
WELSH STATUTORY INSTRUMENTS

2004 No. 2733 (W.240)

EDUCATION, WALES

The Education (Health Standards) (Wales) Regulations 2004

Made - - - - - *19 October 2004*

Coming into force - - - - - *31 October 2004*

The National Assembly for Wales makes the following Regulations in exercise of the powers conferred on it by sections 141 and 210(7) of the Education Act 2002⁽¹⁾.

Name, commencement and application

1. These Regulations are called the Education (Health Standards) (Wales) Regulations 2004 and come into force on 31 October 2004.
2. These Regulations apply in relation to Wales.

Interpretation

3. In these Regulations —
 - “the 2002 Act” (“*Deddf 2002*”) means the Education Act 2002;
 - “employer” (“*cyflogwr*”) includes a person who engages another person to provide services otherwise than under a contract of employment;
 - “part-time” (“*rhan-amser*”) means not more than two and a half normal working days, or an equivalent period, in any working week;
 - “relevant activity” (“*gweithgaredd perthnasol*”) means an activity of the kind prescribed by regulation 5(1)(a) to (h); and
 - “teaching” (“*addysgu*”) means carrying out any activity of the kind prescribed by regulation 5(1)(a) to (d), and “to teach” is to be construed accordingly.

Revocations

4. Regulations 5, 6 and 7 of the Education (Teachers' Qualifications and Health Standards) (Wales) Regulations 1999⁽²⁾ are revoked.

⁽¹⁾ 2002 c. 32. For the meaning of “prescribed” and “regulations” see section 212.

⁽²⁾ S.I.1999/2817 (W.18), as amended by S.I. 2002/1663 (W.158), 2002/2938 (W.279), 2003/140 (W.12), 2003/2458 (W.240) and revoked in large part by S.I. 2004/1729 (W.173) and 2004/1744 (W.183).

Prescribed activities

5.—(1) Each of the following kinds of activity is prescribed for the purposes of section 141 of the 2002 Act —

- (a) planning and preparing lessons and courses for children;
- (b) delivering lessons to children;
- (c) assessing the development, progress and attainment of children;
- (d) reporting on the development, progress and attainment of children;
- (e) an activity which assists or supports teaching;
- (f) supervising, assisting and supporting a child;
- (g) an administrative or organisational activity which supports the provision of education; and
- (h) an activity which is ancillary to the provision of education.

(2) In paragraph (1)(b) “delivering” includes delivery via distance learning or computer aided techniques.

Health standards

6.—(1) A relevant activity may only be carried out by a person if, having regard to any duty of the employer under Part II of the Disability Discrimination Act 1995⁽³⁾, the person has the health or physical capacity to carry out that activity.

(2) Subject to paragraph (3), a person who is in receipt of a retirement pension by virtue of regulation E4(4) of the Teachers' Pensions Regulations 1997⁽⁴⁾ (ill health retirement) is not to be regarded as having the health or physical capacity for teaching.

(3) Paragraph (2) does not apply to a person appointed on a part-time basis to teach if the person's entitlement to receive such pension, as therein described, took effect before 1 April 1997.

(4) Where any question arises as to whether a person who has been engaged to carry out a relevant activity has the health or physical capacity to do so, that question is to be determined in accordance with regulation 7.

Determinations as to health or physical capacity

7.—(1) Any such question as is referred to in regulation 6(4) is to be determined by the employer who, in order to do so —

- (a) must afford the person an opportunity to submit medical evidence and make representations to the employer;
- (b) must consider such evidence and representations and any other medical evidence available to the employer, including medical evidence relating to the person which has been supplied to the employer in confidence on the ground that, in the opinion of the person who supplied it, its disclosure to the person to whom it relates would not be in the best interests of that person;
- (c) may require the person to submit to an examination by a qualified medical practitioner appointed by the employer;
- (d) must, if the person in question so requests, arrange for such an examination;
- (e) may, if the person fails to submit to such an examination without good reason or fails or refuses to make available to the medical practitioner who carries out such examination

(3) 1995 c. 50.

(4) S.I. 1997/3001 as amended by S.I. 1998/2255, 1999/607, 2000/665, 2000/2431, 2000/3028, 2001/871 and 2002/3058.

such medical or other information as that practitioner may reasonably require, conclude, if such other evidence and information available to the employer justifies it, that the person in question does not have the necessary health or physical capacity, notwithstanding the fact that it would otherwise have been desirable that further medical evidence be obtained.

(2) At any time before such medical examination as is referred to in paragraph (1)(c) or (d) is undertaken, the employer or the person may submit to the appointed medical practitioner a statement containing evidence or other matter relevant to the examination.

(3) A qualified medical practitioner appointed by the person being examined may be present during any such medical examination as is referred to in paragraph (1)(c) or (d).

Signed on behalf of the National Assembly for Wales under section 66(1) of the Government of Wales Act 1998(5)

19 October 2004

D. Elis-Thomas
The Presiding Officer of the National Assembly

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations set out, for the purposes of section 141 of the Education Act 2002, the activities which a person can carry out only if he or she has the health or physical capacity to do so. The Regulations apply to a person providing education at a school, at a further education institution or elsewhere under a contract with an LEA (or with a person exercising functions on behalf of an LEA). They also apply where a person is working under a contract for an LEA or governing body of a school or further education institution, other than in the provision of education, but in work which brings the person regularly into contact with children. The prescribed activities are as follows:—

- (a) planning and preparing lessons and courses for children;
- (b) delivering lessons to children;
- (c) assessing the development, progress and attainment of children;
- (d) reporting on the development, progress and attainment of children;
- (e) an activity which assists or supports teaching;
- (f) supervising, assisting and supporting a child;
- (g) an administrative or organisational activity which supports the provision of education; and
- (h) an activity which is ancillary to the provision of education.

A person who is in receipt of a retirement pension on the grounds of ill health is to be treated as not having the health or physical capacity to carry out the first four activities in the above list, which are teaching activities. However, provided such a person has the health or physical capacity to do so, he or she can carry out the final four activities in the list. The restriction on those in receipt of an ill health retirement pension does not apply to a person who was entitled to such a pension before 1 April 1997 and who works part-time.

The Regulations also set out how questions as to whether a person engaged to carry out an activity has the health or physical capacity to do so are to be determined. This includes offering the person the opportunity to submit medical evidence and to make representations and the arranging of medical examinations.

These Regulations revoke and replace the provisions of the Education (Teachers' Qualifications and Health Standards) (Wales) Regulations 1999 relating to health and mental and physical capacity.