

EXPLANATORY MEMORANDUM TO
THE SCHOOL STAFFING (ENGLAND) REGULATIONS 2009

2009 No. 2680

1. This explanatory memorandum has been prepared by the Department for Children, Schools and Families and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Purpose of the instrument**

2.1 The School Staffing (England) Regulations 2009 (“the Staffing Regulations”) consolidate the School Staffing (England) Regulations 2003 (SI 2003 No. 1963), the School Staffing (England) (Amendment) Regulations 2003, (SI 2003 No. 2725), the School Staffing (England) (Amendment) Regulations 2006 (SI 2006 No. 1067) and the School Staffing (England) (Amendment) (No.2) Regulations 2006 (SI 2006 No. 3197).

2.2 They also incorporate several new provisions. They place a new duty on the governing body to ensure the head teacher complies with the duties imposed and benefits from entitlements conferred on the head teacher by any order made under section 122 of the Education Act 2002 (regulation 5(1)). (Orders made under section 122 make such provision by reference to a document entitled the School Teachers Pay and Conditions Document (STPCD), which is permitted by section 124(3)).

2.3 Regulation 5 of the Education (Review of Staffing Structure) (England) Regulations 2005 (SI 2005 No. 1032) (“the Staffing Structure Regulations”) has been moved to the Staffing Regulations (regulation 5(2)). This provision places a duty on the governing body to have regard to the desirability of the head teacher to achieve a satisfactory balance between time spent discharging their professional duties and pursuing personal interests.

2.4 They also make it mandatory for at least one person involved in the interviewing of job applicants at a school to be trained in safer recruitment techniques (regulation 9).

2.5 The opportunity has also been taken to make some minor amendments, in order to remove inconsistencies within the Regulations, to clarify the intention of some of the regulations and to modernise them.

3. **Matters of special interest to the Joint Committee on Statutory Instruments.**

3.1 In their seventh report of session 2006-2007, the JCSI stated that regulation 3(8) and (11) of S.I. 2006/3197, which inserted regulations 18A and 26A into S.I. 2003/1963, did not accord with proper drafting practice in that

they were drafted in the passive voice and left the identification of the person upon whom the obligation is put to be deduced purely from similar obligations in nearby provisions. The Committee welcomed the Department's commitment to give consideration to the desirability of changing the drafting style of S.I. 2003/1963 when the Regulations were consolidated. The Department has now done this. The Staffing Regulations are now drafted throughout in the active voice and clearly identify the person upon whom each duty is placed.

4. Legislative Context

4.1 Sections 72 and 138(7) of the School Standards and Framework Act 1998 and sections 19(3), 26, 34(5), 35(4) and (5), 36(4) and (5) and 210(7) of the Education Act 2002 confer powers on the Secretary of State to make regulations relating to the staffing of schools, including, in particular, regulations which make provision for the appointment, discipline, suspension and dismissal of teachers and other staff in maintained schools. The Secretary of State for Children, Schools and Families has used these powers to make such provision in the Staffing Regulations.

5. Territorial Extent and Application

5.1 This instrument applies to England.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- *What is being done and why*

7.1 In April 2009 Ministers approved the bringing of these Regulations into force on 2 November 2009. Although Ministers subsequently made a commitment in May 2009 to bring all schools-related SIs into force on 1 September, " and to strive to lay them by 30 June ", due to other Departmental commitments, including work on the Apprenticeships, Skills, Children and Learning (ASCL) Bill, it was not possible to finalise these Regulations in time for a 1 September commencement. For those regulatory changes which do not introduce any new burdens on schools the commencement date will be 2 November 2009.

