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STATUTORY INSTRUMENTS

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**2009 No. 2680**

**The School Staffing (England) Regulations 2009**

**PART 2**

**Provisions Relating to Community, Voluntary Controlled,  
Community Special and Maintained Nursery Schools**

**Application of Part 2**

**11.** This Part applies to community, voluntary controlled, community special and maintained nursery schools.

**Manner of appointment**

**12.—**(1) Where a governing body approves, identifies, selects or recommends a person for appointment under regulation 15(5), 15(7), 16(3) or 17(1), it must determine whether that person is to be appointed—

- (a) under a contract of employment with the authority;
- (b) by the authority otherwise than under a contract of employment; or
- (c) by the governing body otherwise than under a contract of employment.

(2) The governing body must check—

- (a) the identity of any such person;
- (b) that the person meets all relevant staff qualification requirements; and
- (c) that the person has a right to work in the United Kingdom.

(3) The governing body must obtain an enhanced criminal record certificate in respect of any such person before, or as soon as practicable after, the person's appointment.

(4) In the case of any such person for whom, by reason of having lived outside the United Kingdom, obtaining such a certificate is not sufficient to establish that person's suitability to work in a school, the governing body must make such further checks as the authority consider appropriate, having regard to any guidance issued by the Secretary of State.

(5) The governing body must complete the checks referred to in paragraphs (2) and (4) before a person is appointed.

(6) Paragraphs (3) and (4) do not apply to a person who has worked in—

- (a) a school in England in a post—
  - (i) which brought the person regularly into contact with children or young persons; or
  - (ii) to which the person was appointed on or after 12th May 2006 and which did not bring the person regularly into contact with children or young persons; or
- (b) an institution within the further education sector in England in a post which involved the provision of education which brought the person regularly into contact with children or young persons,

during a period which ended not more than three months before the person's appointment.

(7) The governing body must keep a register containing the information specified in Schedule 2.

### **Application of regulation 12 to other appointments**

**13.** Regulation 12(2) to (6) and (7) (insofar as it relates to paragraphs 2 to 4, 7 and 8 of Schedule 2) also applies in relation to—

- (a) any person appointed by an authority for the purpose of working at a school to which this Part applies in the temporary absence of a member of staff of the school; and
- (b) any person appointed by an authority to work at a school as a member of the school meals staff.

### **Authority's entitlement to offer advice**

**14.—**(1) A representative of the authority may attend and offer advice at all proceedings relating to the selection or dismissal of any teacher.

(2) The governing body must consider any advice offered by the authority pursuant to paragraph (1).

### **Appointment of head teacher and deputy head teacher**

**15.—**(1) The governing body must notify the authority in writing of—

- (a) any vacancy for the head teacher; and
- (b) any post for a deputy head teacher which it has identified as one to be filled.

(2) The governing body must advertise any such vacancy or post in such manner as it considers appropriate unless it has good reason not to.

(3) Where the governing body advertises any such vacancy or post, it must appoint a selection panel, consisting of at least three of its members, other than a governor who is the head teacher or (as the case may be) a deputy head teacher, to—

- (a) select for interview such applicants for the post as it thinks fit and, where the post is that of head teacher, notify the authority in writing of the names of the applicants selected;
- (b) interview those applicants who attend for that purpose; and
- (c) where it considers it appropriate, recommend to the governing body for appointment one of the applicants interviewed.

(4) If, within a period of seven days beginning with the date when it receives notification under paragraph (3)(a), the authority makes written representations to the selection panel that any applicant is not a suitable person for the post, the selection panel must—

- (a) consider those representations; and
- (b) where it decides to recommend for appointment any person about whom representations have been made, notify the governing body and authority in writing of its reasons.

(5) Subject to regulation 12(2) and, where appropriate, regulation 12(4), where the person recommended by the selection panel is approved by the governing body for appointment, the authority must appoint that person, unless the governing body has determined that the person is to be appointed by the governing body otherwise than under a contract of employment pursuant to regulation 12(1)(c).

