

**EXPLANATORY MEMORANDUM TO  
THE EDUCATION (SPECIFIED WORK AND REGISTRATION) (ENGLAND)  
(AMENDMENT) REGULATIONS 2007**

**2007 No. 2117**

1. This explanatory memorandum has been prepared by the Department for Children, Schools and Families and is laid before Parliament by Command of Her Majesty.
2. **Description**
  - 2.1 This instrument amends the Education (Specified Work and Registration) (England) Regulations 2003 (“the Principal Regulations”) made under section 133 (Requirement to be Qualified) of the Education Act 2002, with effect from 1 September 2007.
  - 2.2 The amendments relate to arrangements for trainee teachers who have not passed one or more of the skills tests (in Literacy, Numeracy and Information Communications Technology) and close an unintentional loophole relating to the employment of Overseas Trained Teachers. They make a new provision to extend any deadline imposed on unqualified teachers who carry out specified work, to take account of any absence from work on statutory maternity, adoption, paternity or parental leave or because of pregnancy. They also delete a number of provisions which are now redundant.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
  - 3.1 None
4. **Legislative Background**
  - 4.1 The instrument amends the Principal Regulations made under section 133 (Requirement to be Qualified) of the Education Act 2002.
  - 4.2 The Principal Regulations seek to safeguard standards in the classroom and preserve the role, status and overall responsibility of qualified teachers in schools. The Regulations in this instrument do not change this policy intention.
5. **Territorial Extent and Application**
  - 5.1 This instrument applies to England only.
6. **European Convention on Human Rights**
  - 6.1 As the instrument is subject to negative resolution procedure no statement is

required. There are no human rights implications.

## 7. Policy background

- 7.1 The Principal Regulations were developed at the time of the National Agreement on *Raising Standards and Tackling Workload* (signed on 15 January 2003 between the Government, local government employers and school workforce unions) as one of a number of legislative measures to change teachers' contracts and make clear the categories of people who can undertake 'specified work' in schools. Specified work is defined as planning and preparing lessons and courses for pupils, delivering lessons to pupils, and assessing and reporting on the development, progress and attainment of pupils, and encompasses 'teaching' in its widest sense.
- 7.2 The Principal Regulations came into force on 1 August 2003 accompanied by detailed guidance developed and agreed by the Workforce Agreement Monitoring Group (WAMG), in which WAMG stated that they would review the Principal Regulations and associated guidance in 2006.

### *The skills tests*

- 7.3 Regulation 6 of the instrument replaces the five year grace period for teacher trainees who have completed their Initial Teacher Training course, but not passed all the skills tests (in English, Numeracy and ICT) with a deadline of 31 August 2008. Beyond this date they will not be allowed to work as teachers.
- 7.4 The five year grace period was originally granted in 2001 to the second cohort of teachers who were required to take the skills tests (in numeracy and literacy by this time). The third and subsequent cohorts had to pass in ICT as well (as did anyone from cohort 2 who had not passed in numeracy and literacy before May 2002).. Now that the tests are well established and the vast majority (98%) of trainees pass all of them during their Initial Teacher Training year, we do not consider there to be a need to retain this grace period. We envisage that this change will affect both new and a small number of existing teachers. The timing of the change will give teacher trainees ample time to pass any outstanding skills tests and schools time to adjust to the fact that, with effect from 1 September 2008, they will no longer be able to employ this type of trainee as an unqualified teacher.

### *Overseas Trained Teachers (OTTs) and Qualified Teacher Status (QTS)*

- 7.5 Regulation 6 of the instrument also closes the loophole which previously allowed the employment of Overseas Trained Teachers after four years from their first day of teaching in England if they had joined an employment-based teacher training scheme, thereby circumventing the deadline of four years imposed on them in paragraph 5 of Schedule 2 of the 2003 Regulations.
- 7.6 Since September 2006 we have warned local authorities, schools, and agencies that we will close this unintentional loophole in the 2003 Regulations, with effect

from the 2007/08 school year. However, a number of responses to the consultation suggested that this amendment should be deferred to the 2008/09 school year to allow schools additional time to make the necessary changes to their staffing arrangements, so we have extended the deadline by a year. This amendment will therefore come into force on 1 September 2008. We envisage this will affect a small number of OTTs currently working in schools without Qualified Teacher Status.

#### *Unqualified teachers who take statutory leave*

- 7.7 Regulation 4 of the instrument makes provision to extend any deadline imposed on unqualified teachers who carry out specified work (such as the deadlines imposed by paragraphs 5 and 6 of Schedule 2 to the Principal Regulations, as amended), to take account of any absence from work on statutory maternity, adoption, paternity or parental leave or because of pregnancy.

#### *Minor amendments*

- 7.8 Regulations 3, 5, 6(1) to (5), and 7 of the instrument tidy up the wording and drafting inconsistencies in the Principal Regulations and delete a number of provisions which are now redundant.

#### Consultation

- 7.9 A public consultation took place via the Department for Children, Schools and Families consultation website on the proposed draft amendments to the Regulations between 11 May and 22 June 2007. Local authorities, schools, agencies and other representative organisations were consulted. The comments received on these proposed draft amendments to the Regulations have been consolidated into this instrument.
- 7.10 We consulted on a proposed change to the Regulations so that OTTs who have not achieved QTS within four years should not be able to be employed as instructors, effective from the 2007/08 school year. A majority of the respondents to the consultation disagreed with the proposed amendment, considering that they unreasonably restrict a head teacher's discretion to employ people they judge to have suitable skills in the absence of a qualified teacher. We have therefore removed this change from the amending Regulations. Guidance will make it clear that the law remains as before: instructors should only be employed if they have a skill which is not available from a qualified teacher at the time. There should be no automatic reclassifying of teachers as instructors.
- 7.11 We believe a consultation period of six weeks rather than the standard twelve weeks was appropriate in this case because:
- The draft amendments we proposed were few and/or minor and not deemed to be controversial.

- The Department has been publicising the proposed amendment to close the loophole which allowed Overseas Trained Teachers on employment-based teacher training schemes to teach beyond 4 years, since September 2006.
- Existing teachers affected by the removal of the five year grace period will still have until 1 September 2008 to pass any outstanding skills tests.
- We engaged fully with stakeholders, including our Social Partners through the Workforce Agreement Monitoring Group (WAMG), throughout the consultation process. We also had exceptional agreement to write directly to affected teachers and schools at the start of the consultation on the proposed skills tests amendments and provided wider advice to all headteachers and local authorities about the effect of the proposed changes and the general importance of teachers having Qualified Teacher Status.

### Guidance

7.12 The Department has revised the guidance issued in support of the Principal Regulations which we will circulate to key stakeholders and make available on [details of website] to explain the new provisions once the Instrument has been approved by Parliament.

## **8. Impact**

8.1 An Impact Assessment has not been prepared for this instrument as there is no regulatory impact on any part of the private or voluntary sector. The Department carried out an initial assessment of the additional costs and burdens on schools and teachers arising from the amendments to the Regulations. This assessment indicated that any additional costs are likely to be negligible and the numbers of teachers (and therefore schools) affected in any given year would be small.

## **9. Contact**

9.1 Any enquiries about the contents of this memorandum should be addressed to Rebecca Beeton, School Resources Group, Department for Children, Schools and Families , telephone: 0207 925 3879 or e-mail: rebecca.beeton@dcsf.gsi.gov.uk.