

EXPLANATORY MEMORANDUM TO
THE SCHOOL STAFFING (ENGLAND) (AMENDMENT) REGULATIONS 2015

2015 No. 887

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

2. Purpose of the instrument

2.1 The instrument amends the requirements for governing bodies of maintained schools in England to check the suitability of people who are to be appointed as members of school staff. The amendments reflect changes in the current legislation as regards the way the Disclosure and Barring Service (“DBS”) issues and up-dates enhanced criminal record certificates and changes in the types of certificates that can be issued in different cases.

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

3.1 None.

4. Legislative Context

4.1 The School Staffing (England) Regulations 2009 (“the 2009 Regulations”) set out (among other things) the steps that governing bodies of maintained schools in England must take to check the suitability of people who are to be appointed as members of staff or who are to be supplied by employment businesses as members of supply staff. Those steps include obtaining (in respect of ordinary staff) or arranging for an employment business to obtain (in respect of supply staff) an enhanced criminal record certificate in respect of the person who is to be appointed. The issue and content of enhanced criminal record certificates is governed by Part V of the Police Act 1997 (“the PA 1997”) and by the Safeguarding Vulnerable Groups Act 2006 (“the SVGA 2006”). Enhanced criminal record certificates are issued by the DBS.

4.2 An enhanced criminal record certificate includes any convictions, cautions, reprimands, final warnings, and any other relevant information held by the police. In some circumstances it can also include suitability information relating to children – that is, information about whether the person is on the DBS ‘barred list’ of people who are unsuitable for working with children.

4.3 Part 5 of the Protection of Freedoms Act 2012 (“the POFA 2012”) amended the SVGA 2006 so as to change the circumstances in which the DBS is permitted to include suitability information relating to children in an enhanced criminal record certificate. It is therefore necessary to amend the 2009 Regulations so that the circumstances in which an

enhanced criminal record certificate must be obtained in respect of a prospective member of staff, and the circumstances in which that certificate must include suitability information relating to children, are consistent with the SVGA 2006 as amended by the POFA 2012.

4.4 The POFA 2012 also amended the PA 1997 to enable the DBS to issue, on request, up-dates confirming whether the information set out in an enhanced criminal record certificate remains current or whether the certificate is no longer accurate and should be replaced with a new one. The 2009 Regulations currently provide that in relation to supply staff an enhanced criminal record certificate must not be older than three months. This instrument amends the 2009 Regulations to permit an older certificate to be relied on provided that an up-date issued within the last three months confirms that the certificate remains current. This instrument also requires a governing body when appointing staff to consider requesting an up-date to the enhanced criminal record certificate it is required to obtain in respect of ordinary staff.

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 The 2009 Regulations detail the procedures that headteachers and governing bodies in maintained schools in England must follow in respect of the appointment, conduct, discipline, capability and dismissal of school staff. Where a governing body in a maintained school intends to make a staff appointment it is required to perform various checks and obtain specific information to ascertain whether the person is suitable to be employed. These include in certain circumstances checking whether the prospective member of staff is on the barred list and obtaining an enhanced criminal record certificate from the DBS. These checks serve to safeguard pupils.

7.2 In respect of the checks required, the 2009 Regulations currently take a blanket approach to all staff, and take no account of the level of information that the DBS is allowed to disclose under the current legislation. As duties relating to safeguarding are taken extremely seriously by schools, it is important for the 2009 Regulations to be as clear and accurate as possible in setting out the checks that can and must be made in different circumstances. These amendments ensure that the level of checks required by the 2009 Regulations when staff are appointed will reflect what the DBS is able to disclose. This will avoid any ambiguity.

7.3 Furthermore use of the DBS Update Service to confirm that any information contained on a previously issued enhanced criminal record certificate remains current will provide schools and employment businesses with a convenient method of checking criminal records and, where shown on the certificate, suitability information. An online check that confirms that no additional information has been added to a certificate since its issue will save both time and money, potentially allowing the school to fill an urgent vacancy without delay. It will also reduce the bureaucracy for the applicant who has chosen to subscribe to the Update Service as they will no longer need to provide repeat information when making an application for a new DBS certificate and may be able to begin work more quickly.

7.4 As a result of these amendments schools will request only those enhanced criminal record certificates and barred list checks that are appropriate to the role of the member of staff and that DBS is properly able to provide. Schools will continue to be required to request an enhanced criminal record certificate with suitability information for all staff engaging in regulated activity relating to children (as defined in the SVGA 2006). They will also be required to request enhanced criminal record certificates for all other staff who have the opportunity for regular contact with children but are not engaging in regulated activity, for example a contractor who works under a temporary contract of employment.

7.5 The amending Regulations preserve alignment with the requirements in respect of barred list checks and use of the DBS Update Service already placed on independent schools (including academy and free schools) by virtue of the Education (Independent School Standards) Regulations 2014 and those that will apply to non-maintained special schools from September 2015 under the Education (Non-Maintained Special Schools) (England) Regulations 2015. This therefore aligns these requirements across all school types in England.

- Consolidation

7.6 Not applicable.

8. Consultation outcome

8.1 There was no consultation undertaken about these amendments because they are technical amendments that are required to make the 2009 Regulations consistent with the overarching primary legislation – namely, the PA 1997 and the SVGA 2006 as amended by the POFA 2012.

8.2 The changes will remove any ambiguity as regards the kinds of checks that must be made prior to employing a school staff member or engaging a supply staff member and offer schools and employment businesses when checking the validity of an employee's criminal record certificate a quick alternative to making an application for a new certificate. The changes are likely therefore to reduce, rather than add to, administrative duties currently carried out.

9. Guidance

9.1 The department's Keeping Children Safe in Education statutory safeguarding guidance reflects the checks that schools are required to perform before appointing staff. Once the amendments to the 2009 Regulations are made we intend to update this guidance to reflect the amended Regulations. In addition, we will notify maintained schools of the revised requirements as part of the next departmental "Need to Know" communication, which is sent to all schools prior to the start of the each term.

10. Impact

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

10.2 In respect of impacts on the public sector, this instrument affects maintained schools only and reflects only changes that have already been brought into force by primary legislation.

10.3 An Impact Assessment has not been prepared for this instrument given the technical nature of the changes made.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The Department for Education continually monitor and act on feedback from schools and local authorities and members of the public. All such feedback is considered and will be used to identify and inform any future changes to the Regulations.

13. Contact

Carol Macmillan at the Department for Education Tel: 01325 340648 or email: carol.macmillan@education.gsi.gov.uk can answer any queries regarding the instrument.