

EXPLANATORY MEMORANDUM TO
THE EDUCATION (SPECIFIED WORK) (ENGLAND) REGULATIONS 2012

2012 No. 762

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

2. Purpose of the instrument

2.1 These Regulations define ‘specified work’ and provide that it may only be carried out in schools by qualified teachers and persons who satisfy certain requirements. The detail of these requirements is set out in the Schedule.

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

3.1 None.

4. Legislative Context

4.1 These Regulations revoke and replace the Education (Specified Work and Registration) (England) Regulations 2003 (SI 2003/1663) (“the 2003 Regulations”). Certain provisions repeat provisions in the 2003 Regulations, some with amendment to reflect the transfer of responsibilities to the Secretary of State from the Training and Development Agency for Schools (“TDA”) and the General Teaching Council for England (“GTCE”) as these are abolished by the Education Act 2011 (“the 2011 Act”).

4.2 Also as Information Communication Technology (“ICT”) is no longer part of the teacher trainee skills test, these Regulations provide for “teacher trainee skills tests” to mean only the literacy and numeracy teacher trainee skills tests administered by the Secretary of State. Further these Regulations restrict the exceptions allowing individuals who would not otherwise be permitted to carry out specified work to do so where approval has been given by the Secretary of State.

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

- 7.1 These Regulations revoke and replace the 2003 Regulations, to reflect a number of wider Departmental policy changes, some of which are related to the Education Act 2011 that directly impact on the issue of who in schools, in addition to qualified teachers, may carry out specified work.
- 7.2 The 2011 Act provides for the abolition of the TDA and GTCE and the bringing of their key functions back to the Secretary of State where they will be carried out on his behalf by a new executive agency, the Teaching Agency. The abolition of these organisations is consistent with the Government's plans to reform Arm's Length Bodies to achieve greater efficiency and provide appropriate accountability for ongoing activities.
- 7.3 Once the GTCE is abolished there will no longer be a register of teachers. In future, the Secretary of State will maintain a record of all teachers who have qualified teacher status ("QTS") and have passed their statutory induction period, and a list of teachers prohibited from teaching and those with other sanctions imposed by the GTCE that are still current. This will provide employers with an important resource in assessing qualifications as well as establishing who should not be employed as a teacher.
- 7.4 Teachers who have failed successfully to complete their probation will not now be permitted to carry out specified work unless they have received the Secretary of State's approval to do so before 1st September 2012. The previous saving provision as regards teachers who started but did not complete probation has been repeated in these Regulations
- 7.5 The Schedule to these Regulations sets out the requirements and conditions to be met by those individuals who wish to carry out specified work but who do not have QTS. The provisions in the 2003 Regulations concerning existing unqualified teachers in nursery classes and at nursery school (paragraph 1), instructors with special qualifications and expertise (paragraph 2), overseas trained teachers (paragraph 3) and those on employment-based teacher training schemes (paragraph 5), are repeated.
- 7.6 From the date of these Regulations trainee teachers who have yet to pass the teacher trainee skills test (paragraph 4 of the Schedule) have one year to do so if they wish to continue carrying out specified work. The 2003 Regulations permitted those individuals to carry out specified work until 31st August 2008 or such longer period as may have been approved by the Secretary of State. Under these Regulations trainee teachers who have yet to pass teacher trainee skills tests will not be permitted to carry out specified work after 31st March 2013.
- 7.7 In these Regulations, "teacher trainee skills tests" refers to the literacy and numeracy teacher trainee skills tests. The Department confirmed in the initial teacher

training implementation plan, published in November 2011, the intention to remove the ICT skills test which had been part of the skills tests.

- 7.8 Paragraph 6 of the Schedule (persons who may carry out specified work under supervision) is concerned with teaching assistants and student teachers. There is no legislative limit on the length of time these individuals may carry out specified work under supervision. The 2003 Regulations permitted Student Teachers to carry out supervised specified work, in certain circumstances, for a maximum of two years.

8. Consultation outcome

Abolition of TDA and GTCE:

- 8.1 The intention to abolish the TDA and GTCE and bring their key functions into the Department was set out in the Schools White Paper “The Importance of Teaching” in November 2010. The Department provided an opportunity for a range of interested groups, including the teacher and head teacher unions, to discuss and comment on the issues. The Department received no representations on the proposed abolition of the TDA. A range of representations on the decision to abolish the GTCE were received, of which the majority were broadly positive.

