeting a child after grooming
- Murder
- Murder of an infant
- Offences related to female genital mutilation
- Offences related to prostitution
- Offences related to the supply of Class A drugs to a child
- People trafficking
- Possession of extreme pornographic images
- Possession of indecent images of children
- Rape
- Sexual assault
- Sexual offences against a person with a mental disorder
- Sexual offences against children
- Sexual offences against children outside the UK

- Sexual penetration of a corpse
- Supply of a controlled drug to another
- Voyeurism
- Wounding and causing grievous bodily harm