EXPLANATORY MEMORANDUM TO

THE SCHOOL STAFFING (ENGLAND) (AMENDMENT) REGULATIONS 2014

2014 No. 798

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

2. Purpose of the instrument

2.1 These Regulations amend the School Staffing (England) Regulations 2009 ("the principal Regulations") so that Secretary of State approval is no longer required to approve the persons who provide safer recruitment training for maintained schools.

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3. Matters of special interest to the Joint Committee on Statutory Instruments o*r* the Select Committee on Statutory Instruments

3.1 None

4. Legislative Context

4.1 The principal Regulations make provision relating to the staffing of maintained schools, in particular, regulation 9 places a duty on the governing body of the school to ensure that (i) any person who interviews an applicant for any post under those Regulations completes safer recruitment training and (ii) at least one person of any panel or group that is involved in the selection and recruitment of school staff also completes safer recruitment training. "Safer recruitment training" is defined in regulation 3 of the principal Regulations as training provided by a person approved by the Secretary of State for the purpose of ensuring that those who undertake it know how to take proper account of the need to safeguard children when recruiting staff. These Regulations amend that definition so that from 1st September 2014, the Secretary of State is no longer required to approve the persons who provide such training. A further clarifying amendment is also made to the definition in regulation 3 so that the underlying purpose of such training captures the need to promote the welfare of children when recruiting staff to more closely mirror the wording of section 175 of the Education Act 2002.

5. Territorial Extent and Application

5.1 This instrument applies to England.

6. European Convention on Human Rights

As the instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- What is being done and why

7.1 Following the murders of Holly Wells and Jessica Chapman in Soham in 2002, Lord Bichard recommended that 'no interview panel for staff working in schools should be convened without at least one panel member being properly trained'. This was achieved through regulations 3 and 9 of the principal Regulations. The then Government took this recommendation a step further with a requirement that the training must be provided by a person approved by the Secretary of State.

7.2 The then Government put in place two ways in which this training could be achieved:

- an online training course run by the Department for Education
- an agreement with the Lucy Faithfull Foundation that they would deliver face to face trainers that would meet the Secretary of State's requirements.

Members of the Local Safeguarding Children's Board (LSCB) also carry out training as the purpose of the LSCB is to ensure that agencies work together to safeguard children; many authorities such as Buckinghamshire use training provided by the LSCB.

7.3 The Government wants schools to have flexibility to choose training which best meets their needs. Practical, up to date information on specific safeguarding issues is best provided by expert organisations who are actively engaged in the child safety area. The Secretary of State's approval limits the training which schools are able to access thereby potentially impeding their ability to keep children safe.

7.5 The change will mean that from September 2014 schools will need to source and organise their own training via the local authority and/or expert providers because the DfE's online training will cease to operate. Our work with providers will ensure that:

- NSPCC will offer replacement online training at a minimal cost (expected to be around £25 per person);
- Lucy Faithfull Foundation will continue to train face to face trainers;
- LSCBs will continue to offer training (as previously described); and
- Other expert organisations such as children's charities may also provide training.

It is anticipated that schools will benefit from training which is provided by expert organisations, which is tailored to their needs, which meets minimum standards (see Guidance section) and which is kept constantly updated.

8. Consultation outcome

8.1 The Government consulted on updated statutory safeguarding guidance for schools, *Keeping Children Safe in Education*, and on a proposal to remove the requirement for "safer recruitment training "to be provided by a person approved by the Secretary of State between 28 March until 20 June 2013. More than 300 responses were received from LSCBs, local authority representatives, school representatives, children's charities and individual headteachers and school staff engaged with it. Of those who responded to the question about Secretary of State approval of the training, 69 per cent were opposed to its removal, 22 per cent were in favour and 9 percent were not sure. Local authorities were the group most strongly opposed to its removal – 83 per cent did not agree with the proposal.

8.2 Of those who opposed the removal of the Secretary of State's approval and who favoured its retention arguments were that retaining the regulation would help maintain consistency, avoid complacency, maintain high quality training and heighten awareness of safeguarding issues when recruiting.

8.3 Officials undertook 14 face to face meetings with those most strongly opposed - local authority representatives, teacher unions, school representative bodies including governor representatives and children's charities - to explore their views in greater detail.

8.4 It was clear from these meetings that many had misunderstood the proposal to remove Secretary of State approval to be a proposal to remove the requirement for safer recruitment training altogether. Officials explained to those respondents with concerns that this would not be the case; further, a number of respondents suggested that high quality training was already available to schools as they had found training by the LSCB and NSPCC to be excellent. They also suggested that minimum standards could be set out by DfE. The parties who attended the meetings were reassured that alternative arrangements would not represent a weakening of policy on safeguarding and indicated that they would cascade the discussion to their members.

9. Guidance

9.1 The Department has revised the current statutory guidance, *Safeguarding Children and Safer Recruitment in Education*. Schools and colleges must have regard to the guidance when carrying out their duties to safeguard and promote the welfare of children[1]. The intention is that the revised guidance will be published by the end of April 2014. The current guidance says that safer recruitment training must be approved a person approved by the Secretary of State. The updated guidance states that, once the changes made by these amending Regulations come into force, schools will be able to choose training to best suit their needs, seeking advice from the LSCB as required. The training

[1] Section 175 Education Act 2002, the Further Education (Providers of Education) (England) (Regulations) 2006 (S.I.2006/ 3199), the Education (Independent School Standards) (England) Regulations 2010 (S.I. 2010 / 1997) and the Education (Non-Maintained Special Schools) (England) Regulations 2011 (S.I. 2011/1627)

should cover, as a minimum, the contents of the updated *Keeping Children Safe in Education* guidance.

10. Impact

10.1 An impact assessment has not been produced for this instrument because the legislation does not have an impact on private firms or organisations in the civil society sector (collectively, the business sector). The (minimal) impact is purely on schools in the public sector.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 This instrument will be subject to informal review through Ofsted. The assessment of the quality of leadership and management made during an Ofsted inspection includes an assessment of the effectiveness of the safeguarding arrangements in place to ensure there is safe recruitment and all learners are safe.

13. Contact

Louise Woodward at the Department for Education Tel: 020 7340 7596 or email: louise.woodward@education.gsi.gov.uk can answer any queries regarding the instrument.

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