
S T A T U T O R Y I N S T R U M E N T S

2000 No. 2419

EDUCATION, ENGLAND AND WALES

Education (Restriction of Employment) Regulations 2000

<i>Made</i> - - - - -	<i>5th September 2000</i>
<i>Laid before Parliament</i>	<i>11th September 2000</i>
<i>Coming into force</i> - -	<i>2nd October 2000</i>

The Secretary of State for Education and Employment, in exercise of the powers conferred by sections 218(6), (6ZA), (6A) and (6B) and 232(5) of the Education Reform Act 1988(a), sections 15 and 42(6) and (7) of the Teaching and Higher Education Act 1998(b) and section 6 of the Protection of Children Act 1999(c), hereby makes the following Regulations:

Citation, commencement and application

1.—(1) These Regulations may be cited as the Education (Restriction of Employment) Regulations 2000.

(2) These Regulations shall come into force on 2nd October 2000.

(3) Subject to paragraph (4) these Regulations also apply to Wales(d).

(4) Regulation 2(1) and Schedule 1, in so far as they provide for the revocation of regulation 10A of the 1993 Regulations and regulation 3(4) of the Education (Teachers) (Amendment) Regulations 1998(e), and regulations 10 and 11, do not apply to Wales.

Revocations and transitional provisions

2.—(1) The revocations set out in Schedule 1 shall have effect.

(2) Any prohibition or restriction on a person's employment in force immediately before 1 October 2000 which—

(a) is contained in a direction under regulation 10 of the 1993 Regulations; or

(b) has effect, by virtue of paragraph 1 of Schedule 1 to the 1993 Regulations, as if so contained

shall have effect as if it were contained in a direction under these Regulations and accordingly regulations 13(1)(b) and 14 shall apply to that direction.

(a) 1988 c. 40; subsection (6) of section 218 was amended by section 290(3) of the Education Act 1993 (c. 35) and section 5 of the Protection of Children Act 1999 (c. 14) and subsection (6A) was inserted by section 49(2) of the Education Act 1997 (c. 44) and amended by section 5(3) of the Protection of Children Act 1999.

(b) 1998, c. 30. Section 15 is amended by section 5(4) of the Protection of Children Act 1999.

(c) 1999, c. 14.

(d) Functions under section 218(6) of the Education Reform Act 1988 are exercisable concurrently by the Secretary of State and the National Assembly for Wales by virtue of S.I. 1999/672 as varied by S.I. 2000/1829. Functions under section 218(6A) of the Education Reform Act 1988 and sections 15 and 42(6) and (7) of the Teaching and Higher Education Act 1998 have been transferred to the National Assembly for Wales by virtue of S.I. 1999/672.

(e) S.I. 1998/1584.

Interpretation

3.—(1) In these Regulations—

“further education institution” means an institution, not being a school, which provides further education (whether or not it also provides higher education) and is either maintained by a local education authority or is within the further education sector;

“worker with children or young persons” means a person, employed—

- (a) by a local education authority; or
- (b) by the governing body of a school or institution falling within section 218(10) or (11) of the Education Reform Act 1988(a),

in work, otherwise than as a teacher, which brings him regularly into contact with persons who have not attained the age of nineteen.

(2) In these Regulations any reference to the 1993 Regulations is a reference to the Education (Teachers) Regulations 1993(b).

Relevant employment

4. Any reference in these Regulations to relevant employment is a reference to employment—

- (a) by a local education authority, as a teacher (whether or not at a school or further education institution) or worker with children or young persons;
- (b) by any other body, as a teacher at a school or further education institution;
- (c) by the governing body of a school or further education institution as a worker with children or young persons;
- (d) by the proprietor of an independent school, as a teacher or worker with children or young persons; and
- (e) at an independent school, as a teacher or worker with children or young persons; and

includes the engagement of a person to provide his services as a teacher otherwise than under a contract of employment and references to employment or relevant employment shall be construed accordingly.

