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STATUTORY INSTRUMENTS

2006 No. 3197

EDUCATION, ENGLAND

**The School Staffing (England) (Amendment) (No.2)
Regulations 2006**

<i>Made</i>	- - - -	<i>29th November 2006</i>
<i>Laid before Parliament</i>		<i>8th December 2006</i>
<i>Coming into force</i>	- -	<i>1st January 2007</i>

The Secretary of State for Education and Skills makes the following Regulations in exercise of the powers conferred by sections 72 and 138(7) of the School Standards and Framework Act 1998(a) and sections 35(4) and (5), 36(4) and (5) and 210(7) of the Education Act 2002(b):

1. These Regulations may be cited as the School Staffing (England) (Amendment) (No.2) Regulations 2006 and come into force on 1st January 2007.

2. These Regulations apply in relation to England.

3.—(1) The School Staffing (England) Regulations 2003(c) are amended in accordance with this regulation.

(2) In regulation 3 insert the following definitions at the appropriate place in alphabetical order—

““children’s suitability statement” has the meaning given by section 113C(2) of the Police Act 1997(d);

“employment business” has the meaning given by section 13(3) of the Employment Agencies Act 1973(e) and includes a local authority and a person carrying on an employment business;”.

(3) At the end of regulation 3 insert the following—

“(5) For the purposes of these Regulations a person applies for an enhanced criminal record certificate if he countersigns an application for the certificate as a registered person (within the meaning of section 120 of the Police Act 1997) or if an application is countersigned on his behalf, and the application is submitted to the Secretary of State in accordance with Part V of that Act.”.

(4) For paragraphs (2) to (5) of regulation 11 substitute the following—

(a) 1998 c.31.
(b) 2002. c.32.
(c) S.I. 2003/1963; amended by S.I. 2006/1067.
(d) 1997 c.50.
(e) 1973 c.35.

“(2) The identity of any such person must be checked, he must meet all relevant staff qualification requirements and a check must be made of his right to work in the United Kingdom.

(3) An enhanced criminal record certificate issued pursuant to Part V of the Police Act 1997 must be obtained in respect of any such person before or as soon as practicable after his appointment, and the application for such a certificate must be accompanied by a children’s suitability statement.

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

(5) The checks referred to in paragraphs (2) and (4) must be completed before a person’s appointment.

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

during a period which ended not more than three months before his appointment.

(7) A register must be kept which meets the requirements mentioned in paragraphs (8) to (12).

(8) In relation to each member of staff appointed on or after 1st January 2007, the register must show whether—

- (a) his identity was checked;
- (b) a check was made to establish whether he is subject to any direction made under section 142 of the Education Act 2002 or any prohibition, restriction or order having effect as such a direction;
- (c) checks were undertaken to ensure that he met the requirements with respect to qualifications or registration mentioned in regulation 3(3)(a);
- (d) an enhanced criminal record certificate was obtained in respect of him;
- (e) checks were made pursuant to paragraph (4); and
- (f) a check of his right to work in the United Kingdom was made,

and the register must include the date on which each such check was completed or the certificate obtained.

(9) In relation to each member of staff in post on 1st April 2007 who was appointed at any time before 1st January 2007, the register must show whether each check referred to in paragraph (8) was made and whether an enhanced criminal record certificate was obtained, together with the date on which any check was completed or certificate obtained.

(10) Paragraph (9) applies, in the case of a member of staff appointed before 12th May 2006, only if the work of his post brings him regularly into contact with children or young persons.

(11) In relation to any person supplied by an employment business to work at the school, the register must show whether written notification has been received from the employment business that —

- (a) it has made checks corresponding to those which paragraph (8)(a) to (c), (e) and (f) requires to be recorded in relation to a member of staff of a school;

- (b) it or another employment business has applied, with a children’s suitability statement, for an enhanced criminal record certificate; and
- (c) it has obtained such a certificate in response to an application made by that or another employment business;

together with the date the notification was received.

(12) Where written notification has been received from the employment business in accordance with a contract or other arrangements made pursuant to regulation 15A(5) that it has obtained an enhanced criminal record certificate which disclosed any matter or information, or that information was provided to it in accordance with section 113B(6) of the Police Act 1997, the register must also show whether the employment business supplied a copy of the certificate to the school.

(13) It is immaterial for the purposes of paragraphs (8) and (9) whether the check was made or certificate obtained pursuant to a legal obligation.

(14) The register required to be kept pursuant to this regulation may be kept in electronic form, provided that the information so recorded is capable of being reproduced in legible form.”.

