EXPLANATORY MEMORANDUM TO THE

EDUCATION (MODIFICATION OF ENACTMENTS RELATING TO EMPLOYMENT) (ENGLAND) (AMENDMENT) ORDER 2004
2004 No. 2325

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

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

2. Description

2.1 The Education (Modification of Enactments Relating to Employment) (England) (Amendment) Order 2004, which comes into force on 1 October 2004, amends the Education (Modification of Enactments Relating to Employment) (England) Order 2003 by adding to the Schedule which lists modified employment enactments. The addition is sections 29-32 and Schedules 2-4 of the Employment Act 2002, which relate to statutory dispute resolution procedures for staff dismissal, discipline and grievance.

2.2 The 2003 Order modifies various provisions relating to employment to take account of the requirement for local education authorities to delegate financial management of schools to school governing bodies. While a school has a delegated budget, the governing body also has delegated staffing powers, which include the appointment, suspension, conduct and discipline, capability and dismissal of staff at the school. However, the local education authority remains the employer of staff at the school and the modification of relevant employment enactments ensures that governing bodies are accountable for their staffing decisions as if they were the employer. This applies in any maintained school where the local education authority is the legal employer of staff and the governing body has delegated staffing power.

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

3.1 There are no matters of special interest to the committee.

4. Legislative Background

4.1 Section 81 of the School Standards and Framework Act 1998 provides the power for the Secretary of State to make an Order modifying employment enactments relating to employment for the purpose of governing body staffing responsibilities and ensuring that they may be made accountable for their decisions. This is a re-enactment of a provision that first appeared in the Education Reform Act 1988 when the local management of schools was introduced.

5. Extent

5.1 This instrument applies to England.

6. European Convention on Human Rights

The Minister for School Standards, David Miliband, has, has taken the view that the provisions of the Education (Modification of Enactments Relating to Employment) (England) (Amendment) Order 2004 are compatible with the Convention Rights.

7. Policy background

7.1 Since the introduction of local management for maintained schools from 1988, governing bodies with delegated budgets have been accorded responsibilities for staffing decisions on appointments, discipline and dismissal even where the local education authority is the legal employer. So that governing bodies are fully accountable for their staffing decisions as if they were the employer, certain relevant employment enactments have been modified for this purpose.

7.2 Maintained school governing bodies with delegated staffing responsibilities have also been required by education statute to establish procedures for staff discipline and grievance and to afford a formal hearing and appeal in the case of staff dismissal. The introduction on 1 October of the general requirement in the Employment Act 2002 for all employers to have such arrangements will replace the statutory requirement for maintained schools which is set out in the Schedule to the Education School Staffing (England) Regulations 2003. This general employment law change makes it necessary for the provision in the Employment Act 2002 to be modified so that relevant governing bodies are regarded as if they were employers, which will ensure that governing bodies continue to be accountable for their responsibilities related to staff discipline grievance and dismissal.

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

8.2 The impact on the public sector relates to the staffing functions of maintained schools in England and Wales to the extent that it makes the governing bodies of these schools accountable under general employment law for staff dismissal, discipline and grievance, in line with other employers, which will replace the particular requirements that previously applied to them under education statute.

9. Contact

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