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STATUTORY INSTRUMENTS

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**2009 No. 2680**

**The School Staffing (England) Regulations 2009**

**PART 3**

Provisions relating to foundation, voluntary aided and foundation special schools

**Application of Part 3**

**23.** This Part applies to foundation, voluntary aided and foundation special schools.

**Manner of appointment**

**24.—(1)** Where the governing body has selected a person for appointment it may appoint that person either—

- (a) under a contract of employment; or
- (b) otherwise than under a contract of employment.

(2) The governing body must check—

- (a) the identity of any such person;
- (b) that the person meets all relevant staff qualification requirements; and
- (c) that the person has a right to work in the United Kingdom.

(3) The governing body must obtain an enhanced criminal record certificate in respect of any such person, before, or as soon as practicable after, the person's appointment.

(4) In the case of any such person for whom, by reason of having lived outside the United Kingdom, obtaining such a certificate is not sufficient to establish the person's suitability to work in a school, the governing body must make such further checks as it considers appropriate, having regard to any guidance issued by the Secretary of State.

(5) The governing body must complete the checks referred to in paragraphs (2) and (4) before a person is appointed.

(6) Paragraphs (3) and (4) do not apply to a person who has worked in—

- (a) a school in England in a post—
  - (i) which brought the person regularly into contact with children or young persons; or
  - (ii) to which the person was appointed on or after 12th May 2006 and which did not bring the person regularly into contact with children or young persons; or
- (b) an institution within the further education sector in England in a post which involved the provision of education which brought the person regularly into contact with children or young persons,

during a period which ended not more than three months before the person's appointment.

(7) The governing body must keep a separate register which contains the information specified in Schedule 2.

### **Application of regulation 24 to other appointments**

25. Regulation 24(2) to (6) and (7) (insofar as it relates to paragraphs 2 to 4, 7 and 8 of Schedule 2) also applies in relation to any person appointed by an authority for the purpose of working at a school to which this Part applies in the temporary absence of a member of staff of the school.

### **Authority's entitlement to offer advice**

26.—(1) The authority may offer advice to the governing body in relation to the exercise of the governing body's functions of appointment and dismissal of any teacher, to the extent provided by, and subject to, any relevant agreement.

(2) A "relevant agreement" is an agreement in writing between the authority and the governing body which entitles the authority to offer advice to the governing body in relation to the exercise of any such function to the extent provided, and which has not been terminated by the governing body by notice in writing to the authority.

(3) The governing body must consider any advice offered by the authority pursuant to paragraph (1).

### **Appointment of head teacher and deputy head teacher**

27.—(1) The governing body must notify the authority in writing of—

- (a) any vacancy for the head teacher; and
- (b) any post of deputy head teacher which it has identified as one to be filled.

(2) The governing body must advertise any such vacancy or post in such manner as it considers appropriate unless it has good reason not to.

(3) Where the governing body advertises any such vacancy or post, it must appoint a selection panel, consisting of at least three of its members, other than a governor who is the head teacher or (as the case may be) a deputy head teacher, to—

- (a) select for interview such applicants for the post as it thinks fit and, where the post is that of head teacher, notify the authority in writing of the names of the applicants so selected;
- (b) interview those applicants who attend for that purpose; and
- (c) where it considers it appropriate to do so, recommend to the governing body for appointment one of the applicants interviewed.

(4) If, within a period of seven days beginning with the date when it receives notification under paragraph (3)(a), the authority makes written representations to the selection panel that any of the applicants is not a suitable person for the post, the selection panel must—

- (a) consider those representations; and
- (b) where it decides to recommend for appointment the person about whom the representations have been made, notify the authority in writing of its reasons.

(5) Subject to regulation 24(2) and, where appropriate, regulation 12(4), the governing body may appoint the person recommended by the selection panel to the vacancy or the post to be filled.

(6) If—

- (a) the selection panel does not recommend a person to the governing body; or
- (b) the governing body declines to appoint the person recommended by the selection panel,

the selection panel may recommend another person for appointment in accordance with this regulation (but this does not prevent it from recommending an existing applicant).

(7) Subject to regulation 24(2) and, where appropriate, regulation 12(4), if the governing body decides, for good reason, not to advertise and conduct a selection process to fill the vacancy or post in accordance with paragraphs (2) to (4), it may appoint the person it has identified to the vacancy or post to be filled.

(8) Paragraphs (2) to (7) are subject to regulation 34.