(5) For regulation 11A substitute the following—

“**11A.** Regulation 11(2) to (6), (7) (insofar as it relates to paragraphs (8) to (10) of that regulation), (8) to (10), (13) and (14) also applies in relation to—

- (a) any person appointed by a local education authority for the purpose of working at a school to which this Part or Part 3 applies in the temporary absence of a member of staff of the school; and
- (b) any person appointed by a local education authority to work at a school as a member of the school meals staff.”.

(6) In regulation 14—

- (a) omit from paragraph (1) “, which is to be filled for a period of more than four months”; and
- (b) in paragraph (2), after “any such post to be filled” insert “for a period of more than four months”.

(7) After regulation 15 insert the following—

“Supply staff

15A.—(1) No person supplied by an employment business to a school may 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 have received—

- (a) written notification from the employment business in relation to that person—
 - (i) that the checks referred to in regulation 11(11)(a) have been made, and
 - (ii) that an application for an enhanced criminal record certificate accompanied by a children’s suitability statement has been made, or such a certificate has been obtained 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 supplied to the employment business in accordance with section 113B(6) of the Police Act 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, and it discloses any matter or information, or any information was provided to the employment business in accordance with section 113B(6) of the Police Act 1997, a copy of the certificate.

(2) Except in the case of a person to whom paragraph (3) applies the certificate referred to in paragraph (1)(a)(ii) must have been obtained not more than three months before the date on which the person is due to begin work at the school.

(3) This paragraph applies to a person who has worked in—

(a) a school in England in a post—

(i) which brought him regularly into contact with children or young persons, or

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

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

during a period which ended not more than three months before the date on which he 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 his identity must be checked by the governing body at the school (irrespective of any such check carried out by the employment business before the person was offered for supply).

(5) The authority or (as the case may be) the governing body shall in the contract or other arrangements which they make 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), and

(b) if any enhanced criminal record certificate which the employment business obtains contains any matter or information, or if any information was supplied to the employment business in accordance with section 113B(6) of the Police Act 1997, to provide a copy of the certificate.”.

(8) After regulation 18 insert the following—

“Checks on change of post

18A. Where a member of the school staff who was appointed before 12th May 2006 moves from a post which did not bring him regularly into contact with children or young persons to a post which does, an enhanced criminal record certificate must be obtained in respect of him before or as soon as practicable after he moves to his new post, and the application for such a certificate must be accompanied by a children’s suitability certificate .”.

(9) For paragraphs (2) to (5) of regulation 20 substitute the following—

“(2) The identity of any such person must be checked, he must meet all relevant staff qualification requirements and a check must be made of his right to work in the United Kingdom.

(3) An enhanced criminal record certificate issued pursuant to Part V of the Police Act 1997 must be obtained in respect of any such person so before or as soon as practicable after his appointment, and the application for such a certificate must be accompanied by a children’s suitability statement.

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

(5) The checks referred to in paragraphs (2) and (4) must be completed prior to a person’s appointment.

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

during a period which ended not more than three months before his appointment.

(7) A separate register must be kept which meets the requirements mentioned in paragraphs (8) to (12).

(8) In relation to each member of staff appointed on or after 1st January 2007, the register must show whether —

- (a) his identity was checked;
- (b) a check was made to establish whether he is subject to any direction made under section 142 of the Education Act 2002 or any prohibition, restriction or order having effect as such a direction;
- (c) checks were undertaken to ensure that he met the requirements with respect to qualifications or registration mentioned in regulation 3(3)(a);
- (d) an enhanced criminal record certificate was obtained in respect of him;
- (e) checks were made pursuant to paragraph (4); and
- (f) a check of his right to work in the United Kingdom was made,

and the register must include the date on which each such check was completed or the certificate obtained.

(9) In relation to each member of staff in post on 1st April 2007 who was appointed at any time before 1st January 2007, the register must show whether each check referred to in paragraph (8) was made and whether an enhanced criminal record certificate was obtained, together with the date on which any such check was completed or certificate obtained.

(10) Paragraph (9) applies, in the case of a member of staff appointed before 12th May 2006, only if the work of his post brings him regularly into contact with children or young persons.

(11) In relation to any person supplied by an employment business to work at the school, the register must show whether written notification has been received from the employment business that —

- (a) it has made checks corresponding to those which paragraph (8)(a) to (c), (e) and (f) requires to be recorded in relation to a member of staff of a school;
- (b) it or another employment business has applied, with a children's suitability statement, for an enhanced criminal record certificate; and
- (c) it has obtained such a certificate in response to an application made by that or another employment business;

together with the date the notification was received.

