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## STATUTORY INSTRUMENTS

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# 2009 No. 2680

## The School Staffing (England) Regulations 2009

PROSPECTIVE

### PART 1

#### General

#### Citation, commencement and application

1.—(1) These Regulations may be cited as the School Staffing (England) Regulations 2009 and they come into force on 2nd November 2009.

(2) These Regulations apply only in relation to England.

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#### Commencement Information

**I1** Reg. 1 in force at 2.11.2009, see [reg. 1\(1\)](#)

#### Revocations and amendments

2. The Regulations specified in Schedule 1 are revoked to the extent specified in the third column of that Schedule.

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#### Commencement Information

**I2** Reg. 2 in force at 2.11.2009, see [reg. 1\(1\)](#)

#### Interpretation

3.—(1) In these Regulations—

“PA 1997” means the Police Act 1997(1);

“EA 2002” means the [Education Act 2002](#);

“authority” means the local education authority by which a maintained school is, or a proposed school is to be, maintained;

“dismissal” is to be interpreted in accordance with sections 95 and 136 of the Employment Rights Act 1996(2);

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(1) 1997 c.50.

(2) 1996 c.18.

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“employment business” has the meaning given by section 13(3) of the Employment Agencies Act 1973(3);

“enhanced criminal record certificate” means an enhanced criminal record certificate within the meaning of section 113B of PA 1997 which includes suitability information relating to children within the meaning of section 113BA(2) of that Act;

“safer recruitment training” means training provided by a person approved by the Secretary of State for the purpose of ensuring that those who undertake it know how to take proper account of the need to safeguard children when recruiting staff;

“support staff” means any member of a school’s staff other than a teacher;

“teacher” means—

- (a) a person who is a school teacher for the purposes of section 122 of EA 2002 Act; and
- (b) a person who would fall within paragraph (a) but for the fact that the other party to the contract is not an authority or a governing body of a school falling within Part 3 of these Regulations.

(2) References to a vacancy in any post include a prospective vacancy in the post.

(3) A person is to be treated as meeting any staff qualification requirements if the person—

- (a) fulfils any requirements with respect to qualifications or registration which apply to the person as a result of regulations made under sections 132 to 135 of EA 2002(4) and regulations made under section 19 of the Teaching and Higher Education Act 1998(5);
- (b) meets any conditions with respect to health and physical capacity which apply to the person as a result of regulations made under section 141 of the 2002 Act(6); and
- (c) is not barred from regulated activity relating to children in accordance with section 3(2) of the Safeguarding Vulnerable Groups Act 2006(7) or subject to any direction made under section 142 of EA 2002 or any prohibition, restriction or order having effect as such a direction.

(4) References to support staff include support staff employed, or engaged otherwise than under a contract of employment, to provide community facilities and services under section 27 of EA 2002.

(5) For the purposes of these Regulations a person applies for an enhanced criminal record certificate if—

- (a) the person countersigns an application for the certificate as a registered person, within the meaning of section 120 of PA 1997, or an application is countersigned on the person’s behalf; and
- (b) the application is submitted to the Secretary of State in accordance with Part 5 of that Act.

### Commencement Information

**I3** Reg. 3 in force at 2.11.2009, see [reg. 1\(1\)](#)

(3) [1973 c.35](#).

(4) The Education (School Teachers’ Qualifications) (England) Regulations 2003 ([S.I. 2003/1662](#)), The Education (Recognition of School Teachers’ Professional Qualifications) (Consequential Provisions) (England) Regulations 2007 ([S.I. 2007/2782](#)), The Education (Specified Work and Registration) (England) Regulations 2003 ([S.I. 2003/1663](#)), as amended by [S.I.2007/2117](#), and the Education (Head Teachers’ Qualifications) (England) Regulations 2003 ([S.I. 2003/3111](#)), as amended by [S.I. 2005/875](#) and [S.I. 2005/3322](#).

(5) [1998 c.30](#). The Education (Induction Arrangements for School Teachers) (Consolidation) (England) Regulations 2008 ([S.I. 2008/ 657](#)).

(6) The Education (Health Standards) (England) Regulations 2003 ([S.I. 2003/3139](#)).

