

**EXPLANATORY MEMORANDUM TO  
THE SCHOOL SUPPORT STAFF NEGOTIATING BODY (EXCLUDED  
PERSONS) REGULATIONS 2010**

**2010 No. 856**

1. This explanatory memorandum has been prepared by The Department for Children, Schools and Families and is laid before Parliament by Command of Her Majesty.

2. **Purpose of the instrument**

2.1 This instrument prescribes those persons who would otherwise fall into the definition of ‘school support staff’ set out in section 240 of the Apprenticeships, Skills, Children and Learning Act 2009 (“the 2009 Act”), but whom it will exclude from that definition. By virtue of that exclusion, there will be no requirement for the remuneration, or other conditions of employment relating to duties or working time, of those excluded persons to be determined in accordance with any agreement reached by the School Support Staff Negotiating Body (“the SSSNB”) that the Secretary of State ratifies by order, or that the Secretary of State by order requires local authorities and school governing bodies to ‘have regard to’.

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

3.1 None

4. **Legislative Context**

4.1 This is the first use of the power in section 240(3)(b) of the 2009 Act. By excluding these groups from the statutory definition of ‘school support staff’, school governing bodies and local authorities will be allowed to continue with the current practice, whereby for certain specialised posts and where it is considered appropriate, a person may be employed under a contract that incorporates the agreements of one of the following national bodies:

- the Joint Negotiating Committee for Youth and Community Workers;
- the Soulbury Committee;
- the Joint Negotiating Committee for Local Authority Craft and Associated Employees.

4.2 The instrument also excludes persons taking part in the Foreign Language Assistants Programme (“the FLA programme”) funded by the Department for Children, Schools and Families from the statutory definition of ‘school support staff’. Details of the FLA programme can be found at: [www.britishcouncil.org/languageassistants-fla.htm](http://www.britishcouncil.org/languageassistants-fla.htm)

4.3 The 2009 Act establishes the SSSNB to consider, with a view to reaching agreement on, matters concerning the remuneration and conditions of employment relating to the duties and working time of ‘school support staff’. Without excluding these groups, implemented SSSNB agreements would have a direct effect on the contracts not only of the intended group of ‘support staff’ but also on those groups who currently have their terms and conditions agreed by the named bodies, or by the terms and conditions of the FLA programme.

## **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**

- **What is being done and why**

7.1 Sections 227- 241 and Schedule 15 of the Apprenticeships, Skills, Children and Learning Act 2009 provide the statutory underpinning for the SSSNB, which was initially established using the Secretary of State’s prerogative powers as a non-statutory body in July 09. The SSSNB is responsible for considering and agreeing matters concerning the remuneration and conditions of employment relating to the duties and working time of school support staff and referring those agreements to the Secretary of State. Such agreements will provide for delivery of a nationally consistent pay and conditions framework whilst allowing an appropriate level of local flexibility for those support staff employed in all schools maintained by local authorities in England.

7.2 For the purposes of the SSSNB, support staff are defined by section 240 of the 2009 Act and this instrument prescribes certain categories of persons who are excluded from that definition.

## **8. Consultation outcome**

8.1 As key stakeholders, social partners and advisers to the Department for Children Schools and Families, officials and ministers have consulted with the representatives of school support staff and the employers of school support staff over a number of years prior to the establishment of the SSSNB.

8.2 Consultation was sustained throughout the passage of the legislation to establish the body in statute and continues as the SSSNB progresses through its cycle of work. This prolonged dialogue was fundamental in formulating

the criteria in this instrument, and that identified those persons who should be excluded from the definition of school support staff for the purposes of the application of SSSNB agreements to employees' contracts.

8.3 Those organisations that make up the membership of the SSSNB, in their capacity of representing the interests of support staff in maintained schools in England, and those organisations that similarly represent the interests of the employers of such support staff, were consulted on the final wording of this instrument. With the exception of one member organisation, all of the organisations consulted indicated their contentment with both the wording, and intention, of the SI. The one concern received, arose from a perceived error within the references within the SI, to those sections within the ASCLA09 that provides the Secretary of State with the necessary powers to make the SI. We have since written to that organisation to explain how the regulations reflect the legal provisions and powers.

## **9. Guidance**

9.1 It is not intended that DCSF produces guidance specifically related to this instrument, as this instrument does not place any specific obligation on school governing bodies or local authorities. However, it provides sufficient detail to help them, in their capacity as employers of school support staff, to decide whether an employee's pay and other conditions of employment relating to duties and working time will be affected by Secretary of State's orders that are associated with SSSNB agreements.

9.2 It is planned that as SSSNB agreements are reached and referred to the Secretary of State for consideration, the Department will use its regular channels of communication to remind schools of the information available to use to help with implementation of any new pay and conditions framework. In addition, legislation permits that with the Secretary of State's approval, SSSNB may issue guidance in support of agreements. More generally, information on the progress of the SSSNB's work is regularly issued to school support staff, schools, local authorities and school governing bodies, via both DCSF's and individual SSSNB member organisation's channels of communication.

## **10. Impact**

10.1 An Impact Assessment has not been prepared for this instrument as no direct impact on business, charities, voluntary bodies or the public sector is foreseen.

## **11. Regulating small business**

11.1 The legislation does not apply to small business.

## **12. Monitoring & review**

12.1 This instrument does not prevent employers and employees from agreeing which particular national body's agreements will be the most appropriate to include within an employment contract, nor is its intention to do so. When deciding on the pay and conditions of employment of an employee, employers are currently able to decide the most appropriate body's framework to use for that particular employee, based on the description of the employee role to which each national body's specific framework would apply, and that flexibility will be retained.

12.2 We understand that the numbers of school employees whose contracts currently incorporate terms and conditions agreed by the national bodies named within this instrument are low. It is anticipated that this will continue to be the case as SSSNB agreements begin to be used to determine the pay and conditions of school support staff. Anecdotal evidence suggests that once it is agreed which particular national body's agreements will be used to decide the employee's terms and conditions, contracts predominantly remain unchanged for the period of the employment. Any movement between the agreements of national bodies generally results from a change in the employee's role, whereby it is agreed that the terms and conditions of a different national body become more relevant to that employee.

Whilst we do not intend to formally police the level of changes to the contracts of school support staff to incorporate terms and conditions of any of the national bodies listed, it is very likely that trade unions would be quick to identify and challenge activity of this kind, if considered to be inappropriate. If, in future, this sort of activity became apparent, DCSF would then look to take preventative action, but it would be inappropriate at this point to anticipate any 'misuse' of the system.

### **13. Contact**

Carol Macmillan at the Department for Children, Schools and Families Tel: 01325 392278 or email: [carol.macmillan@dcsf.gsi.gov.uk](mailto:carol.macmillan@dcsf.gsi.gov.uk) can answer any queries regarding the instrument.