Prohibition or restriction by the Secretary of State

5.—(1) The powers conferred on the Secretary of State by paragraph (2) shall only be exercisable—

- (a) on medical grounds;
- (b) on the grounds of misconduct;
- (c) on the grounds that the person concerned is not a fit and proper person to be employed as a teacher or worker with children or young persons; or
- (d) on the grounds that the person concerned is included (otherwise than provisionally) in the list kept by the Secretary of State under section 1 of the Protection of Children Act 1999 (list of individuals considered unsuitable to work with children).

(2) Where paragraph (1)(a) or (b) applies the Secretary of State may, subject to such qualifications as he may specify—

- (a) in the case of a person in relevant employment, direct his employer—
 - (i) to suspend or terminate his employment; or
 - (ii) to make his continued employment subject to specified conditions; and
- (b) in the case of such a person in respect of whom a direction is given under sub-paragraph (a) or of a person not in relevant employment, direct that—
 - (i) he be not subsequently appointed to or employed in relevant employment; or
 - (ii) he be only subsequently so appointed or employed subject to specified conditions, including conditions relating to the employment in question.

(a) Section 218(10) and (11) is amended by section 93 of, paragraph 49 of Schedule 8 to and Schedule 9 to the Further and Higher Education Act 1992 (c. 13).

(b) S.I. 1993/543. Relevant amending instruments are S.I. 1994/222, 1995/2594, 1997/2679 and 1998/1584.

- (3) Where paragraph (1)(c) or (d) applies, the Secretary of State shall—
- (a) in the case where the person concerned is in relevant employment, direct his employers to terminate his employment and direct that he be not subsequently appointed to or employed in relevant employment; or
 - (b) in the case where the person is not in relevant employment, direct that he be not subsequently appointed to or employed in relevant employment.
- (4) The employer of a person in relevant employment shall comply with any direction prohibiting or restricting that person's employment or further employment given under these Regulations.

Consultation

6. Where it appears to the Secretary of State that a person is in relevant employment, he shall not exercise his powers under regulation 5 without first consulting that person's employer save where regulation 9(1)(a) or (b) applies.

Representations, evidence and information

7.—(1) Subject to paragraph (3) where the Secretary of State is considering exercising his powers under—

- (a) regulation 5, save where regulation 9(1)(a) or (b) applies; or
- (b) regulation 12, save where regulation 9(1)(b) applies,

he shall afford the person concerned the opportunity to make representations to him and, where appropriate, submit medical or other evidence to him within 2 months of the date on which notice of that opportunity is served on the person concerned or, where he is satisfied that the person had good reason not to make such representations or submit such evidence within that period, such further period as the Secretary of State considers reasonable.

(2) A notice shall be deemed to be served for the purposes of this regulation 48 hours after the date on which it is sent.

(3) Paragraph (1) shall not apply where service cannot be effected by reason of the inability of the Secretary of State to ascertain the whereabouts of the person concerned.

Medical examination and evidence

8.—(1) Where the Secretary of State is considering exercising his powers under regulation 5 or 12 he may require the person concerned to submit himself for examination by a qualified medical practitioner appointed by the Secretary of State.

(2) At any time before such medical examination, the Secretary of State, or the person concerned, may submit to the qualified medical practitioner appointed by the Secretary of State a statement containing evidence or other matter relevant to the examination.

(3) The medical examination may be attended by a qualified medical practitioner appointed for the purpose by the person being examined.

Automatic prohibition

9.—(1) This regulation applies in the case of a person who—

- (a) on or after 1st November 1995—
 - (i) has pleaded guilty to or been found guilty of an offence set out in Schedule 2 to these Regulations against or involving a child under the age of sixteen or who has pleaded guilty to or been found guilty of an attempt to commit any such offence, by or before a court in the United Kingdom;
 - (ii) was employed in relevant employment before or at the time he committed or was convicted of the offence; and
 - (iii) was aged eighteen or over at the time the offence was committed; or
- (b) is included (otherwise than provisionally) in the list kept by the Secretary of State under section 1 of the Protection of Children Act 1999 (list of individuals considered unsuitable to work with children).

