
STATUTORY INSTRUMENTS

1995 No. 2594

EDUCATION, ENGLAND AND WALES

**The Education (Teachers)
(Amendment) (No. 2) Regulations 1995**

Made - - - - 28th September 1995
Laid before Parliament 10th October 1995
Coming into force - - 1st November 1995

In exercise of the powers conferred by sections 218(6) and 232(5) of the Education Reform Act 1988(1), the Secretary of State hereby makes the following Regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Education (Teachers) (Amendment) (No. 2) Regulations 1995 and shall come into force on 1st November 1995.

(2) Any reference in these Regulations to the principal Regulations is a reference to the Education (Teachers) Regulations 1993(2).

Amendment of the principal Regulations

2.—(1) Regulation 10 of the principal Regulations (barring by the Secretary of State) shall be amended as follows.

(2) In paragraph (2) there shall be inserted after the word “aforesaid” the words “and subject to paragraphs (9) and (10)”.

(3) For paragraph (4) there shall be substituted the following—

“(4) Where the Secretary of State is considering exercising his powers under paragraph (2) on medical grounds or, under paragraph (11), withdrawing or varying any direction given on medical grounds under paragraph (2)—

- (a) he shall afford the person concerned an opportunity to submit medical evidence and make representations to him;
- (b) he shall consider such evidence and representations and any other medical evidence available to him, including such evidence which has been furnished in

(1) 1988 c. 40; section 218(6) was amended by the Education Act 1993 (c. 35), section 290(3).
(2) S.I. 1993/543; the relevant amending instrument is S.I. 1994/222.

confidence on the ground that it would not be in the best interests of the person concerned to see it;

- (c) he may require the person concerned to submit himself for examination by a duly qualified medical practitioner appointed by the Secretary of State and, if without good cause the person concerned fails to submit himself for such examination or refuses to make available medical evidence or information sought by the medical practitioner, the Secretary of State may reach a conclusion in the matter on such evidence and information as is available to him, notwithstanding that further medical evidence may be desirable.

(4A) At any time before such medical examination as is referred to in paragraph (4)(c), the Secretary of State, or the person concerned, may submit to the duly qualified medical practitioner appointed by the Secretary of State a statement containing evidence or other matter relevant to the examination: and the examination may be attended by any duly qualified medical practitioner appointed for the purpose by the person being examined.”.

- (4) For paragraph (6) there shall be substituted the following—

“(6) Where the Secretary of State is considering exercising his powers under paragraph (2) on grounds of a person’s misconduct, or, under paragraph (11), withdrawing or varying any direction given on grounds of a person’s misconduct, whether under paragraph (2) or paragraph (10), he may require the person concerned to submit himself for examination by a duly qualified medical practitioner appointed by the Secretary of State and, if without good cause the person concerned fails to submit himself for such examination or refuses to make available medical evidence or information sought by the medical practitioner, the Secretary of State may reach a conclusion in the matter on such evidence and information as is available to him, notwithstanding that further medical evidence may be desirable.

(7) At any time before such medical examination as is referred to in paragraph (6), the Secretary of State, or the person concerned, may submit to the duly qualified medical practitioner appointed by the Secretary of State a statement containing evidence or other matter relevant to the examination: and the examination may be attended by any duly qualified medical practitioner appointed for the purpose by the person being examined.

(8) Where, pursuant to paragraph (6), the Secretary of State requires the person concerned to submit himself for such an examination, the Secretary of State shall, without prejudice to his duties under paragraph (5), afford that person the opportunity to submit medical evidence and make representations to him; and the Secretary of State shall consider such evidence and representations and any other medical evidence available to him, including such evidence which has been furnished in confidence on the ground that it would not be in the best interests of the person concerned to see it.

(9) Paragraph (10) applies in the case of a person who is, has been, or seeks to be employed in relevant employment and who, on or after 1st November 1995, has pleaded guilty to or been found guilty of an offence set out in Schedule 4 to these Regulations against or involving a child under the age of sixteen or, who has pleaded guilty to or been found guilty of an attempt to commit any such offence, by or before a court in the United Kingdom.

(10) The Secretary of State, where this paragraph applies, on receipt of a certificate of conviction in respect of any such offence referred to in paragraph (9) committed by the person concerned, shall—

- (a) in the case where that person is in relevant employment, direct his employers to terminate his employment and direct that he be not subsequently appointed to or employed in relevant employment;

(b) in the case where that person is not in relevant employment, direct that he be not subsequently appointed to or employed in relevant employment.

