

2015 No. 887

EDUCATION, ENGLAND

The School Staffing (England) (Amendment) Regulations 2015

Made - - - - 24th March 2015

Laid before Parliament 26th March 2015

Coming into force - - 29th June 2015

The Secretary of State for Education makes the following Regulations in exercise of the powers conferred by section 72(1) of the School Standards and Framework Act 1998(a) and sections 35(4) and (5) and 36(4) and (5) of the Education Act 2002(b):

Citation and commencement

1. These Regulations may be cited as the School Staffing (England) (Amendment) Regulations 2015 and come into force on 29th June 2015.

Amendment of the School Staffing (England) Regulations 2009

2. The School Staffing (England) Regulations 2009(c) are amended as follows.

Amendments to regulation 3

3.—(1) In regulation 3(1)—

- (a) in the definition of “enhanced criminal record certificate”—
 - (i) for “within the meaning of”, in the first place where the words occur, substitute “issued under”; and
 - (ii) after “includes” insert “, in such cases as are from time to time prescribed under section 113BA(1) of that Act(d),”;
- (b) after the definition of “interim prohibition order” insert—
 - ““negative up-date information” means up-date information of a kind falling within section 116A(8)(b)(i) or (c)(i) of PA 1997(e);”;
- (c) after the definition of “prohibition order” insert—

(a) 1998 c. 31.

(b) 2002 c. 32. Sections 35(5) and 36(5) were amended by S.I. 2010/1158.

(c) S.I. 2009/2680, amended by S.I. 2013/1940. Other amending instruments are not relevant.

(d) Section 113BA was inserted by section 63(1) of and paragraph 14(4) of Schedule 9 to the Safeguarding Vulnerable Groups Act 2006 (c. 47). It has been amended but the amendments are not relevant.

(e) Section 116A was inserted by section 83 of the Protection of Freedoms Act 2012 (c. 9) and amended by S.I. 2012/3006.

““relevant activity” means any activity which is a regulated activity relating to children within the meaning of—

- (a) Part 1 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006(a); or
- (b) Part 1 of Schedule 4 to that Act as it had effect immediately before the coming into force of section 64 of the Protection of Freedoms Act 2012(b);”;

(d) after the definition of “teacher” insert—

““up-date information” has the meaning given by section 116A(8) of PA 1997.”.

(2) In regulation 3(3)—

- (a) at the end of sub-paragraph (b) omit “and”; and
- (b) for sub-paragraph (c) substitute—

“(c) is not barred from regulated activity relating to children in accordance with section 3(2) of the Safeguarding Vulnerable Groups Act 2006 in any case where it is intended that the person will engage in any activity which is a regulated activity relating to children within the meaning of Part 1 of Schedule 4 to that Act; and

(d) is not subject to a prohibition order or interim prohibition order or subject to any direction made under section 142 of EA 2002(c) or any prohibition, restriction or order having effect as such a direction.”.

(3) In regulation 3(5)(b) omit “to the Secretary of State”.

(4) After regulation 3(5) insert—

“(6) For the purposes of these Regulations an enhanced criminal record certificate is subject to up-date arrangements in the circumstances set out in section 116A(3) of PA 1997.

(7) References to the giving of negative up-date information are references to the giving of such information under section 116A(1) of PA 1997.”.

Amendments to Parts 2 and 3

4.—(1) In regulation 12(3) and in regulation 24(3) for “The” where it first appears substitute “Where it is intended that the person will engage in relevant activity, the”.

(2) After regulation 12(3) and after regulation 24(3) insert—

“(3A) Where a governing body obtains an enhanced criminal record certificate in respect of any such person and that certificate is subject to up-date arrangements, it must consider whether to request up-date information in relation to the certificate under section 116A(1) of PA 1997.”.

5.—(1) In regulation 18(1)(a)(i) after “5(a)(i)” insert “, (iii) and (iv)”.

(2) In regulation 30(1)(a)(i) for “paragraph 5(a)(i)” substitute “paragraphs 5(a)(i), (iii) and (iv) and 5A”.

(3) In regulation 18(1) and in regulation 30(1)—

(a) in sub-paragraph (a)(ii)—

(i) before “that it” insert “where it is intended that the person will engage in relevant activity,”; and

(a) 2006 c. 47. Part 1 of Schedule 4 was amended by paragraph 41 of Schedule 1 to the Education and Skills Act 2008 (c. 25), section 64 of and paragraph 1 of Schedule 10 to the Protection of Freedoms Act 2012 (c. 9) and S.I. 2009/2610.

(b) 2012 c. 9. Section 64 amended the definition of “regulated activity relating to children” as set out in Part 1 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006; however, by virtue of regulations 5A and 5C(a) of S.I. 2002/233 (as amended by S.I. 2006/748, 2013/2669 and 2014/955) it is still possible to apply for and receive an enhanced criminal record certificate in order to check a person’s suitability to engage in regulated activity relating to children as defined before section 64 came into force.

