

EXPLANATORY MEMORANDUM TO
THE EDUCATION (SCHOOL TEACHERS) (QUALIFICATIONS AND
SPECIFIED WORK) (MISCELLANEOUS AMENDMENTS) (ENGLAND)
REGULATIONS 2012

2012 No. 1736

1. This explanatory memorandum has been prepared by the Department for Education (“DfE”) and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This statutory instrument amends the Education (School Teachers’ Qualifications) (England) Regulations 2003 (“the 2003 Regulations”) and the Education (Specified Work) (England) Regulations 2012 (“the 2012 Regulations”).

2.2 The amendments to the 2003 Regulations will allow initial teacher training (“ITT”) to take place in Pupil Referral Units (“PRUs”). This includes allowing trainee teachers to carry out practical teaching experience for the purpose of an ITT course and for trainees on an employment-based teacher training scheme to be employed to teach in this setting from September 2012.

2.3 The amendments to the 2012 Regulations will give schools greater freedom to appoint industry experts, who are not qualified teachers, to work as instructors teaching and supporting the teaching of appropriate vocational courses.

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

3.1 None.

4. Legislative Context

4.1 This statutory instrument is being made in line with wider Government policy to allow schools greater autonomy and decision-making powers, and to reduce the burdens placed on schools through legislation.

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

7.1 This instrument makes two separate amendments, which are unrelated in terms of their policy focus.

Amendments to the 2003 Regulations

7.2 In order to teach as a qualified teacher in maintained schools and non-maintained special schools in England, a person must hold Qualified Teacher Status (“QTS”). To achieve QTS, the person needs to successfully complete a course of ITT and meet the Teachers’ Standards.

7.3 Charlie Taylor’s Report on *Improving Alternative Provision*, published on 8 March 2012, made 28 recommendations, all of which were accepted by the Government. This included a call for changes to current legislation to allow ITT and teaching practice to take place in PRUs and Alternative Provision (AP) Academies. The Government’s response to this report can be downloaded from the DfE website at:

<http://media.education.gov.uk/assets/files/pdf/s/michael%20gove%20letter%20to%20charlie%20taylor%208%20march%202012.pdf>

7.4 The 2003 Regulations already allow ITT to take place in AP Academies, as AP Academies come under the legal definition of academies in general. However, the 2003 Regulations specifically exclude accredited providers of ITT from using PRUs to provide practical teaching experience as part of an ITT programme. The Regulations also prevent teachers employed in PRUs from undertaking employment-based ITT.

7.5 The current situation places PRUs at a disadvantage when it comes to the training, recruitment and retention of staff who wish to qualify as teachers. Allowing ITT to take place in PRUs will address this and will also allow trainees from mainstream schools to benefit from the excellent training that the best PRUs can offer. The trainees would then be able to take these skills, such as behaviour management, out into the wider school system or workforce.

7.6 Allowing ITT in PRUs will encourage more PRUs to become Teaching Schools and underpin an even greater sharing of effective practice. It will also no longer place PRUs at a disadvantage when compared with other settings such as maintained schools.

7.7 Allowing employment-based training and teaching practice to take place in PRUs will enable PRUs to participate fully in ITT in the same way as other schools. For example, PRUs would be able to offer School Centred ITT (SCITT) programmes and bid for School Direct places.

7.8 It was not desirable to include these particular amendments when the Regulations were last amended in April 2012, as there was insufficient time to adequately consult the profession following the publication of Charlie Taylor’s report.

Amendments to the 2012 Regulations

7.9 Currently, the provision concerned with instructors, in the 2012 Regulations, permits schools to appoint industry experts (who are not qualified teachers) as instructors, to teach suitable vocational courses, only for as long as a qualified or trainee teacher is unavailable for appointment. This means that schools must always favour a qualified teacher regardless of the nature of the post. It also means that where an instructor is appointed, schools must re-advertise the post periodically to check whether a qualified or trainee teacher has become available for appointment.

7.10 In her recent review of vocational education, Professor Alison Wolf found that in some schools the quality of vocational education was suffering because it was often delivered in the absence of qualified professionals who could teach it. Professor Wolf found that many schools misinterpret the current legal provisions and believe it impossible to bring professionals into schools without the supervision of a qualified teacher, which places an additional demand on staff and further increases the risk of vocational education that does not meet the standards that industry requires.

7.11 Professor Wolf recommended that the DfE should clarify and evaluate the rules relating to the teaching of vocational content by qualified professionals who are not qualified teachers. Professor Wolf's review and the Government's response can be downloaded from the DfE's website at: www.education.gov.uk/publications/standard/publicationDetail/Page1/DFE-00031-2011

7.12 In response to Professor Wolf's recommendations, the DfE decided to make it easier for schools to appoint talented industry experts to teach appropriate vocational courses by removing the restrictions that only allow such appointments to be made as a last resort. These particular changes were not introduced when the Regulations were consolidated with effect from April 2012 because the Department was considering how best to implement the recommendation and it was also desirable to consult the profession on these changes.