(2) Where paragraph (1)(a) applies, the Secretary of State shall, on receipt of a certificate of conviction in respect of an offence referred to in that paragraph committed by the person concerned, determine that the person concerned is not a fit and proper person to be employed as a teacher or worker with children or young persons, and give a direction in accordance with regulation 5(3)(a) or (b) whichever applies.

(3) Where paragraph (1)(b) applies, the Secretary of State shall, on receipt of notification that the person concerned has been included in the list referred to in that paragraph, give a direction in accordance with regulation 5(3)(a) or (b) whichever applies.

(4) For the purposes of paragraph (2) “certificate of conviction” shall have the meaning given to it by section 73(2) of the Police and Criminal Evidence Act 1984(a).

Person not employed in relevant employment

10. The governing body of a school or further education institution, the local education authority so far as it relates to that school or institution and the proprietor of an independent school shall take such steps as are reasonably practicable to prevent a person who is not employed by them in relevant employment but who is the subject of a direction given by the Secretary of State under these Regulations, from providing services in relation to the school or institution or persons attending it which—

- (a) are provided by whatever means and whether under contract or otherwise; and
- (b) would bring that person providing them regularly into contact with persons who have not attained the age of nineteen,

in circumstances where to allow him to provide such services would be contrary to the terms of that direction if he were to be so employed.

Misconduct reports

11.—(1) Where a person is dismissed from relevant employment on grounds of his misconduct (whether or not he is convicted of a criminal offence) or he has resigned in circumstances where his employer would have dismissed him, or considered dismissing him, on those grounds had he not resigned, his employer shall report the facts of the case and provide such further information in his possession or control as relates to the circumstances giving rise to the dismissal or resignation to the Secretary of State.

(2) In paragraph (1), the references to “dismissed from relevant employment” include the termination by the local education authority or the governing body of a school or further education institution of a person’s engagement to provide his services as a teacher in relevant employment otherwise than under a contract of employment and references to “dismissed” or “dismissing” shall be construed accordingly and the reference to “resignation” includes the termination by that person of such an engagement.

Review by the Secretary of State

12.—(1) Save where regulation 9(1)(b) applies, a direction given under these Regulations (“the earlier direction”) may be revoked or varied by a subsequent direction on either or both of the grounds referred to in paragraph (2).

(2) The grounds upon which an earlier direction may be revoked or varied under paragraph (1) are that—

- (a) the Secretary of State is in possession of information relevant to the decision to give the earlier direction which he did not have at the time that the decision was made; and
- (b) the Secretary of State is in possession of evidence of a material change in the circumstances of the person concerned occurring since the earlier direction was given.

(3) Where regulation 9(1)(b) applies an earlier direction shall be revoked if the name of the person concerned is removed from the list referred to in that paragraph.

(4) Where the Secretary of State varies a direction given under these Regulations he may, subject to such qualifications as he may specify, direct that the person concerned be only appointed to or employed in relevant employment subject to specified conditions.

(a) 1984, c. 60.

Appeals

13.—(1) Subject to paragraphs (2) and (3) an appeal to the Tribunal established under section 9 of the Protection of Children Act 1999 may be brought by a person in respect of whom a direction has been given under these Regulations—

- (a) save where regulation 9(1)(a) or (b) applies, against a direction given to him by the Secretary of State under these Regulations; and
- (b) save where regulation 9(1)(b) applies, against a refusal by the Secretary of State to revoke or vary a direction given to him under these Regulations following consideration of the information or evidence referred to in regulation 12(2).

(2) No appeal may be brought on the ground of information referred to in paragraph 12(2)(a) or evidence referred to in paragraph 12(2)(b) unless that information or evidence has first been brought to the attention of the Secretary of State under regulation 12.

(3) Where a person has been convicted of any offence involving misconduct, no finding of fact on which the conviction must be taken to have been based shall be challenged on an appeal under these Regulations.

The Tribunal's powers

14. Where on an appeal under regulation 13 the Tribunal considers that the direction is not appropriate it may order the Secretary of State to revoke or vary the direction.

