

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@dcyf.gov.uk) can answer any queries regarding this instrument.

Summary: Intervention & Options

Department /Agency: Department for Children, Schools and Families	Title: Impact Assessment of the School Staffing (Consolidation) (England) Regulations 2009	
Stage: Consultation	Version: 1	Date: 17 July 2009
Related Publications: E-consultation, DCSF website		

Available to view or download at:

<http://www.dcsf.gov.uk/consultations/index.cfm?action=consultationDetails&c>

Contact for enquiries: Richard Symms

Telephone: 01325 391315

What is the problem under consideration? Why is government intervention necessary?

Recruiting the adequate school staff plays an essential role in safeguarding children, which is one of the department's main priorities. However, the problem of asymmetric information arises in every recruiting process (25,000 every year). One way to tackle this problem is by training those who will be carrying out the recruitment. However, despite ongoing reminders to LAs/schools take-up remains low. Given the importance of this issue government intervention is necessary to ensure that at least one teacher/governor in every school has received an adequate training on recruitment procedures.

What are the policy objectives and the intended effects?

To ensure that school staff involved in recruiting other school staff know how to deal with the problem of asymmetric information and safer recruitment practices are applied to all school staff recruitment to minimise the risks to children.

Schools should adopt recruitment practices that help deter, reject or identify people who are unsuitable to work with children.

What policy options have been considered? Please justify any preferred option.

Guidance in the form of on-line training and training materials for 'face-to-face' training sessions have been available since 2005. LAs and schools have been encouraged to comply with the recommendation, but the take-up has not been as expected. A Data Collection exercise in December 2008 confirmed that 40% of schools have the recommended two people trained, 34% of schools have one person trained and 26% of schools have no-one trained. 700 trainers have been trained to deliver the training across local authorities. The proposal is to make the training mandatory for schools from 1 Jan 2010.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects? Normally 2-3 years; at Richard's request or as part of a wider review of whole safeguarding policy in line with the ISA's Vetting & Barring Scheme or Safer recruitment in Education Guidance.

Ministerial Sign-off For consultation stage Impact Assessments:

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister:

Vernon Coaker.....Date: 13th August 2009

Summary: Analysis & Evidence

Policy Option:	Description:
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COSTS	ANNUAL COSTS	Description and scale of key monetised costs by 'main affected groups' The on-line training is free to schools. One-off costs can be based on head teacher completing the training - a data collection exercise identified - 40% of schools have the recommended two people trained, 34% of schools have one person trained and 26% of schools have no-one trained. See Annex A.		
	One-off (Transition) Yrs			
	£ 1,900,800			
	Average Annual Cost (excluding one-off)			
	£ 250,272		Total Cost (PV)	£ 4,305,334
Other key non-monetised costs by 'main affected groups'				

BENEFITS	ANNUAL BENEFITS	Description and scale of key monetised benefits by 'main affected groups' This policy aims at teachers and headteacher to enhance their recruitment skills so people unsuitable to work with children cannot get a post in schools. The potential benefits are the costs associated with an offence (cost of police investigation and victims' personal losses: £1,100,000 per homicide on average)		
	One-off Yrs			
	£			
	Average Annual Benefit (excluding one-off)			
	£		Total Benefit (PV)	£
Other key non-monetised benefits by 'main affected groups'				
The policy will result in approximately an extra 25,000 candidates a year receiving the new safeguarding checks before recruitment.				

Key Assumptions/Sensitivities/Risks If this policy prevents 4 homicides over period of 10 years, then benefits will equal (roughly) costs (see Annexes)

Price Base Year	Time Period Years	Net Benefit Range (NPV) £	NET BENEFIT (NPV Best estimate) £
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What is the geographic coverage of the policy/option?	England			
On what date will the policy be implemented?	1 st January 2009			
Which organisation(s) will enforce the policy?	OFSTED			
What is the total annual cost of enforcement for these organisations?	£			
Does enforcement comply with Hampton principles?	No			
Will implementation go beyond minimum EU requirements?	Yes/No			
What is the value of the proposed offsetting measure per year?	£			
What is the value of changes in greenhouse gas emissions?	£			
Will the proposal have a significant impact on competition?	Yes/No			
Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium	Large
Are any of these organisations exempt?	No	No	N/A	N/A

Impact on Admin Burdens Baseline (2005 Prices)			(Increase - Decrease)
Increase of £	Decrease of £	Net Impact	£

Key: Annual costs and benefits: Constant Prices (Net) Present Value

[Use this space (with a recommended maximum of 30 pages) to set out the evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Ensure that the information is organised in such a way as to explain clearly the summary information on the preceding pages of this form.]