(c) Section 142 was repealed by paragraph 1 of Schedule 10 to the Safeguarding Vulnerable Groups Act 2006 (c. 47) but continues to have effect for the purposes specified by S.I. 2009/2611.

- (ii) at the end omit “and”;
 - (b) after sub-paragraph (a)(iii) insert—
 - “(iv) whether, if the employment business or another employment business has obtained such a certificate before the person is due to begin work at the school and the certificate is or has been subject to up-date arrangements, the employment business or another employment business has been given negative up-date information in relation to the certificate not more than three months before the person is due to begin work at the school; and”;
 - (c) after “of the certificate” in sub-paragraph (b) insert—
 - “; and
 - (c) where an enhanced criminal record certificate is or has been subject to up-date arrangements and the employment business has been given negative up-date information in relation to the certificate not more than three months before the person is due to begin work at the school, a copy of the information”.
- (4) In regulation 18(2) and in regulation 30(2)—
- (a) after “been” insert “issued and”; and
 - (b) after “school” insert “unless that certificate is or has been subject to up-date arrangements and the employment business or another employment business has been given negative up-date information in relation to the certificate not more than three months before the person is due to begin work at the school”.
- (5) In regulation 18(5) and in regulation 30(5)—
- (a) at the end of sub-paragraph (a) omit “and”; and
 - (b) after “of the certificate” in sub-paragraph (b) insert—
 - “; and
 - (c) if any such certificate is or has been subject to up-date arrangements and the employment business has been given negative up-date information in relation to the certificate not more than three months before the person is due to begin work at the school, to provide a copy of the information”.

Amendments to Schedule 2

6.—(1) Schedule 2 is amended as follows.

(2) In paragraph 5—

- (a) the existing provision becomes sub-paragraph (1);
- (b) in sub-paragraph (1)(a)(i) after “2(a)” omit “to” and at the end omit “and”;
- (c) at the end of sub-paragraph (1)(a)(ii) omit “and”;
- (d) after sub-paragraph (1)(a)(ii) insert—
 - “(iii) it has made a check to establish that the person is not subject to any direction under section 142 of EA 2002 or any prohibition, restriction or order having effect as such a direction; and
 - (iv) subject to sub-paragraph (2), it has made a check to establish that the person is not barred from regulated activity relating to children in accordance with section 3(2) of the Safeguarding Vulnerable Groups Act 2006; and”;
- (e) after sub-paragraph (1)(b) insert—
 - “(2) In the case of a person supplied on or after 29th June 2015, sub-paragraph (1)(a)(iv) applies only if it is intended that the person will engage in any activity which is a regulated activity relating to children within the meaning of Part 1 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006.”.

(3) In paragraph 6 after “18(5)” insert “or 30(5)”.

(4) After paragraph 6 insert—

“**6A.** In relation to any person supplied by an employment business on or after 29th June 2015, where written notification has been received from the employment business in accordance with a contract or other arrangements made pursuant to regulation 18(5) or 30(5) that it has been given negative up-date information in relation to an enhanced criminal record certificate not more than three months before the person was due to begin work at the school, whether the employment business provided a copy of the information.”.

24th March 2015

David Laws
Minister of State
Department for Education

EXPLANATORY NOTE

(This note is not part of the Regulations)

The School Staffing (England) Regulations 2009 (“the 2009 Regulations”) set out, among other matters, the checks that the governing body of a maintained school in England must make to ensure the suitability of prospective new members of staff at the school. These Regulations amend the 2009 Regulations to reflect changes made by the Protection of Freedoms Act 2012 to the circumstances in which the Disclosure and Barring Service (“DBS”) can be asked to carry out checks.

Regulation 3 makes amendments to various definitions and other interpretation provisions for terms and expressions used elsewhere in the 2009 Regulations.

Regulation 4 amends regulations 12 and 24 of the 2009 Regulations, which set out the suitability checks for staff who are to be employed at maintained schools. Regulation 5 amends regulations 18 and 30 of the 2009 Regulations, which set out the suitability checks for staff supplied to maintained schools by employment businesses. The effect of the amendments is that an enhanced criminal record certificate will need to be obtained in cases where the proposed new member of staff will be engaging in ‘relevant activity’ as defined in the Regulations (for example if they will regularly be responsible for supervising children or will regularly have opportunities for contact with children at the school). Regulation 4(2) inserts a new sub-paragraph (3A) into regulations 12 and 24 of the 2009 Regulations requiring a governing body to consider asking the DBS for an update confirming whether the information in an enhanced criminal record certificate is still current. Regulation 5(4) amends the requirements for supply staff so that an enhanced criminal record certificate older than three months can still be used if the DBS confirms that the information in the certificate is still current.

Regulation 6 makes consequential changes to Schedule 2 to the 2009 Regulations, which sets out the information that a governing body must record about the checks made when appointing staff.

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