(11) A direction given under this regulation (“the earlier direction”) may be withdrawn or varied by a subsequent direction by reason of either or both of the following—

(a) information which the Secretary of State did not have at the time that the earlier direction was given; or

(b) evidence before the Secretary of State of a material change in the circumstances of the person concerned occurring since the earlier direction was given,

but, subject as aforesaid, the employers of persons in relevant employment shall comply with any direction prohibiting or restricting a person’s employment or further employment.

(12) Where under paragraph (11) the Secretary of State varies a direction given under paragraph (10) he may, subject to such qualifications (if any) as he may specify, direct that the person concerned be only appointed to or employed in relevant employment subject to specified conditions.

(13) For the purposes of paragraph (10), “certificate of conviction” shall have the meaning given to it by section 73(2) of the Police and Criminal Evidence Act 1984(3).”

3. After Schedule 3 to the principal Regulations there shall be inserted the Schedule set out in the Schedule to these Regulations.

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SCHEDULE

Regulation 2(5)

“SCHEDULE 4

Regulation 10(9)

LIST OF RELEVANT CRIMINAL OFFENCES OFFENCES IN ENGLAND AND WALES

1. An offence contrary to section 1(1) of the Sexual Offences Act 1956(4) (rape).
2. An offence contrary to section 5 of the Sexual Offences Act 1956 (sexual intercourse with a girl under the age of thirteen).
3. An offence contrary to section 6(1) of the Sexual Offences Act 1956 (sexual intercourse with a girl under the age of sixteen).
4. An offence contrary to section 10(1) of the Sexual Offences Act 1956 (incest by a man).
5. An offence contrary to section 11(1) of the Sexual Offences Act 1956 (incest by a woman).
6. An offence contrary to section 12(1) of the Sexual Offences Act 1956(5) (buggery).
7. An offence contrary to section 13 of the Sexual Offences Act 1956 (an act of gross indecency between men).
8. An offence contrary to section 14(1) of the Sexual Offences Act 1956 (indecent assault on a woman).
9. An offence contrary to section 15(1) of the Sexual Offences Act 1956 (indecent assault on a man).
10. An offence contrary to section 16(1) of the Sexual Offences Act 1956 (assault with intent to commit buggery).
11. An offence contrary to section 1(1) of the Indecency with Children Act 1960(6) (indecent with children under the age of fourteen).
12. An offence contrary to section 54(1) of the Criminal Law Act 1977(7) (inciting a girl under the age of sixteen to have incestuous sexual intercourse).
13. An offence contrary to section 1(1)(a), (b) or (d) of the Protection of Children Act 1978(8) (indecent photographs of children).

OFFENCES IN SCOTLAND

14. An offence contrary to section 3(1) of the Sexual Offences (Scotland) Act 1976(9) (sexual intercourse with a girl under the age of thirteen).
15. An offence contrary to section 4(1) of the Sexual Offences (Scotland) Act 1976 (having or attempting to have, sexual intercourse with a girl of or above the age of thirteen and under the age of sixteen).
16. An offence contrary to section 2A of the Sexual Offences (Scotland) Act 1976(10) (incest by a man or by a woman).
17. An offence contrary to section 2B of the Sexual Offences (Scotland) Act 1976 (sexual intercourse with a step-child or former step-child).

(4) 1956 c. 69; section 1 is amended by section 142 of the Criminal Justice and Public Order Act 1994 (c. 33).

(5) Section 12 is amended by section 143 of the Criminal Justice and Public Order Act 1994 (c. 33).

(6) 1960 c. 33.

(7) 1977 c. 45.

(8) 1978 c. 37; section 1 is amended by section 84 of the Criminal Justice and Public Order Act 1994 (c. 33).

(9) 1976 c. 67.

(10) Sections 2A to 2C were inserted by section 1 of the Incest and Related Offences (Scotland) Act 1986 (c. 36).

18. An offence contrary to section 2C of the Sexual Offences (Scotland) Act 1976 (sexual intercourse with a child by a person in a position of trust or authority).

19. An offence contrary to section 80(7) of the Criminal Justice (Scotland) Act 1980(11) (committing or procuring or attempting to procure a homosexual act).

20. An offence contrary to section 52(1)(a), (b) or (d) of the Civic Government (Scotland) Act 1982(12) (indecent photographs of children).

21. An offence of sodomy, contrary to the common law.

22. An offence of indecent assault, contrary to the common law.

23. An offence of rape, contrary to the common law.

OFFENCES IN NORTHERN IRELAND

24. An offence contrary to section 48 of the Offences Against the Person Act 1861(13) (rape).

25. An offence contrary to section 52 of the Offences Against the Person Act 1861 (indecent assault on a woman).

26. An offence contrary to section 61 of the Offences Against the Person Act 1861 (buggery)(14).

27. An offence contrary to section 62 of the Offences Against the Person Act 1861 (indecent assault on a man or assault with intent to commit buggery)(15).