- 8.2 Representations were made, primarily from professional associations and unions representing head teachers, and from MPs and Peers during the passage of the Bill, about the loss of data resulting from the removal of the register of teachers. The Department’s Education Forum, which includes professional associations and unions representing head teachers, teachers and teacher employers, was consulted about what essential data should be maintained. After careful consideration, the Government decided that the Teaching Agency would continue to maintain a record of teachers who had gained QTS and passed induction, as well as a list of those prohibited from teaching.

Probationary period savings provision:

- 8.3 A review of induction arrangements was carried out in summer 2011, followed by a twelve week public consultation on proposed changes to the Education (Induction Arrangements for School Teachers) (England) Regulations 2008 (SI 2008/657). 70 % of respondents agreed that the facility for teachers who failed probation prior to 1992 to apply to the Secretary of State for consent to carry out specified work should be removed.

Teacher trainees and the skills test

- 8.4 The proposals to remove the ICT skills tests and make the numeracy and literacy skills tests entry requirements to initial teacher training were consulted upon in the strategy document “Training our next generation of outstanding teachers” published in June 2011. There was general support for these proposals and confirmation they would

be adopted was given in the implementation plan of the same name published in November 2011.

9. Guidance

9.1 The Department is publishing advice which will inform teachers, employers and the public of the role of the new Teaching Agency and the Teachers' Standards can be found at <http://media.education.gov.uk/assets/files/pdf/t/teachers%20standards%20from%20september%202012.pdf>

10. Impact

10.1 This instrument has no impact on business, charities or voluntary bodies.

10.2 This instrument has no impact on the public sector.

10.3 An extract from the Impact Assessment for the Education Act 2011 is attached to this memorandum and will be published alongside the Explanatory Memorandum on www.legislation.gov.uk.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The Regulations are updated when a need arises. Feedback is received from schools and local authorities as well as national representatives of teachers and teacher employers and this is taken into consideration when any future changes are considered.

13. Contact

13.1 Carol Macmillan at the Department for Education (tel: 01325-735 667; or email: carol.macmillan@education.gsi.gov.uk) can answer any queries regarding the instrument.

Extract from the overarching Impact Assessment for the Education Act 2011 - Abolition of the General Teaching Council for England and the Training and Development Agency for Schools:

Abolish the General Teaching Council for England (GTCE) and enable the Secretary of State to carry out its functions relating to serious professional misconduct and barring in a more efficient and effective way

Rationale for Intervention

The GTCE has been the body responsible for regulating the teaching profession in England. As an arm's length body, the GTCE has not been directly accountable to ministers, so there has been less effective scrutiny of the efficiency and effectiveness with which it has performed its functions than there would otherwise have been.

In addition, the arrangements for registering and regulating teachers, and barring them where necessary, have been too complex and bureaucratic, and they have made it difficult for head teachers to deal swiftly and effectively with teacher misconduct and incompetence.

The Education Act therefore makes the regulation of teachers directly accountable to Ministers and Parliament by abolishing the GTCE, and scales back the former level of government intervention. Only the most serious cases of misconduct will be a matter for the national regulator and employers will be able to exercise their own judgement about which cases they refer. We will no longer maintain an extensive and frequently updated teacher register. Instead we will maintain a list only of those teachers who have been barred from the profession, and a database with information about who has qualified teacher status and who has passed a statutory induction period.

Costs

The GTCE will continue until 31 March 2012. The direct costs associated with closure are estimated by the GTCE to be £15m in 2011-2012, of which the Department will cover £8m and the GTCE £7m.

There may be some additional, albeit minimal costs, to maintained and independent schools and sixth forms in complying with the new arrangements. Schools will need to (i) understand the new arrangements, (ii) check the barred list and (iii) consider whether to refer a case to the Secretary of State. The time taken for (i) and (ii) is expected to be negligible. Some Independent Schools and sixth forms may need to spend additional time considering whether to refer cases to the Secretary of State, if previously they did not operate under GTCE arrangements, but now they will be required to do so.

If we assume referral rates are similar in the maintained and independent sectors, we can expect the maintained sector to make approximately 84 referrals per year. If we assume that half of independent schools participate in the existing arrangements, there

will be an additional cost associated with approximately 42 referrals. Using salary costs from the maintained sector, and assuming consideration of a referral takes half a day of senior staff time, total discounted costs between 2012 and 2021 for the independent sector are £85k.