(6) If—

- (a) the selection panel does not recommend a person to the governing body;

- (b) the governing body declines to approve the person recommended by the selection panel; or
- (c) the authority declines to appoint the person that the governing body approves,

the selection panel may recommend another person for appointment in accordance with this regulation (but this does not prevent it from recommending an existing applicant).

(7) Subject to regulation 12(2) and, where appropriate, regulation 12(4), where the governing body decides for good reason not to advertise and conduct a selection process to fill the vacancy or post in accordance with paragraphs (2) to (4), the authority must appoint the person identified by the governing body to fill the vacancy or post, unless the governing body has determined that the person is to be appointed by the governing body otherwise than under a contract of employment pursuant to regulation 12(1)(c).

### **Appointment of other teachers**

**16.—**(1) This regulation applies to any post of teacher, other than a post of head teacher or deputy head teacher.

(2) Where the governing body identifies any such post to be filled for a period of more than four months, it must provide the authority with a specification for the post.

(3) Subject to regulation 12(2) and, where appropriate, regulation 12(4), where a person is selected by the governing body for appointment, the authority must appoint that person, unless the governing body has determined that the person is to be appointed by the governing body otherwise than under a contract of employment pursuant to regulation 12(1)(c).

(4) If the authority declines to appoint a person that the governing body selects, the governing body may select another person for appointment in accordance with this regulation (but this does not prevent it from selecting an existing applicant).

### **Appointment of support staff**

**17.—**(1) Subject to regulation 21, where the governing body identifies a support staff post to be filled, it may recommend a person to the authority for appointment.

(2) Where the governing body recommends a person to the authority for appointment under paragraph (1) it must provide the authority with—

- (a) the name of any person it recommends pursuant to paragraph (1); and
- (b) a job specification for the post, which must include the governing body's recommendations as to—
  - (i) the duties to be performed,
  - (ii) the hours of work (where the post is part-time),
  - (iii) the duration of the appointment,
  - (iv) the grade; and
  - (v) the remuneration.

(3) The grade must be on the scale of grades applicable in relation to employment with the authority and such as the governing body considers appropriate.

(4) Where the authority has discretion with respect to remuneration, it must exercise that discretion in accordance with the governing body's recommendation.

(5) The authority may be regarded as having discretion with respect to remuneration if any provisions regulating the rates of remuneration or allowances payable to persons in the authority's employment—

- (a) do not apply in relation to that appointment; or

(b) leave to the authority any degree of discretion as to the rate of remuneration.

(6) If, within a period of seven days after receiving the job specification, the authority makes written representations to the governing body relating to the grade or remuneration to be paid, the governing body must—

(a) consider those representations; and

(b) where it decides not to change the grade or remuneration to be paid, notify the authority in writing of its reasons.

(7) Subject to regulation 12(2) and, where appropriate, regulation 12(4), the authority must appoint the person recommended by the governing body to the post, unless the governing body has determined that the person is to be appointed by the governing body otherwise than under a contract of employment pursuant to regulation 12(1)(c).

### **Supply staff**

**18.—**(1) The governing body must ensure that no person supplied by an employment business to a school is allowed to begin work as a teacher or member of support staff at the school unless the authority or (as the case may be) the governing body has received—

(a) written notification from the employment business in relation to that person—

(i) that it has made the checks referred to in paragraph 5(a)(i) of Schedule 2;

(ii) that it or another employment business has applied for an enhanced criminal record certificate or has obtained such a certificate in response to an application made by that or another employment business; and

(iii) whether, if the employment business has obtained such a certificate before the person is due to begin work at the school, it disclosed any matter or information, or any information was provided to the employment business in accordance with section 113B(6) of PA 1997; and

(b) where the employment business has obtained an enhanced criminal record certificate before the person is due to begin work at the school which disclosed any matter or information or any information was provided to the employment business in accordance with section 113B(6) of PA 1997, a copy of the certificate.