(7) [2006 c.47](#).

## Delegation of authority

- 4.—(1) The governing body may delegate—
- (a) any of the functions conferred upon it by these Regulations other than those conferred by regulations 5 to 9, 15(3) and (5) and 27(3) and (5); and
  - (b) its power to appoint or dismiss any member of staff at a school to which Part 3 applies.
- (2) Subject to paragraph (4), any delegation under paragraph (1) may be to—
- (a) the head teacher,
  - (b) one or more governors; or
  - (c) one or more governors acting together with the head teacher.
- (3) Where the governing body has made any delegation under paragraph (1) to one or more governors and the function being delegated does not directly concern the head teacher —
- (a) the head teacher may attend and offer advice at all relevant proceedings; and
  - (b) the governor or governors to whom the delegation has been made must consider any such advice.
- (4) Any delegation under paragraph (1) of—
- (a) the determination that the head teacher should cease to work at the school; or
  - (b) the power to appoint or dismiss the head teacher,
- may be to one or more governors, other than a governor who is the head teacher.

### Commencement Information

**I4** Reg. 4 in force at 2.11.2009, see [reg. 1\(1\)](#)

## Head teacher duties and entitlements

- 5.—(1) The governing body must ensure that the head teacher at the school—
- (a) complies with the duties imposed upon the head teacher; and
  - (b) benefits from any entitlement conferred upon the head teacher,
- by any order under section 122 of the EA 2002 (teachers' pay and conditions)(8).
- (2) In discharging its duty under paragraph (1)(a), the governing body must have regard to the desirability of the head teacher being able to achieve a satisfactory balance between the time spent discharging the professional duties of a head teacher and the time spent by the head teacher pursuing personal interests outside work.

### Commencement Information

**I5** Reg. 5 in force at 2.11.2009, see [reg. 1\(1\)](#)

## Performance of head teacher

- 6.—(1) Where the authority has any serious concerns about the performance of the head teacher of a school it must—
- (a) make a written report of its concerns to the governing body of the school; and

(8) By virtue of section 124(3) of EA 2002, an order under section 122 may make provision by reference to a document.

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(b) at the same time, send a copy of the report to the head teacher.

(2) The governing body must notify the authority in writing of the action it proposes to take in the light of the authority's report.

#### Commencement Information

**I6** Reg. 6 in force at 2.11.2009, see [reg. 1\(1\)](#)

### Conduct and discipline of staff

7.—(1) The governing body must establish procedures—

- (a) for the regulation of the conduct and discipline of staff at the school; and
- (b) by which staff may seek redress for any grievance relating to their work at the school.

(2) Where the implementation of any determination made by the governing body in operation of the procedures requires any action which—

- (a) is not within the functions exercisable by the governing body by or under EA 2002; but
- (b) is within the power of the authority,

the authority must take that action at the request of the governing body.

#### Commencement Information

**I7** Reg. 7 in force at 2.11.2009, see [reg. 1\(1\)](#)

### Capability of staff

8. The governing body must establish procedures for dealing with lack of capability on the part of staff at the school.

#### Commencement Information

**I8** Reg. 8 in force at 2.11.2009, see [reg. 1\(1\)](#)

### Safer recruitment training

9. With effect from 1<sup>st</sup> January 2010, the governing body must ensure that—

- (a) any person who interviews an applicant for any post under these Regulations has completed the safer recruitment training; or
- (b) in the case where—
  - (i) a selection panel is appointed for that purpose under regulation 15 or 27; or
  - (ii) the governing body delegates the appointment of a member of staff to two or more governors or one or more governors and the head teacher under regulation 4(1),
 at least one member of that panel or group has completed the safer recruitment training.