Similarly, some sixth form colleges will be affected by the new arrangements, if they were not previously operating under GTCE arrangements. Equivalent assumptions suggest the number of additional referrals would be ten, at a discounted cost between 2012 and 2021 of £13k.

The total discounted costs associated with the abolition of the GTCE are therefore £15m.

Benefits

The GTCE has been funded indirectly by the Department, in that it has refunded the approximately 500,000 teachers who have registered with the GTCE each year. These refunds were projected to amount to £19m per year after 2011-2012. Taking over residual GTCE functions, primarily teacher regulation, will require approximately £8m per year. This is £11m less than the estimated level of Departmental expenditure on the GTCE from 2012-2013.

Between 2012-2013 and 2019-2020, we estimate the total discounted benefits to be £74m. The additional cost to the Department of producing a list of those barred from the profession is expected to be negligible.

As far as it can be monetised, the net present value is therefore estimated to be £59m.

Further benefits derive from the associated changes to the arrangements for the regulation of teachers. For example, head teachers will save some of the time taken up by the previous regulatory regime; and there will no longer be a need for every teacher to be registered with the GTCE and for that information to be regularly updated.

Risks

There is a risk that schools may take time to get used to the new mechanisms for accessing information about teachers once the GTCE 'catch-all' registration system has gone. Careful management and effective communication of changes to the functions performed by the GTCE will mitigate this risk.

Introduce restrictions on reporting on allegations against teachers before they are charged

Rationale for Intervention

Attracting and retaining excellent teachers, and giving them the authority they need to do their job are crucial parts of the Government's efforts to raise standards. Teachers

have been at risk of being named publicly when allegations which are later found to be malicious or unfounded are made against them by pupils. There has been no provision in legislation preventing the media from publishing information identifying teachers against whom allegations have been made. The Education Act gives teachers a legal right to anonymity from allegations made by pupils until the point they are charged with a criminal offence.

Costs

There will be small costs to editors and journalists in relation to the time it takes for them to understand the new provisions.

Benefits

Benefits will include a reduction in the number of teachers suffering the consequences of unfounded allegations on their personal and professional lives. Evidence indicates that only a very small number of teachers have been identified in the local press when false allegations have been made against them but, for the individual teachers affected, the benefits would be substantial. There will also be an impact arising from the increased sense of security this measure will deliver for all teachers.

This policy should make teaching a more attractive profession and reinforce teachers' authority to ensure discipline in the classroom and give them the powers they need to deal with misbehaviour by pupils. This should benefit pupils, the school system and teachers. There may also be a reduction in the costs associated with having to replace teachers who leave the profession.

Abolish the Training and Development Agency (TDA) for schools and transfer its functions to the Secretary of State

Rationale for Intervention

The TDA has been responsible for the training and development of the school workforce, one of the most important functions within the education system. As an arm's length body, the TDA has not been directly accountable to ministers, so there has been less effective scrutiny of the efficiency and effectiveness with which it has performed its functions than there would otherwise have been.

Government intervention was therefore necessary to abolish the TDA and make its functions directly accountable to Ministers and Parliament. This change will enable more effective scrutiny of the TDA's functions, which carry significant costs and are of vital importance to education standards, and should allow Ministers to identify areas where they can be delivered more efficiently and effectively.

This impact assessment deals with the abolition of the TDA, rather than with any (nonlegislative) changes to the way its functions are carried out.

Costs

The main cost is from redundancy payments for staff in TDA corporate functions such as HR, finance, communication and facilities management. Our best estimate of the total discounted cost is £2.2m.

Benefits

Transferring functions back to the Department will lead to significant savings in areas such as finance, HR, communications and facilities management. In total we estimate that these functions cost £6m p.a., so modelling a 40 per cent reduction gives us a best estimate cost saving of £2.4m p.a. There will also be annual cost savings from abolishing the TDA board and bringing senior staff salaries in line with the Department's pay scales. We estimate these to be £200,000 p.a. The total annual monetised benefits therefore amount to £2.6m and the total benefit discounted over ten years is £20.9m.

Bringing the TDA's functions back under direct ministerial scrutiny also provides the potential to make efficiencies, prioritise the functions that need to continue and streamline services so that the most cost-effective delivery of the key priorities is secured in the longer term.

Risks and Assumptions

Robust programme management, human resources and governance arrangements have been established to oversee arm's length body transition and associated risks, including managing transfer of functions from TDA to the Department.