5th September 2000

Estelle Morris
Minister of State,
Department for Education and Employment

SCHEDULE 1

Regulation 2(1)

Revocations

1. The Education (Teachers) Regulations 1993, SI 1993/543.
2. The Education (Teachers)(Amendment) Regulations 1994, SI 1994/222.
3. The Education (Teachers)(Amendment No. 2) Regulations 1995, SI 1995/2594.
4. The Education (Teachers)(Amendment No. 2) Regulations 1997, SI 1997/2679.
5. The Education (Teachers)(Amendment) Regulations 1998, SI 1998/1584.

SCHEDULE 2

Regulation 9(1)(a)

List of relevant criminal offences

Offences in England and Wales

1. An offence contrary to section 1(1) of the Sexual Offences Act 1956 (rape).
2. An offence contrary to section 5 of the Sexual Offences Act 1956 (sexual intercourse with a girl under the age of thirteen).
3. An offence contrary to section 6(1) of the Sexual Offences Act 1956 (sexual intercourse with a girl under the age of sixteen).
4. An offence contrary to section 10(1) of the Sexual Offences Act 1956 (incest by a man).
5. An offence contrary to section 11(1) of the Sexual Offences Act 1956 (incest by a woman).
6. An offence contrary to section 12(1) of the Sexual Offences Act 1956 (buggery).
7. An offence contrary to section 13 of the Sexual Offences Act 1956 (an act of gross indecency between men).
8. An offence contrary to section 14(1) of the Sexual Offences Act 1956 (indecent assault on a woman).
9. An offence contrary to section 15(1) of the Sexual Offences Act 1956 (indecent assault on a man).
10. An offence contrary to section 16(1) of the Sexual Offences Act 1956 (assault with intent to commit buggery).
11. An offence contrary to section 1(1) of the Indecency with Children Act 1960 (indecent with children under the age of fourteen).
12. An offence contrary to section 54(1) of the Criminal Law Act 1977 (inciting a girl under the age of sixteen to have incestuous sexual intercourse).
13. An offence contrary to section 1(1)(a), (b) or (d) of the Protection of Children Act 1978 (indecent photographs of children).

Offences in Scotland

14. An offence contrary to section 3(1) of the Sexual Offences (Scotland) Act 1976 (sexual intercourse with a girl under the age of thirteen).

15. An offence contrary to section 4(1) of the Sexual Offences (Scotland) Act 1976 (having or attempting to have, sexual intercourse with a girl of or above the age of thirteen and under the age of sixteen).
16. An offence contrary to section 2A of the Sexual Offences (Scotland) Act 1976 (incest by a man or by a woman).
17. An offence contrary to section 2B of the Sexual Offences (Scotland) Act 1976 (sexual intercourse with a step-child or former step-child).
18. An offence contrary to section 2C of the Sexual Offences (Scotland) Act 1976 (sexual intercourse with a child by a person in a position of trust or authority).
19. An offence contrary to section 80(7) of the Criminal Justice (Scotland) Act 1980 (committing or procuring or attempting to procure a homosexual act).
20. An offence contrary to section 52(1)(a), (b) or (d) of the Civic Government (Scotland) Act 1982 (indecent photographs of children).
21. An offence of sodomy, contrary to the common law.
22. An offence of indecent assault, contrary to the common law.
23. An offence of rape, contrary to the common law.

Offences in Northern Ireland

24. An offence contrary to section 48 of the Offences Against the Person Act 1861 (rape).
25. An offence contrary to section 52 of the Offences Against the Person Act 1861 (indecent assault on a woman).
26. An offence contrary to section 61 of the Offences Against the Person Act 1861 (buggery).
27. An offence contrary to section 62 of the Offences Against the Person Act 1861 (indecent assault on a man or assault with intent to commit buggery).
28. An offence contrary to section 4 of the Criminal Law (Amendment) Act 1885 (unlawful carnal knowledge of any girl under the age of fourteen).
29. An offence contrary to section 5 of the Criminal Law (Amendment) Act 1885 (unlawful carnal knowledge of any girl under the age of seventeen).
30. An offence contrary to section 11 of the Criminal Law (Amendment) Act 1885 (an act of gross indecency between men).
31. An offence contrary to section 1 of the Punishment of Incest Act 1908 (incest by a man).
32. An offence contrary to section 2 of the Punishment of Incest Act 1908 (incest by a woman).
33. An offence contrary to section 22 of the Children and Young Persons Act (Northern Ireland) 1968 (indecency with or towards a child).
34. An offence contrary to article 3(1)(a), (b) or (d) of the Protection of Children (Northern Ireland) Order 1978 (indecent photographs of children).
35. An offence contrary to article 9 of the Criminal Justice (Northern Ireland) Order 1980 (inciting a girl under the age of sixteen to have incestuous sexual intercourse).