7.13 In giving schools this freedom, the law will continue to specify that instructors should only be appointed where special qualifications and/or experience are required. In some cases it will still be more appropriate for a qualified teacher to deliver a particular vocational course, but this will ultimately be a decision for schools to make.

7.14 Instructors, in maintained schools and non-maintained special schools, will continue to be paid at the appropriate level of the unqualified teachers' pay scale. If industry experts aspire to take up a long-term teaching career we anticipate that they will complete a course of initial teacher training, which would enable them to be paid as a qualified teacher.

8. Consultation outcome

Amendments to the 2003 Regulations

8.1 The DfE undertook an 8 week public consultation on these changes, which commenced on the 30 March 2012 and ended on the 25 May 2012.

8.2 The standard 12 week consultation period was shortened to 8 weeks. This was because the changes were unlikely to come as a surprise to the public, as the Government's intention to allow ITT in PRUs was reflected in the DfE's published response to Charlie Taylor's report.

8.3 There were 33 responses to the consultation, including formal responses from the main teaching unions and some professional associations. A majority of 25 responses agreed with the proposal to allow practical teaching experience for the purpose of a course of ITT to take place in PRUs. 26 responses agreed with the proposal to allow work-based training for the purpose of an employment-based teacher training scheme to take place in PRUs.

8.4 Concerns were raised about how ITT placements in PRUs might place unreasonable additional pressure on trainees and on PRUs' capacity to support trainees during placements. Concerns were also raised about the effect that PRUs taking on additional responsibilities may have on pupils and staff. These included PRUs not being able to meet the needs of trainee teachers due to limited curricular and subject expertise.

8.5 Many who agreed with the proposals, however, believe the changes will give trainees the opportunity to gain significant practical experience and develop a wider range of behavioural management skills.

8.6 In conclusion, the consultation has provided some useful insights into the concerns that some of the profession and unions have around the proposals to allow ITT in PRUs and for them to apply to become teaching schools.

8.7 The outcomes from the consultation will be published on the DfE's website in the summer.

Amendments to the 2012 Regulations

8.8 The DfE undertook a public consultation on these changes, which commenced on the 26 March 2012 and ended eight weeks later on the 18 May 2012.

8.9 The standard 12 week consultation period was shortened to 8 weeks. This was because the changes were unlikely to come as a surprise to the public as the Government's intention to give schools greater autonomy has been made clear and reflected in numerous policy documents. In the light of this,

the eight week consultation period allowed sufficient time for interested parties to take an informed view.

8.10 There were 28 responses to the consultation, including formal responses from the main teaching unions and some professional associations. A slight majority of 16 responses supported the proposals, 3 were unsure and 9 did not support the proposals. Concerns were raised that giving schools more freedom to recruit unqualified instructors could undermine the qualified profession and take work away from qualified teachers. Others, however, were supportive and made the point that head teachers are best placed to decide who is most qualified for a particular job. Other responses stressed that schools must strike the right balance between the need for industry expertise and the need for teaching skills.

8.11 There was some misunderstanding that the changes would limit schools to appointing industry experts only. This is not the case. It will be open to schools to appoint a qualified teacher, a teacher on the employment based training scheme or an instructor to be appointed to provide instruction. The Regulations will not specify who schools should recruit as instructors, subject to that person being appointed only where special experience or qualifications or both are required.

8.12 The consultation provided some useful insights into the concerns that some of the profession and unions have around the employment of unqualified teachers to undertake specified work. However, the changes introduced by these amendments will help to clarify the rules relating to the teaching of vocational content. By making it easier for schools to appoint talented industry experts, the changes will allow head teachers, who are in the best position, to make the decision about who is most suitable to teach a particular course, without excessive legal restrictions.

8.13 The outcomes from the consultation will be published on the DfE's website in the summer.

9. Guidance

9.1 The *Governor's Guide to the Law*, which is available on the DfE's website, will be updated in September 2012 to reflect these changes.

10. Impact

10.1 No impact on business, charities or voluntary bodies is foreseen.

10.2 The impact on the public sector by the amendments to the 2003 Regulations is not significant. The impact on the public sector of the changes to the 2012 Regulations is that the changes will make it easier for schools to employ instructors to teach appropriate vocational courses if they choose to.

10.3 Because no impact on the private or voluntary sector is foreseen an Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The policy changes to the 2003 Regulations are permissive, allowing PRUs to decide if they want to take the opportunity to be part of these changes. The Department for Education will also consider the effects of these changes through the annual School Workforce Census.

12.2 The Teaching Agency will closely monitor the number of trainees trained in PRUs and monitor the number of School Direct places and their involvement in SCITT.

12.3 The DfE will continue to keep the quality of teachers under review.

13. Contact

13.1 Paula Penny at the Department for Education, Tel: 0207 3408249 or email: paula.penny@education.gsi.gov.uk, can answer any queries regarding the instrument.