Background

In 2004, following the murders of Jessica Chapman and Holly Wells at Soham, Sir Michael Bichard was asked to lead an independent inquiry into child protection measures, record keeping, vetting and information sharing in Humberside Police and Cambridgeshire Constabulary. The report of Sir Michael's inquiry made 31 recommendations, most of which fell to the Home Office to implement. There were 8 recommendations that fell to this Department, including the following two:

Recommendation 16: Headteachers and school governors should receive training on how to ensure that interviews to appoint staff reflect the importance of safeguarding children; and

Recommendation 17: From a date to be agreed, no interview panel to appoint staff working in schools should be convened without at least one member being properly trained.

Following a submission in March 2008, the then Minister agreed that Safer Recruitment Training would become a mandatory requirement for the recruitment of school staff. Since then officials have been exploring the earliest practical date for implementing the training and the best model for delivery.

It was originally hoped to introduce the mandatory requirement by September 2009, however, officials now recommend that the mandatory requirement should be implemented in January 2010, as part of proposed wider changes to the School Staffing Regulations. Information collected from Local Authorities (LAs) suggests that January 2010 is a realistic date to allow LAs to complete their current training programmes.

The on-line training is free to schools and has been the preferred route for the majority of those already trained. The training is highly regarded, easy to use and accessible. However, there are some headteachers and governors who prefer face-to-face training. Some 700 trainers have been trained to deliver workshops locally. Data collection from LAs suggests that they are already providing training using their own staff, who have been trained by NCSL and are using approved NCSL materials. Some LAs are providing this service for free and therefore not incurring costs but many charge schools on a cost recovery basis. The original launch of safer recruitment training advised schools that no central funding would be provided for the training.

The data collection exercise undertaken by Government Office Safeguarding Advisers (GOSAs) on behalf of the Department in December 2008 confirmed that 40% of schools have the recommended two people trained, 34% of schools have one person trained and 26% of schools have no-one trained (summary breakdown attached separately). The data collection also confirmed that in all but two of the 30 LAs surveyed, all had plans to have at least one person trained in each school by the end of 2009.

Ongoing enquiries and feedback from schools that some will not take steps to train staff until such time as the training becomes mandatory.

Despite the availability of the training since 2005 take-up has been below that expected at the outset which implies that reliance on self-regulation is a risk to safeguarding of children in schools. Stakeholders represented on the Steering Group have an overwhelming view that the training should become a mandatory requirement in the recruitment of all school staff and deem not undertaking the training as an unacceptable risk to children.

Rational

Recruiting the adequate school staff plays an essential role in safeguarding children, which is one of the department's main priorities. However, the problem of asymmetric information arises in every recruiting process. One way to tackle this problem is by training those who will be carrying out the recruitment. However, despite ongoing reminders to LAs/schools take-up remains low. Given the importance of this issue government intervention is necessary to ensure that at least one teacher/governor in every school has received an adequate training on recruitment procedures.

Safer recruitment training fits within the wider context of safeguarding children and the responsibilities of all local authorities, schools and FE colleges in England to safeguard and promote the welfare of children and young people. It is vital that schools adopt recruitment and selection procedures that help deter, reject or identify people who are unsuitable to work with children. Safer practice in recruitment means thinking about and including issues to do with child protection and safeguarding and promoting the welfare of children at every stage of the process.

The training provides valuable information on a safer school culture, and advice and guidance to strengthen safeguards against employing unsuitable people in schools. The training will help schools demonstrate that they have effective recruitment and selection processes in place to ensure learners are both well-taught and protected. Ofsted review compliance through the school self-evaluation form as part of the inspection process.

The Department is working with the Children's Workforce Development Council to develop similar on-line training and training materials for those involved in recruitment across the wider children's workforce. The part of the agreement to provide the training to some 250,000 individuals across the wider workforce it has been decided that the training for the schools sector will be transferred from NCSL provision to CWDC. This will achieve a more robust platform for delivery and will extend the training capacity to allow other than heads and governors in schools to undertake the training.

Similar developments are being taken forward by the Department for Business, Innovation and Skills who are working with the Learning and Skills Improvement Service to make the training available to the Further Education sector.

Risk

Imposing costs on schools yet to engage on safer recruitment training.

Imposing an additional cost for those schools (headteachers/teachers) who have engaged in other forms of recruitment training to comply with the regulatory requirement to complete training approved by the Secretary of State.