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations revoke the Education (Teachers) Regulations 1993 and make fresh provision for the restriction of the employment of persons as teachers or workers with children or young persons.

They provide for a person's relevant employment to be prohibited or restricted on four grounds: medical grounds, misconduct, that he is not a fit and proper person to be employed as a teacher or in work that brings him into contact with children or young persons, or that he has been placed on the list of people considered unsuitable to work with children kept by the Secretary of State for Health under section 1 of the Protection of Children Act 1999 ("the Department of Health List").

The Regulations enable the Secretary of State to direct an employer of a person in relevant employment to terminate that person's employment or make his continued employment subject to certain conditions, and to direct that he is not to be employed in the future in relevant employment or is only to be employed under certain conditions. Where a person is found not to be a fit and proper person to work with children or young persons or where he is on the Department of Health List, the Secretary of State must prohibit him from relevant employment (*regulation 5*).

Where a person appears to the Secretary of State to be in relevant employment he is to consult that person's employer before exercising his powers (*regulation 6*).

A person other than one on the Department of Health List may make representations and submit evidence or information for the Secretary of State's consideration within 2 months of being notified of the opportunity to do so or, where he has good reasons for not doing so within that period, such further period as the Secretary of State decides. If the Secretary of State is unable to ascertain the person's whereabouts, the regulation does not apply (*regulation 7*).

A person may be required to undergo a medical examination by a doctor appointed by the Secretary of State. The person may submit his own evidence to the doctor prior to, and may have his own doctor present at, the examination (*regulation 8*).

A person is automatically prohibited from relevant employment if he is convicted of an offence set out in Schedule 2 if he was aged 18 or over and in relevant employment before or at the time it was committed or he was convicted. Such a prohibition must be made on the grounds that the person is not a fit and proper person to be a teacher or worker with children or young persons. A person is also automatically prohibited from relevant employment if he is on the Department of Health List (*regulation 9*).

The governing body of a school or further education institution, the local education authority for that school or institution and the proprietor of an independent school must take reasonably practicable steps to prevent a person who is subject to a direction under these Regulations, but not in relevant employment, from providing services in relation to that school or institution or to those attending it which would bring him regularly into contact with children or young persons (*regulation 10*).

Where a person is dismissed from relevant employment on grounds of misconduct, or where he resigns in circumstances in which he would have been so dismissed, his employer must report the facts of the case and provide such further information as relates to the circumstances of the dismissal or resignation to the Secretary of State (*regulation 11*).

Unless a person is prohibited from relevant employment because he is on the Department of Health List, he may seek a review of the direction made against him and the Secretary of State may revoke or vary the direction if there is new relevant information or evidence of a material change in the person's circumstances (*regulation 12*).

An appeal to the Tribunal established under section 9 of the Protection of Children Act 1999 may be brought by a person to whom a direction has been given by the Secretary of State. An appeal does not lie against a direction given by the Secretary of State where a person has been automatically prohibited from relevant employment or against a refusal by the Secretary of State to revoke or vary a direction where a person is on the Department of Health List. If the

person is relying on new relevant information or evidence of a material change in his circumstances, he must seek a review under regulation 12 before appealing to the Tribunal. A person who has been convicted of an offence involving misconduct cannot challenge on appeal any finding of fact upon which his conviction is based (*regulation 13*).

Where the Tribunal considers that the direction is not appropriate it may order the Secretary of State to revoke or vary the direction (*regulation 14*).

STATUTORY INSTRUMENTS

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