7.2 New regulation 5(1) – Following evidence of non-compliance with the School Teachers' Pay and Conditions Document ("STPCD") the Secretary of State made a public commitment in March 2008 to introduce legislation as soon as possible to ensure that all schools comply. Consequently, several new clauses were inserted into the ASCL Bill to give local authorities powers to issue warning notices to governing bodies where they fail to comply with any provision in the STPCD concerning one or more

of their teachers or where they fail to ensure that the head teacher of the school complies with any such provision and give the Secretary of State for Children, Schools and Families powers to require local authorities to issue such notices. In addition to these measures, the Staffing Regulations place a duty on governing bodies to ensure the head teacher complies with the duties imposed (which include a duty to manage their staff in accordance with their terms and conditions) and benefits from the entitlements conferred on the head teacher by the STPCD. If a governing body fails to comply with this duty the Secretary of State will be able to exercise his 'default powers' in the Education Act 1996 to direct the governing body to comply. In view of the Secretary of State's public commitment and the fact that this is something which governing bodies should be doing anyway, he does not wish to postpone bringing this provision into force until 1 September 2010."

7.3 New regulation 5(2) - Upon reviewing the Staffing Structure Regulations the Department decided that it would be better if regulation 5 of those Regulations was transferred into the Staffing Regulations.

7.4 New regulation 9 - Safer recruitment training - The majority of school recruitment takes place towards the end of the school year, so that schools have new staff in place for the beginning of the next school year in September. If this mandatory training requirement were to be introduced in September 2010, it would not have any real impact until the following school year. By introducing it in January 2010, this will ensure that all recruitment which takes place in the lead up to September 2010 and thereafter will be carried out by individuals or panels at least one of whom has completed the safer recruitment training in accordance with the Bichard recommendations. Although this is outside the agreed arrangements for introducing SIs with an effective date of September, we believe that it is justified in light of the need to fully implement those recommendations.

- ***Consolidation***

7.5 These Regulations consolidate S.I. 2003/1963, as amended by S.I. 2003/ 2725, S.I. 2006/1067 and S.I. 2006/3197.

8. Consultation outcome

8.1 A consultation attracted 41 responses from the school workforce, religious organisations, local government, and professional bodies. The consultation took place over a twelve week period ending on 24 July 2009. There was general acceptance of the transfer of Regulation 5 (regarding the work/life balance of head teachers) of The Education (Review of Staffing Structure) (England) Regulations 2005 to the Staffing Regulations. The addition of a duty on governing bodies to ensure head teachers comply with their duties and benefit from entitlements conferred upon the head teacher by the School Teachers' Pay and Conditions Document received a similar response. Widespread support was also shown for the inclusion of a regulation making it mandatory for at least one person involved in the selection of staff to have been trained in 'Safer Recruitment'.

9. Guidance

9.1 The Department has revised the statutory guidance associated with these Regulations to reflect the changes. The primary purpose of the guidance is to explain what is required of governing bodies, local authorities and head teachers by the Regulations. Where appropriate, it also gives some guidance on, or pointers to, other Acts and Regulations relevant to the employment of staff in maintained schools. The guidance will be issued to coincide with the coming into force of the Regulations.

10. Impact

10.1 There will be no impact on business, charities or voluntary bodies.

10.2 The impact on the public sector will be minimal. The safer recruitment training is provided free of charge, although there will be a cost associated with providing cover for staff attending the training.

10.3 An impact assessment is attached to this memorandum for the changes relating to ‘Safer Recruitment Training’.

10.4 Impact assessments are not necessary for the other policy areas as the Regulations merely reflect changes to policies that are being taken forward as part of the ASCL Bill currently progressing through Parliament and the assessments formed part of the original Bill work.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The changes to the Regulations should reduce the number of queries directed at the Department, local authorities and Local Government Employers by employers, regarding staffing matters. The impact of the changes will be subject to on-going review and will be formally reviewed after 12 months and the legislation may be amended accordingly.

13. Contact

Anthony Wilson at the Department for Children, Schools and Families (Tel: 01325 391124 or e-mail anthony.wilson@dcsf.gsi.gov.uk) can answer any queries regarding this instrument.