### **Appointment of other teachers**

**28.** Where the governing body identifies any post of teacher (other than head teacher or deputy head teacher) which is to be filled for a period of more than four months, it must send a specification for the post to the authority.

### **Appointment of support staff**

**29.** The governing body is responsible for the appointment of support staff unless the governing body and the authority agree that the authority will make such appointments.

### **Supply staff**

**30.—(1)** The governing body must ensure that no person supplied by an employment business to a school is allowed to begin work as a teacher or member of support staff at the school unless the governing body has received—

- (a) written notification from the employment business in relation to that person—
  - (i) that it has made the checks referred to in paragraph 5(a)(i) of Schedule 2;
  - (ii) that it or another employment business has applied for an enhanced criminal record certificate or has obtained such a certificate in response to an application made by that or another employment business; and
  - (iii) whether, if the employment business has obtained such a certificate before the person is due to begin work at the school, it disclosed any matter or information, or any information was provided to the employment business in accordance with section 113B(6) of PA 1997; and
- (b) where the employment business has obtained such a certificate before the person is due to begin work at the school which disclosed any matter or information, or any information was provided to the employment business in accordance with section 113B(6) of PA 1997, a copy of the certificate.

(2) Subject to paragraph (3), the certificate referred to in paragraph (1)(a)(ii) must have been obtained not more than three months before the person is due to begin work at the school.

(3) Paragraph (2) does not apply in relation to a person who has worked in—

- (a) a school in England in a post—
  - (i) which brought the person regularly into contact with children or young persons; or
  - (ii) to which the person was appointed on or after 12th May 2006 and which did not bring the person regularly into contact with children or young persons; or
- (b) an institution within the further education sector in England in a post which involved the provision of education which brought the person regularly into contact with children or young persons,

during a period which ended not more than three months before the person is due to begin work at the school.

(4) Before a person offered for supply by an employment business may begin work at the school the governing body must check the person's identity (whether or not the employment business made such a check before the person was offered for supply).

(5) The governing body must, either in the contract or in other arrangements which it makes with any employment business, require it, in respect of any person whom the employment business supplies to the school—

- (a) to provide the notification referred to in paragraph (1)(a); and
- (b) where the employment business obtains an enhanced criminal record certificate which discloses any matter or information, or if any information is provided to the employment business in accordance with section 113B(6) of PA 1997, to provide a copy of the certificate.

### **Suspension of staff**

**31.**—(1) The governing body or the head teacher may suspend any person employed or engaged otherwise than under a contract of employment to work at the school where, in the opinion of the governing body or (as the case may be) the head teacher, the person's suspension from the school is required.

(2) The governing body or (as the case may be) head teacher must immediately inform the head teacher or (as the case may be) the governing body when a person is suspended under paragraph (1).

(3) Only the governing body may end a suspension under paragraph (1).

(4) On ending such a suspension, the governing body must inform the head teacher.

(5) In this regulation "suspend" means suspend without loss of emoluments.

### **Suspension and dismissal of authority staff**

**32.** In the case of staff employed, or engaged otherwise than under a contract of employment, by the authority in accordance with regulation 29, regulation 19 (in place of regulation 31) and regulation 20 apply as they apply to schools referred to in regulation 11.

### **Checks on change of post**

**33.** Where a member of the school staff who was appointed before 12th May 2006 moves from a post which did not bring the person regularly into contact with children or young persons to a post which does, the governing body must obtain an enhanced criminal record certificate in respect of the person before, or as soon as practicable after, the move.

### **Appointment of head teachers for schools of Roman Catholic Religious Orders**

**34.**—(1) This regulation applies in relation to a voluntary aided school if the trustees under a trust deed relating to the school are also trustees of a Roman Catholic Religious Order ("the Order").

(2) Subject to paragraph (5), paragraphs (3) and (4) have effect in relation to the filling of a vacancy in the post of head teacher of the school, in place of regulation 27(2) to (7).

(3) The governing body must notify the Major Superior of the vacancy in writing.

(4) The governing body must—

- (a) interview such persons who are members of the Order as are proposed as candidates for appointment to the post by the Major Superior; and
- (b) appoint to the post one of the persons so interviewed unless, by virtue of regulation 24(2) or otherwise, the governing body has good reason for not making any such appointment.

(5) If the governing body does not make an appointment under paragraph (4)(b), regulation 27(2) to (7), has effect in relation to the filling of the vacancy.

(6) In this regulation—

“the Major Superior” means the Major Superior of the Order;

“Roman Catholic Religious Order” means a Roman Catholic religious institute or society of apostolic life.