Non-compliance risks an unlawful appointment of a staff member.

Evaluation and Monitoring Plans

An evaluation exercise is not planned due to the training being regulated as a mandatory requirement.

Responsibility for compliance rests with the school (record keeping is recommended in the *Safeguarding Children and Safer Recruitment in Education* guidance refers).

OFSTED inspection of schools will check compliance.

Local Authorities/Local Safeguarding Children Boards/Government Office Safeguarding Advisers all have a responsibility to monitor take-up and encourage participation across their areas/regions.

Ongoing general reviews of safeguarding practice will monitor take-up.

Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	Yes/No	Yes/No
Small Firms Impact Test	Yes/No	Yes/No
Legal Aid	Yes/No	Yes/No
Sustainable Development	Yes/No	Yes/No
Carbon Assessment	Yes/No	Yes/No
Other Environment	Yes/No	Yes/No
Health Impact Assessment	Yes/No	Yes/No
Race Equality	Yes/No	Yes/No
Disability Equality	Yes/No	Yes/No
Gender Equality	Yes/No	Yes/No
Human Rights	Yes/No	Yes/No
Rural Proofing	Yes/No	Yes/No

Annexes

Annual Costs

Calculation of Compliance Costs 2008

The compliance cost is basically (1) the cost to teachers/ headteachers / deputy head of taking part in the recruitment training when the act comes into force plus (2) the cost over the years of training for those who become headteacher and who have not taken this training.

Head	2009	With On-Costs		
	Annually	Weekly*	Daily**	Hourly***
Nur/Pri Head	64,617	1,657	331.37	41.42
Sec Head	89,818	2,303	460.61	57.58
Dep/asst Head				
Nur/Pri Dep				
Head	54,408	1,395	279.01	34.88
Sec Dep Head	64,617	1,657	331.37	41.42
CT				
Nur/Pri CT	39,287	1,007	201.47	25.18
Sect CT	43,164	1,107	221.36	27.67

* 39 weeks of work per year

** 5 days a week

*** 8 hours a day

Source: 2009's figures are based on 2007's figures (School Workforce in England (Jan 2008) <http://www.dcsf.gov.uk/rsgateway/DB/SFR/s000813/index.shtml>) including 2008's pay raise (<http://www.teachernet.gov.uk/docbank/index.cfm?id=12833>), 2009's pay raise (3% estimate) plus on-costs (based on DCSF estimates)

(1) Based on the number of schools yet to have anyone trained in safer recruitment:

26 % of the 24,000 schools (9,600) have none trained as set out in evidence section (unable to determine the proportion of primary or secondary schools)

Primary Heads

$9,600 \times 4 \text{ hours} \times \text{£}41.42 = \text{£}1,590,528$

Cost per individual head = £165.68

Secondary Heads

$9,600 \times 4 \times \text{£}57.58 = \text{£}2,211,072$

Cost per individual head = £230.32

Average cost per individual school =£198

Total cost for 9,600 schools = £ 1,900,800

(2) Cost derived from new headteachers (without previous training) who come to replace headteachers who get retired.

Lower bound: 843 headteachers a year (4 hours a year) = £166,914. Over ten years (3.5% discount rate) = £1,436,743

Upper bound: 1,685 headteachers a year (4 hours a year) = £333,630. Over ten years (3.5% discount rate) = £2,871,782

Averaging = £2,154,262

Total cost = £1,900,800 (one-off) + £2,154,262 (running over 10 years) = £4,305,334

Annual Benefits

This policy aims at teachers and headteacher to enhance their recruitment skills so people unsuitable to work with children cannot get a post in schools. The potential benefits are the costs associated with an offence (cost of police investigation and victims' personal losses).

The average cost of a homicide is £1,100,000 and a sexual offence £ 19,000 (see "*The Economic and Social Costs of Crime*", Home Office Research Study 217). These are average figures and, therefore, the figures that we will be using to estimate costs and benefits.

However we should bear in mind that when these offences affect children these figures are likely to be higher given children's longer lifespan, their greater emotional impact on children and their families, finally, the greater social unrest that they bring about. For example, in the case of the investigation into the murder of Holly Wells and Jessica Chapman (known as Operation Fincham) the total cost was £5,102,182 (Cambridgeshire Police Authority). This figure does not include the emotional and physical impact on victims.

Net Benefit

If this policy prevents 4 homicides over a 10 years period, then benefits will equal (roughly) costs.