28. An offence contrary to section 4 of the Criminal Law (Amendment) Act 1885(16) (unlawful carnal knowledge of any girl under the age of fourteen).

29. An offence contrary to section 5 of the Criminal Law (Amendment) Act 1885 (unlawful carnal knowledge of any girl under the age of seventeen).

30. An offence contrary to section 11 of the Criminal Law (Amendment) Act 1885 (an act of gross indecency between men).

31. An offence contrary to section 1 of the Punishment of Incest Act 1908(17) (incest by a man).

32. An offence contrary to section 2 of the Punishment of Incest Act 1908 (incest by a woman).

33. An offence contrary to section 22 of the Children and Young Persons Act (Northern Ireland) 1968(18) (indecency with or towards a child).

34. An offence contrary to article 3(1)(a), (b) or (d) of the Protection of Children (Northern Ireland) Order 1978(19) (indecent photographs of children).

35. An offence contrary to article 9 of the Criminal Justice (Northern Ireland) Order 1980(20) (inciting a girl under the age of sixteen to have incestuous sexual intercourse).”.

(11) 1980 c. 62.

(12) 1982 c. 45; section 52 is amended by section 84 of the Criminal Justice and Public Order Act 1994 (c. 33).

(13) 1861 c. 100.

(14) Section 61 is modified by article 14 and paragraph 1 of the Homosexual Offences (Northern Ireland) Order 1982 (N.I.19).

(15) Section 62 is modified by article 14 and paragraph 2 of the Homosexual Offences (Northern Ireland) Order 1982 (N.I.19).

(16) 1885 c. 69.

(17) 1908 c. 45.

(18) 1968 c. 34 (N.I.).

(19) S.I. 1978/1047 (N.I.17); article 3 is amended by section 84 of the Criminal Justice and Public Order Act 1994 (c. 33).

(20) S.I. 1980/704 (N.I. 6).

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28th September 1995

Robin Squire
Parliamentary Under-Secretary of State,
Department for Education and Employment

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend regulation 10 of the Education (Teachers) Regulations 1993 (“the principal Regulations”). Regulation 10 relates to the barring or restricting of employment of persons in relevant employment by the Secretary of State. “Relevant employment” is defined by regulation 7 of the principal Regulations, as substituted by regulation 3 of the Education (Teachers) (Amendment) Regulations 1994 (S.I. 1994/222). Regulation 7, as so substituted, provides that—

“(1) Any reference in this Part to relevant employment is, subject to paragraph (2), a reference to employment—

- (a) by a local education authority, as teachers (whether or not at a school or further education institution) or as workers with children or young persons;
- (b) by any other body, as teachers at a school or further education institution; or
- (c) by the governing body of a school or further education institution as workers with children or young persons.

(2) In regulation 10, any reference to relevant employment also includes employment—

- (a) by the proprietor of an independent school, as teachers or workers with children or young persons; and
- (b) at an independent school, as teachers or as workers with children or young persons.”.

The principal change effected by these Regulations is that, where a person is convicted of an offence listed in Schedule 4 to the principal Regulations, as inserted by regulation 3 and the Schedule to these Regulations, involving a child under the age of 16, or an attempt to commit such an offence, the Secretary of State is under a duty—

- (a) where that person is in relevant employment, to direct his employers to terminate his employment and to direct that he is not to be subsequently appointed to or employed in relevant employment, and
- (b) where that person is not in relevant employment, to direct that he is not to be subsequently appointed to or employed in relevant employment.

A direction given under regulation 10 of the principal Regulations may, as amended by these Regulations, be withdrawn or varied by reason of (a) information which the Secretary of State did not have at the time of the earlier direction or (b) evidence before the Secretary of State of a material change in the circumstances of the person concerned occurring since the earlier direction.

Where a direction given under regulation 10(10) is varied, it may be varied so that the person concerned is only to be appointed to or employed in relevant employment subject to any specified conditions.

Where the Secretary of State is considering exercising powers under regulation 10(2) of the principal Regulations on the grounds of a person’s misconduct or is considering withdrawing or varying a

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direction given on those grounds or a direction required to be made following a person's conviction of an offence listed in Schedule 4 or an attempt to commit such an offence, the Secretary of State is now empowered to require that the person concerned be medically examined. If the person fails to do so without good reason, the Secretary of State can reach a decision on the evidence and information available.

Modifications are made to regulation 10(4) of the principal Regulations, which applies when the Secretary of State is considering exercising powers under regulation 10(2) on medical grounds or is considering withdrawing or varying a direction given on those grounds. The Secretary of State is no longer obliged to arrange a medical examination at the request of the person concerned.