#### Commencement Information

**I9** Reg. 9 in force at 2.11.2009, see [reg. 1\(1\)](#)

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### **Amendment of the School Governance (Procedures) (England) Regulations 2003**

**10.** The School Governance (Procedures) (England) Regulations 2003<sup>(9)</sup> are amended as follows—

(a) in regulation 16, for paragraph (1) substitute-

“(1) Subject to regulation 17 of these Regulations, regulation 3(2) of the Religious Character of Schools (Designation Procedure) Regulations 1998<sup>(10)</sup> and regulation 6 of the Education (School Government) (Terms of Reference) (England) Regulations 2000<sup>(11)</sup>, the governing body may delegate any of its functions to—

- (a) a committee;
- (b) any governor other than a governor who is the head teacher; or
- (c) where the function being delegated does not directly concern the head teacher, the head teacher (whether or not he is a governor).”;

(b) in regulation 17, after paragraph (4) insert-

“(5) The governing body may not delegate functions relating to powers conferred, and the duties imposed, on governing bodies by or under the School Staffing (England) Regulations 2009<sup>(12)</sup> save as provided in those Regulations.”.

#### **Commencement Information**

**110** Reg. 10 in force at 2.11.2009, see [reg. 1\(1\)](#)

<sup>(9)</sup> S.I. 2003/1377. Regulation 17 was amended by S.I. 2007/959.

<sup>(10)</sup> S.I. 1998/2535.

<sup>(11)</sup> S.I. 2000/2122.

<sup>(12)</sup> S.I. 2009/2680.

**Status:**

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**Changes and effects yet to be applied to the whole Instrument associated Parts and Chapters:**

Whole provisions yet to be inserted into this Instrument (including any effects on those provisions):

- Sch. 2 para. 5(1) Sch. 2 para. 5 renumbered as Sch. 2 para. 5(1) by [S.I. 2015/887 reg. 6\(2\)\(a\)](#)
- Sch. 2 para. 4A inserted by [S.I. 2013/1940 reg. 2\(7\)\(a\)](#)
- Sch. 2 para. 5A inserted by [S.I. 2013/1940 reg. 2\(7\)\(b\)](#)
- Sch. 2 para. 5(1)(a)(iii)(iv) inserted by [S.I. 2015/887 reg. 6\(2\)\(d\)](#)
- Sch. 2 para. 5(2) inserted by [S.I. 2015/887 reg. 6\(2\)\(e\)](#)
- Sch. 2 para. 6A inserted by [S.I. 2015/887 reg. 6\(4\)](#)
- Sch. 2 para. 5(1)(a)(ii) word omitted by [S.I. 2015/887 reg. 6\(2\)\(c\)](#)
- Sch. 2 para. 5(1)(a)(i) words omitted by [S.I. 2015/887 reg. 6\(2\)\(b\)](#)
- Regulations applied (with modifications) by [S.I. 2012/1035 reg. 25Sch. 7 reg. 3\(3\)\(c\)\(d\)](#) substituted for [reg. 3\(3\)\(c\)](#) by [S.I. 2015/887 reg. 3\(2\)\(b\)](#)
- [reg. 3\(6\)\(7\)](#) inserted by [S.I. 2015/887 reg. 3\(4\)](#)
- [reg. 4\(2\)\(ba\)](#) inserted by [S.I. 2015/883 reg. 5\(2\)\(a\)](#)
- [reg. 4\(5\)](#) inserted by [S.I. 2015/883 reg. 5\(2\)\(b\)](#)
- [reg. 8A](#) inserted by [S.I. 2012/1740 reg. 2\(3\)](#)
- [reg. 12\(3A\)](#) inserted by [S.I. 2015/887 reg. 4\(2\)](#)
- [reg. 18\(1\)\(a\)\(iv\)](#) inserted by [S.I. 2015/887 reg. 5\(3\)\(b\)](#)
- [reg. 18\(1\)\(c\)](#) and word inserted by [S.I. 2015/887 reg. 5\(3\)\(c\)](#)
- [reg. 18\(5\)\(c\)](#) and word inserted by [S.I. 2015/887 reg. 5\(5\)\(b\)](#)
- [reg. 24\(3A\)](#) inserted by [S.I. 2015/887 reg. 4\(2\)](#)
- [reg. 30\(1\)\(a\)\(iv\)](#) inserted by [S.I. 2015/887 reg. 5\(3\)\(b\)](#)
- [reg. 30\(1\)\(c\)](#) and word inserted by [S.I. 2015/887 reg. 5\(3\)\(c\)](#)
- [reg. 30\(5\)\(c\)](#) and word inserted by [S.I. 2015/887 reg. 5\(5\)\(b\)](#)