

EXPLANATORY MEMORANDUM TO
THE SCHOOL STAFFING (ENGLAND) (AMENDMENT) REGULATIONS 2013

2013 No. 1940

1. This explanatory memorandum has been prepared by the Department for Education 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 These Regulations amend the School Staffing (England) Regulations 2009 (“the School Staffing Regulations”) so that the checks that maintained schools are required to carry out on new staff reflect recent changes to the regulation of teacher misconduct. They do this by adding to the checks the governing body of a maintained school is required to carry out before appointing a person to the school staff. The additional check is that the person is not subject to a prohibition order, or an interim prohibition order, made by the Secretary of State under section 141B or regulations made under Schedule 11A to the Education Act 2002.

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

3.1 None

4. **Legislative Context**

4.1 These Regulations are necessary to reflect changes to the regulation of the teaching profession made by the Education Act 2011. That Act abolished the former regulator, the General Teaching Council for England (“GTCE”), and section 8, which inserted new sections 141A to 141D and Schedule 11A into the Education Act 2002, gave the Secretary of State power to prohibit people from teaching on certain specified grounds. The School Staffing Regulations already require checks to be made to see if a relevant direction, prohibition, restriction or order has been made by the GTCE and these Regulations amend the School Staffing Regulations to also require a check for relevant orders made by the Secretary of State under these new powers in relation to teacher misconduct.

4.2 It is intended that other regulations will be reviewed to ensure that these amendments are replicated for other types of schools, sixth form colleges, 16 to 19 Academies, relevant youth accommodation and children’s homes.

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 Prior to April 2012 the GTCE considered matters of teacher misconduct and had a variety of sanctions that could be imposed.

7.2 Since April 2012 following the abolition of the GTCE, the Secretary of State has had the power to investigate where an allegation of misconduct has been made about a person who is carrying out teaching work and to make a prohibition order which prohibits the person from carrying out such work.

7.3 The School Staffing Regulations set out in detail the procedures that headteachers and governing bodies in maintained schools in England must follow in respect of the appointment, conduct, discipline, capability and dismissal of school staff (teachers and other school staff), including safeguarding checks. Where a governing body in a maintained school intends to make a staff appointment, it is required to perform a check to ascertain whether the person is barred from regulated activity by the Disclosure and Barring Service (DBS) or is the subject of a General Teaching Council for England and Wales (GTCEW) direction or any prohibition, restriction or order having effect as such a direction.

7.4 This amendment ensures the School Staffing Regulations keep pace with the changes to teacher prohibition in England. The amendment requires that governing bodies of maintained schools must check that the person to be appointed is not subject to a prohibition order or an interim prohibition. It also requires governing bodies to ensure that in relation to supply staff, the employment business that employs the person has carried out such checks.

- Consolidation

7.5 It is proposed that a detailed review of the School Staffing Regulations will take place during autumn 2013 with the intention that consolidated School Staffing Regulations will come into force in September 2014. The aim of that review will be to simplify the requirements within the regulations in respect of governing bodies' roles and responsibilities in the appointment, suspension and dismissal of staff; and to remove unnecessary prescription – allowing governing bodies more autonomy to manage their processes and procedures.

8. Consultation outcome

8.1 The changes to the regulation of the teaching profession were the subject of a 12 week public consultation in 2011. The consultation asked specifically for comment on the provisions in the Education Bill 2011 and proposed changes to the disciplinary and induction regulations for teachers in England. It also made clear that details of all teacher prohibitions and interim prohibitions made under the new process would be accessible to employers via an online system.

8.2 The consultation allowed for general comments to be made about the revisions to teacher prohibition, no concerns were raised about the principle of prohibiting teachers on the grounds of misconduct, or objecting in any way to governing bodies having responsibility for appointing staff or checking prohibitions. The amendment does not propose any direct change to those matters consulted on in 2011, or to any matter that we received comment on.

8.3 The changes made to the School Staffing Regulations follow the changes to the regulation of the profession made by the Education Act 2011, requiring checks to be made in respect of the new prohibition order. As these changes serve only to extend the existing checking requirements so as to encompass the new prohibition regime, it was considered that no consultation was required.

9. Guidance

9.1 We intend to update the School Staffing Guidance to reflect the inclusion of a check of prohibition orders and interim prohibitions as part of the current mandatory pre-appointment checks. In addition, we will notify maintained schools of the revised requirement as part of the “Need to Know” communication, which is sent to all schools prior to the start of the autumn term.

10. Impact

10.1 This instrument has minimal impact on business, charities, voluntary bodies or the public sector. The governing body of a maintained school is currently required to check whether a person it proposes to appoint, is subject to any direction/prohibition or order made under s142 of the Education Act 2002. A prohibition check is performed by the governing body, or in the case of a member of supply staff by the employment business, by accessing the ‘Employer Access Online’ system. This system provides information about the person to whom the check relates, including any teacher qualification held, induction status and whether they are subject to any restrictions in respect of particular activities, prohibition orders or interim prohibition orders. This means that governing bodies, and employment agencies, will not need to undertake any practical additional activity as a result of this amendment.

10.2 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 We continually monitor feedback from schools and local authorities and members of the public, which informs future changes to the regulations.

13. Contact

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carol.macmillan@education.gsi.gov.uk can answer any queries regarding the instrument.