# EXPLANATORY MEMORANDUM TO

# THE SCHOOL STAFFING (ENGLAND) (AMENDMENT) REGULATIONS 2012

## No. 1740

**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 These Regulations insert a new regulation into the School Staffing (England) Regulations 2009 ("the School Staffing Regulations"), which requires the governing body of a maintained school to confirm whether or not a teacher has been the subject of capability procedures within the last two years, and, if so, provide details, if asked to do so by the governing body or proprietor of a maintained school or an Academy School to which that person has applied for a teaching post (regulation 8A). They also amend regulation 4 to allow governing bodies to delegate this duty to others in accordance with that regulation.

## 3. Matters of special interest to the Joint Committee on Statutory Instruments *or* the Select Committee on Statutory Instruments

3.1 None.

## 4. Legislative Context

4.1 These Regulations amend the School Staffing Regulations, which impose duties and confer powers upon governing bodies, head teachers and local authorities in relation to the staffing of maintained schools, including, in particular, duties and powers relating to the appointment, discipline, suspension and dismissal of teachers and other staff and a duty to establish procedures for dealing with lack of capability.

## 5. Territorial Extent and Application

5.1 This instrument applies to England.

## 6. European Convention on Human Rights

6.1 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 Schools White Paper 2010, "The Importance of Teaching", set out the Government's intentions to improve the quality of teachers and teaching. To support its aims the White Paper confirmed the Government's commitment to simplify current arrangements for managing the performance and capability procedures for teachers.

7.2 In support of these arrangements a new regulation 8A is being inserted into the School Staffing Regulations, which will require governing bodies to share information about whether or not a teacher or head teacher has been the subject of capability procedures, when this is requested by prospective employers. This will provide prospective employers with important information that is currently not routinely made available and it will supplement the information prospective employers already have, or can call on, when making decisions about teacher appointments. This new regulation will come into force in September 2012, and will complement the new model policy on Teacher Appraisal and Capability, published in January 2012.

7.3 These Regulations are the first substantive amendment to the School Staffing Regulations. The Department plans to carry out a comprehensive review of the Staffing Regulations in 2013/14.

## 8. Consultation outcome

8.1 A public consultation attracted 45 responses from the maintained school workforce, local government, religious organisations, professional bodies, including trade unions and individual teachers. The consultation took place over a six week period ending 24 February 2012. The Department had previously consulted on a proposal to require governing bodies to provide a teacher's two most recent written appraisal reports, on request, to any school to which a teacher applied for work. Having considered the responses to this proposal we concluded that the requirement on schools to share factual information about whether a teacher or head teacher has been in capability procedures was a fairer alternative. As this is an important component of the Department's policy to prevent the recycling of underperforming teachers we reduced the further consultation period from twelve to six weeks to allow implementation at the same time as the new arrangements for teacher appraisal and capability, due to come into force in September 2012.

8.2 64% of responses broadly supported the purpose of the new regulation while only a small minority (7%) expressed fundamental opposition. The remaining respondees neither supported nor opposed the proposal; instead preferring to comment on how they expected the new requirement to operate once implemented. Built into these responses were questions asking for clarification regarding the scope of the requirement, equality issues, data protection and confidentiality. Assurances were sought for the underlying reasons about a teacher's capability to be considered by schools receiving the required information, such as ill-health or family bereavement. Concerns were also expressed

about teachers, who had successfully gone through capability procedures, and were now performing to a satisfactory standard but may not to be appointed by another school due to the proposal.

8.3 In the light of these responses, the regulations were subsequently revised to require schools to provide details of a teacher's capability history so that prospective employers can differentiate between teachers who have been in capability procedures for a short period, perhaps because of illness or a bereavement and who are now performing to a satisfactory standard, and those for whom underperformance is still ongoing or has been a more regular feature of their employment.

## 9. Guidance

9.1 The Department is revising the statutory guidance issued by the Secretary of State in support of the School Staffing Regulations, to reflect the changes. The primary purpose of the guidance is to explain what is required of governing bodies, local authorities and head teachers by the Regulations. Where appropriate, it also gives some guidance on, or pointers to, other Acts and Regulations relevant to the employment of staff in maintained schools. The revised guidance will be issued to coincide with the coming into force of these Regulations.

## 10. Impact

10.1 There will be no impact on business, charities or voluntary bodies.

10.2 The impact on the public sector is minimal. Schools will need to make arrangements to ensure they provide timely information about a teacher's capability to a prospective employer.

10.3 An Impact Assessment has not been prepared for this instrument because no impact on the private or voluntary sector is foreseen.

## 11. Regulating small business

11.1 The legislation does not apply to small business.

## 12. Monitoring & review

12.1 We will be seeking to gather information about how these Regulations are being implemented by schools in the first year of operation (2012/13). We are developing plans for longer-term monitoring and review.

## 13. Contact

Stephen Bateman at the Department for Education (Tel: 01325 735673 or email: Stephen Bateman@education.gsi.gov.uk) can answer any queries regarding the instrument.