

EXPLANATORY MEMORANDUM TO
THE EDUCATION (PROHIBITION FROM TEACHING OR WORKING WITH
CHILDREN) (AMENDMENT) REGULATIONS 2007

2007 No. 195

1. This explanatory memorandum has been prepared by the Department of Education and Skills and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 The instrument amends the provision whereby the Secretary of State is under a duty to give a direction under section 142 of the Education Act 2002 in relation to adults who are found to have committed specified offences. The effect of a direction under section 142 is that a person is prohibited from teaching or working with children. Those who are subject to such a direction are colloquially known as being included in “List 99”.

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

3.1 None

4. Legislative Background

4.1 These Regulations amend the Education (Prohibition from Teaching or Working with Children) Regulations 2003 (S.I. 2003/1184) as amended by S.I. 2004/1493 (“the existing Regulations”).

4.2 They amend the specified offences against children which place the Secretary of State under a duty to prohibit an adult from teaching or working with children, and make provision for those who are formally found to have committed specified offences (for example, where a person has been cautioned) to be treated in the same way as those convicted of the offences. Where new offences have been added, the regulations do so prospectively, not retrospectively. They introduce a new provision so that, in relation to certain offences for which the Secretary of State is required to prohibit an adult from teaching or working with children, the person will have the right to make representations to have the prohibition removed, and to appeal to the Care Standards Tribunal if they are unsuccessful.

4.3 The Regulations remove the requirement for a person to have previously worked in an educational establishment before the Secretary of State’s duty is engaged and make transitional provision for those prohibited under the old regulations who will be treated differently under the new regulations.

4.4 They also impose a duty on the Secretary of State to give a direction (with a subsequent right to make representations and appeal) to individuals subject to Risk of Sexual Harm Orders or individuals who have committed an offence outside the United Kingdom which, if committed in England and Wales, would be an offence satisfying the automatic prohibition requirements.

5. Territorial Extent and Application

5.1 This instrument extends to England and Wales.

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

7.1 The existing Regulations require the Secretary of State to prohibit from teaching or working with children adults who have a conviction for one of a range of specified offences against a child, subject to certain criteria. The individual has no right to make representations or to appeal against the prohibition.

7.2 On 19th January 2006, the then Secretary of State for Education and Skills made a statement to Parliament and lodged a report in the libraries of both Houses, detailing a number of commitments following public concern resulting from reports that a small number of individuals who were subject to the sex offenders notification system, but not subject to the automatic prohibition provision, were working in schools.

7.3 The main issue raised was that there was an anomaly between those who were convicted of a specified offence against a child who were covered by the automatic prohibition provision in the regulations, and those who accepted a caution, who were not. These Regulations are to address the Secretary of State's commitment to automatically enter on List 99 anyone cautioned or convicted for a sexual offence against a child, or for a serious sexual offence against an adult. The police will ensure that those accepting a caution for a specified offence are made fully aware of the implications of doing so.

7.4 As the existing Regulations only specify offences committed against children under 16 these regulations make additional automatic prohibition provision by adding some additional relevant offences, including some very serious offences against adults, such as rape; offences committed overseas; and those subject to Risk of Sexual Harm Orders, all of which raise a presumption that the individual is unsuitable to work with children. They also introduce a right to make representations and to appeal to the Care Standards Tribunal in some cases.

7.5 One of the existing criteria to be satisfied before a person can be automatically prohibited from teaching or working with children is that they must have previously worked in an educational establishment. It is not always possible for the police to identify where this is the case, which potentially leads to under reporting to the Secretary of State and some individuals who should be prohibited from working with children, not being prohibited. This criterion also does not prevent a person who has not previously worked with children but who is known to be unsuitable from applying to work with children. To make the automatic prohibition more effective in preventing those who are known to be unsuitable from seeking work with children, these Regulations remove the requirement for a person to have previously worked in an educational establishment before automatic prohibition action can be taken.

7.6 Some individuals who are already prohibited from working with children as a result of the existing autobarring provision, would, if they had been referred under these Regulations, have been given the opportunity to make representations to have their name removed from the List. These Regulations make provision for any such individuals to be given the opportunity to apply to have their case reviewed by the Care Standards Tribunal.

7.7 A full consultation on the draft regulations was issued on 13th October 2006 and closed on 2nd January 2007. There were 28 responses which were mainly in agreement with the proposals in the consultation and strongly welcomed processes which strengthened the safeguarding arrangements applied to children.

7.8 The full consultation response will be available [from the end of January 2007], on the Department for Education and Skills website: <http://www.dfes.gov.uk/consultations>

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

8.2 Additional costs to the Department as a result of giving a direction to all adults who commit specified offences against children, not just those who have previously worked in education, and funding for the Care Standards Tribunal for additional work relating to the transitional arrangements, will be met from existing provision.

9. Contact

9.1 Anne Hunter at the Department for Education and Skills can answer questions about this instrument. E-mail: Anne.hunter@dfes.gsi.gov.uk