(2) Subject to paragraph (3), the certificate referred to in paragraph (1)(a)(ii) must have been obtained not more than three months before the person is due to begin work at the school.

(3) Paragraph (2) does not apply in relation to a person who has worked in—

(a) a school in England in a post—

(i) which brought the person regularly into contact with children or young persons; or

(ii) to which the person was appointed on or after 12th May 2006 and which did not bring the person regularly into contact with children or young persons; or

(b) an institution within the further education sector in England in a post which involved the provision of education which brought the person regularly into contact with children or young persons,

during a period which ended not more than three months before the person is due to begin work at the school.

(4) Before a person offered for supply by an employment business may begin work at the school the governing body must check the person's identity (whether or not the employment business made such a check before the person was offered for supply).

(5) The authority or (as the case may be) the governing body must, either in the contract or in other arrangements which it makes with any employment business, require it, in respect of any person whom the employment business supplies to the school—

- (a) to provide the notification referred to in paragraph (1)(a); and
- (b) if any enhanced criminal record certificate which the employment business obtains contains any matter or information, or if any information was provided to the employment business in accordance with section 113B(6) of PA 1997, to provide a copy of the certificate.

### **Suspension of staff**

**19.**—(1) Subject to regulation 21, the governing body or the head teacher may suspend any person employed or engaged otherwise than under a contract of employment to work at the school where, in the opinion of the governing body or (as the case may be) the head teacher, such suspension is required.

(2) The governing body or (as the case may be) the head teacher must immediately inform the authority and the head teacher or (as the case may be) the governing body when a person is suspended under paragraph (1).

(3) Only the governing body may end a suspension under paragraph (1).

(4) On ending such a suspension, the governing body must immediately inform the authority and the head teacher.

(5) In this regulation “suspend” means suspend without loss of emoluments.

### **Dismissal of staff**

**20.**—(1) Subject to regulation 21, where the governing body determines that any person employed or engaged by the authority to work at the school should cease to work there, it must notify the authority in writing of its determination and the reasons for it.

(2) If the person concerned is employed or engaged to work solely at the school (and does not resign), the authority must, before the end of the period of fourteen days beginning with the date of the notification under paragraph (1), either—

- (a) terminate the person’s contract with the authority, giving such notice as is required under that contract; or
- (b) terminate such contract without notice if the circumstances are such that it is entitled to do so by reason of the person’s conduct.

(3) If the person concerned is not employed or engaged by the authority to work solely at the school, the authority must require the person to cease to work at the school.

### **School meals staff**

**21.**—(1) Subject to paragraphs (2) to (5), the authority is responsible for the appointment, discipline, suspension and dismissal of school meals staff who work or are to work at a school.

(2) Before exercising any such function the authority must consult the school’s governing body to such extent as the authority thinks fit.

(3) Where an order is in force under section 512A(1) of the Education Act 1996(1) imposing on the governing body of a school a duty corresponding to a duty of the authority mentioned in

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(1) The Education Act 1996 c. 56. Section 512A was inserted by section 116 of the School Standards and Framework Act 1998 (c.31), and amendment by EA 2002, sections 201(2) and 215(1) and Schedule 21, and by the Education Act 2005 (c. 18), section 112.

section 512(3) and (4) of that Act (duty to provide school lunches) or section 512ZB(1) of that Act (duty to provide school lunches free of charge), paragraph (4) or (5) applies as appropriate.

(4) Where the governing body and the authority have agreed that the authority will provide lunches at the school and the governing body determines that any member of the school meals staff should cease to work at the school—

(a) the governing body must notify the authority in writing of its determination and the reasons for it; and

(b) the authority must require the person to cease to work at the school.

(5) Where no such agreement has been made, regulations 7, 17, 19 and 20 apply in relation to school meals staff.

### **Checks on change of post**

**22.** Where a member of the school staff who was appointed before 12th May 2006 moves from a post which did not bring the person regularly into contact with children or young persons to a post which does, the governing body must obtain an enhanced criminal record certificate in respect of the person before, or as soon as practicable after the move.