EXPLANATORY MEMORANDUM TO

THE EDUCATION (HEAD TEACHERS' QUALIFICATIONS) (ENGLAND) (AMENDMENT) REGULATIONS 2011

2011 No. 602

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

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 This instrument amends the Education (Head Teachers' Qualifications) (England) Regulations 2003. Those Regulations provide that a person may only serve as a head teacher of a maintained or non-maintained special school if they hold certain qualifications, unless they were appointed between 1st April 2004 and 31st March 2009, had successfully applied at the time of their appointment to train for the National Professional Qualification for Headship (NPQH), and have been in post for less than four years. That four year period is extended where the head teacher is absent from work in exercise of certain listed rights. This instrument adds Additional Paternity Leave to that list of rights.

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

3.1 None.

4. Legislative Context

4.1 Under section 135 of the Education Act 2002, regulations may provide that a person may serve as the head teacher of a school only if the person has a specified qualification. The Education (Head Teachers' Qualifications) (England) Regulations 2003 (S.I. 2003/3111) make provision to that effect, with the exception described in paragraph 2.1 above.

4.2 Under sections 80AA and 80BB of the Employment Rights Act 1996, regulations may entitle an employee who satisfies specified conditions to be absent from work on leave for the purpose of caring for a child at a time when the child's mother or adopter satisfies prescribed conditions. The Additional Paternity Leave Regulations 2010 (S.I. 2010/1055) make provision under those sections in relation to Additional Paternity Leave (which is described in paragraph 7.3 below).

5. Territorial Extent and Application

5.1 The regulations amended by this instrument apply only in relation to England.

6. European Convention on Human Rights

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 National Professional Qualification for Headship (NPQH) is a competence based development programme for aspiring headteachers. On 1 April 2009, it became mandatory for all first-time head teachers in the maintained sector to hold the NPQH prior to appointment. Prior to this there was a five-year period (from 1 April 2004 – 31 March 2009), during which new heads could be appointed whilst working towards NPQH, on the condition that they complete the NPQH satisfactorily within four years of the date of their appointment.

7.2 The Education (Head Teachers' Qualifications) (England) Regulations 2003 allow for the four year period to be extended by the length of any absences taken during the period which are due to a listed right (currently maternity, ordinary paternity, parental or adoption leave). Those Regulations do not yet allow for the possibility of Additional Paternity Leave. It is therefore necessary to amend those Regulations to refer to Additional Paternity Leave as well.

7.3 Currently, mothers are entitled to one year of maternity leave, and fathers to two weeks paternity leave, which is referred to as Ordinary Paternity Leave; and adopters can exercise parallel rights. Parents of children whose expected week of birth begins on or after 3rd April 2011 will be able to choose to transfer the second six months of maternity leave to the father (or the mother's partner) providing the mother returns to work and certain other conditions are satisfied; and parallel rights will be exercisable by adopters notified of having been matched with a child on or after 3rd April 2011. This is known as Additional Paternity Leave.

8. Consultation outcome

8.1 No public consultation has been undertaken because the amendment effected by this instrument is consequential on the introduction of Additional Paternity Leave and will be favourable to head teachers. From September to November 2009, the previous Government undertook a public consultation on the administration of Additional Paternity Leave and Pay. 110 written responses were received, which were largely positive with regard to the policy intentions. Full details can be accessed via the link below: http://webarchive.nationalarchives.gov.uk/+/http://www.berr.gov.uk/files/file54374.pdf

9. Guidance

9.1 We will amend the guidance currently available on the National College for the Leadership of Schools and Children's Services website to reflect the change made by this instrument.

10. Impact

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

10.2 The impact on the public sector is likely to be favourable as head teachers in this position are less likely to fail the NPQH because there was insufficient time for them to complete the qualification because of absence from work due to Additional Paternity Leave. Failure to complete the NPQH within four years of appointment would result in such head teachers having to leave their posts.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 This Statutory Instrument will not be subject to internal review as it has been made to reflect wider regulatory changes.

13. Contact

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.