

2003 No.3139

EDUCATION, ENGLAND

The Education (Health Standards) (England) Regulations 2003

Made - - - - *3rd December 2003*

Laid before Parliament *9th December 2003*

Coming into force - - *1st January 2004*

In exercise of the powers conferred on the Secretary of State by sections 141 and 210 of the Education Act 2002(a), the Secretary of State for Education and Skills hereby makes the following Regulations:

Citation, commencement and application

1. These Regulations may be cited as the Education (Health Standards) (England) Regulations 2003 and shall come into force on 1st January 2004.
2. These Regulations apply in relation to England.

Interpretation

3. In these Regulations—
 - “the 2002 Act” means the Education Act 2002;
 - “part-time” means not more than two and a half normal working days, or an equivalent period, in any working week;
 - “relevant activity” means an activity of the kind prescribed by regulation 5(1)(a) to (h); and
 - “teaching” means carrying out any activity of the kind prescribed by regulation 5(1)(a) to (d).

Revocations

4. The Education (Teachers’ Qualifications and Health Standards) (England) Regulations 1999(b) are hereby revoked.

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;

(a) 2002 c. 32; see section 212(1) for the definition of “regulations”.
(b) S.I. 1999/2166, revoked in large part by S.I. 2003/1662 and 2003/1663 except for regulations 5, 6 and 7 and regulation 3 to the extent that it relates to those regulations.

- (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 his employer under Part II of the Disability Discrimination Act 1995(a), he has the health and 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(b) (ill health retirement) is not to be regarded as having the health or physical capacity for teaching.

(3) Nothing in paragraph (2) shall prevent a person being appointed on a part-time basis to carry out a relevant activity if his entitlement to receive such pension took effect before 1st April 1997.

Health standards - procedures

7.—(1) If it appears to an employer that a person may no longer have the health or physical capacity to carry out a relevant activity, the employer—

- (a) must afford the person an opportunity to submit medical evidence and make representations to him;
- (b) must consider such evidence and representations and any other medical evidence available to him, including such evidence which has been furnished in confidence on the ground that it would not be in the best interests of the person concerned to see it; and
- (c) may require the person, or at his request must arrange for him, to submit himself for examination by a qualified medical practitioner appointed by the employer and, if the person fails to submit himself for such examination without good reason or refuses to make available medical evidence or information sought by the medical practitioner, the employer may reach a conclusion in the matter, including a conclusion that the person no longer has the health or physical capacity to carry out that relevant activity, on such evidence and information as is available to him, notwithstanding that further medical evidence may be desirable.

(a) 1995 c. 50; to which relevant amendments are made by S.I. 2003/1673.

(b) S.I. 1997/3001; the only relevant amending instrument is S.I. 2000/2431.

(2) At any time before such medical examination as is referred to in paragraph (1)(c) is undertaken, the employer or the person himself may submit to the appointed medical practitioner a statement containing evidence or other matter relevant to the examination: and the examination may be attended by a qualified medical practitioner appointed by the person being examined.

3rd December 2003

David Miliband
Minister of State
Department for Education and Skills

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations prescribe activities for the purposes of section 141 of the Education Act 2002 - “relevant activities” - which may only be carried out by a person who has the health and physical capacity to do so. They provide that a person in receipt of a certain ill-health retirement pension will not be regarded as having the health or physical capacity to carry out some, but not all, of these relevant activities – namely those described as “teaching”. This is subject to an exception, however, that does not automatically prevent those who became entitled to receive such pension before 1st April 1997 from teaching part-time.

These Regulations also provide procedures by which an employer may conclude that a person no longer has the health or physical capacity to carry out a relevant activity.

These Regulations supersede regulations 5, 6 and 7 of the Education (Teachers’ Qualifications and Health Standards) (England) Regulations 1999 (S.I. 1999/2166). Some obsolete provisions have been removed and some amendments have been made to take account of changes in the law concerning teachers’ qualifications and work made by sections 122, 132 and 133 of the Education Act 2002.

A full regulatory impact assessment has not been produced for this instrument as it has no impact on the costs of businesses.

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