(12) Where written notification has been received from the employment business in accordance with a contract or other arrangements made under regulation 24A(5) that it has obtained an enhanced criminal record certificate which disclosed any matter or information, or that information was provided to it in accordance with section 113B(6) of the Police Act 1997, the register must also show whether the employment business supplied a copy of the certificate to the school.

(13) It is immaterial for the purposes of paragraphs (8) and (9) whether the check was made or certificate obtained pursuant to a legal obligation.

(14) The register required to be kept pursuant to this regulation may be kept in electronic form, provided that the information so recorded is capable of being reproduced in legible form.”.

(10) After regulation 24 insert the following—

“Supply staff

24A.—(1) No person supplied by an employment business to a school may begin work as a teacher or member of support staff at the school unless the governing body have received—

- (a) written notification from the employment business in relation to that person—
 - (i) that the checks referred to in regulation 20(11)(a) have been made, and
 - (ii) that an application for an enhanced criminal record certificate accompanied by a children’s suitability statement has been made, or such a certificate has been obtained in response to an application 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 supplied to the employment business in accordance with section 113B(6) of the Police Act 1997; and
- (b) where the employment business has obtained such a certificate before the person is due to begin work at the school, and it discloses any matter or information, or any information was provided to the employment business in accordance with section 113B(6) of the Police Act 1997, a copy of the certificate.

(2) Except in the case of a person to whom paragraph (3) applies the certificate referred to in paragraph (1)(a)(ii) must have been obtained not more than three months before the date on which the person is due to begin work at the school.

(3) This paragraph applies to a person who has worked in—

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

during a period which ended not more than three months before the date on which he 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 his identity must be checked by the governing body at the school (irrespective of any such check carried out by the employment business before the person was offered for supply).

(5) The governing body shall in the contract or other arrangements which they make 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), and
- (b) if any enhanced criminal record certificate which the employment business obtains contains any matter or information, or if any information was supplied to the employment business in accordance with section 113B(6) of the Police Act 1997, to provide a copy of the certificate.”.

(11) After regulation 26 insert the following—

“Checks on change of post

26A. Where a member of the school staff who was appointed before 12th May 2006 moves from a post which did not bring him regularly into contact with children or young

persons to a post which does, an enhanced criminal record certificate must be obtained in respect of him before or as soon as practicable after he moves to his new post, and the application for such a certificate must be accompanied by a children's suitability certificate .”.

29th November 2006

Jim Knight
Minister of State
Department for Education and Skills

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the School Staffing (England) Regulations 2003 (“the School Staffing Regulations”), which apply to schools in England maintained by local authorities. The regulation numbers below are those of the School Staffing Regulations as amended by these Regulations.

The School Staffing Regulations, as amended by the School Staffing (England)(Amendment) Regulations 2006 (S.I.2006/1067), require teachers and support staff in maintained schools to meet specified requirements as to qualifications, health, physical capacity and the absence of any bar from working with children and young persons. They also require that, subject to exceptions, a person appointed to be a teacher or member of the support staff must, prior to or as soon as practicable after, his appointment be subject to an enhanced Criminal Records Bureau (“CRB”) check made under the Police Act 1997.

These Regulations add further requirements: a person’s identity and right to work in the United Kingdom must be checked (regulations 11(2) and 20(2)). They remove, in effect, an exception from the enhanced CRB check requirement for foreign nationals for whom carrying out such a check was inappropriate, and persons who have lived outside the United Kingdom must be subject to further checks if a CRB check is insufficient to establish suitability to work in a school (regulations 11(4) and 20(4)).

Schools are required to keep a register of the checks which they have made in respect of their own staff (regulations 11(7)-(10) and 20(7)-(10)) and, in the case of supply staff, of the information about checks provided by the supply agency (regulations 11(11) and (12) and 20(11) and (12)). Local education authorities are required to carry out the same checks on supply and school meals staff whom they appoint as they carry out on other staff (regulation 11A).

A teacher or member of support staff supplied by an agency cannot work at a school until the agency have confirmed that checks have been carried out, and schools are required in their arrangements with agencies to place them under an obligation to provide this information (regulations 15A and 24A). If a person moves from a post which did not bring him regularly into contact with children or young persons to one which does at the same school, he must be subject to an enhanced CRB check (regulations 18A and 26A).

A full regulatory impact assessment of the effect that this instrument will have on the costs of business is available from Colin Green, DfES, Caxton House, Tothill Street, London SW1H 9NA and on the Department for Education and Skills website at www.dfes.gov.uk.

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