

SCHOOL STAFFING REGULATIONS - SAFER RECRUITMENT POLICY DRAFT

Reviewed and updated: January 2023

Next review: January 2026

Suitable for: all types of school

Status: non-statutory

Introduction

Regulatory Amendments

The School Staffing (England) Regulations 2009 came into force from 2 November 2009 and consolidated the existing regulations that date back to 2003 and subsequent amendments. Some adjustments were made from 1 April 2012, recognising teachers in further education who have been awarded QTLS by the Institute for Learning (IfL) and are members of the IfL as qualified teachers in schools. In addition from 1 April 2012, teachers who qualified in Australia, Canada, New Zealand and the United States of America (USA) are recognised as qualified teachers and awarded qualified teacher status (QTS) in England without being required to undertake any further training or assessment.

Further regulatory amendment in 2012 requires any school to inform about capability issues in the previous two years when a teacher applies for another teaching post elsewhere, including detailing the nature of the capability issues. Although the regulations do not apply to academies, the requirement on reporting capability issues does apply.

The School Staffing (England) (Amendment) Regulations 2013 came into force on 1 September 2013 and amend the School Staffing (England) Regulations 2009. These regulations prescribe that governing boards of maintained schools must conduct the relevant employment checks when appointing new members of staff. They should establish candidates' identities, their right to work in the UK and their qualifications.

The latest amendment, The School Staffing (England) (Amendment) Regulations 2015, came into force on 29 June 2015 and amend the 2009 regulations to reflect changes made by the Protection of Freedoms Act 2012 to the circumstances in which the Disclosure and Barring Service (DBS) can be asked to carry out checks.

This document should be read in conjunction with the DfE's non statutory guidance entitled 'Staffing and employment: advice for schools', dated January 2021.

Appointments

All appointments in schools are subject to the regulations and the training requirements for interviewers, together with the pre-recruitment checks detailed below, are statutory.

Safer recruitment training

- Safer recruitment training (Educare) is required by all senior leaders and governors, leading a selection or interview panel for staff recruitment. Training certificates must be shared with the Headteacher's PA and T Marr (administrator) Access to educare training modules can be provided by the data and GDPR manager Mr Ryan.
- The key provisions require that at least one person involved in any appointment at the school has received appropriate training, in accordance with safeguarding guidance. Before the implementation of the 2014 amended regulations, there was a requirement for safer recruitment training for appointment panel members to be recognised by the DfE, however

this is no longer a requirement. School leaders should use their professional judgement to determine what training is appropriate in meeting the needs of their school.

- While the same rules regarding delegation of appointments apply, they are subject to the training provision above. Thus if an appointment is delegated to one person, that person must have undertaken appropriate training. CEFM advises that there should always be at least two people involved in the entirety of the appointments process. For further information please refer to the CEFM appointments guidance.

Pre-recruitment checks

Before an appointment is made, the governing board should take the following action:

- Take up references from the applicant's current or former employer.
- Consider any capability history that the applicant may have had in the previous two years.
- Consider the applicant's fitness to teach.
- Check that the applicant is not subject to a prohibition order or an interim prohibition order.
- From 1 September 2022, schools are required to 'consider' carrying out an online search for information about those candidates they intend to shortlist.

Note. While conducting an online search is optional, legal advice is that schools should do this unless they have a very good reason not to do so. The school must decide whether to conduct the search in-house (in which case it must be done independently of the appointment panel by someone who has had safe recruitment training) or to employ an external agent. The parameters of any search should be carefully defined as to what details are lawful, necessary, proportionate and pertinent to the recruitment process, so that only information about an applicant that could pose a genuine risk to the school and/or its reputation should be provided to the appointment panel.

The regulations require that the governing board must also check:

- The identity of any person to be offered a post.
- That the person meets all relevant qualification requirements.
- That the person has a right to work in the United Kingdom.

In addition, the governing board must obtain an enhanced disclosure and barring service (DBS) certificate (formerly CRB) in respect of any such person before, or as soon as practicable after, the person's appointment. Where a governing board obtains an enhanced criminal record certificate and that certificate is subject to update arrangements, the governing board must consider asking the DBS for an update confirming whether the information contained within the enhanced criminal record certificate is still current.

In June 2013, the DBS introduced 'portable' DBS checks. This service enables applicants to subscribe (for a small annual fee) to a continually updated check of criminal records. As a result, the applicant's certificate can be transferred from one role or employer to another, without the need for a new check to be carried out each time. With the applicant's permission, the school is able to log on to the DBS website to check the status of the applicant's certificate. Note that the school still needs to check the original DBS certificate.

The regulations make it clear that there is not a requirement for a further DBS check in respect of anyone whose immediately previous employment was in a school or further education establishment

in England having regular contact with children and where that employment is considered continuous (a gap of no more than three months).

Similarly, if the person worked in a school in a post to which they were appointed on or after 12 May 2006, and which did not bring them into regular contact with children, and that employment has been continuous, no further DBS check is necessary.

If it is not possible to obtain the enhanced DBS certificate, or where this would be inadequate to establish suitability to work in a school, because the person concerned has lived outside the United Kingdom, the governing board must make such further checks as appropriate and having regard to any guidance issued by the Education Secretary.

Although there is an ongoing provision that allows for the enhanced DBS certificate to be obtained as soon as practicable after an offer of appointment, such an offer should always be on the basis that the outcome of the DBS check is satisfactory to the governing board.

There is a requirement for schools to have a single central record relating to all checks and these regulations reinforce that provision.

Regulations – community and controlled schools

LA role

A representative of the LA may attend and offer advice at all proceedings relating to the selection or dismissal of any teacher in a community school or controlled school.

In such schools, the governing board must consider any advice offered by the LA, but that is as far as the regulations go on this point.

Appointment of headteachers and deputies

The governing board must notify the LA in writing of any vacancy for the headteacher, and any post for a deputy headteacher, which it has identified as one to be filled.

While there has for some time been some provision for appointment without advertisement in exceptional circumstances, the regulations allow more flexibility in the application of this provision and it is for the governing board to determine whether or not there is good reason not to advertise or the arrangements for any advertisement.

Where the governing board advertises any such vacancy or post, it is recommended they appoint a selection panel, consisting of at least one of its members, other than a governor who is the headteacher or a deputy headteacher.

The panel should select, for interview, suitable applicants. Where the post is that of headteacher, the LA should be notified in writing of the names of such applicants. The same panel should interview those shortlisted applicants who attend for interview and, if it considers that there is an appropriate candidate, recommend to the governing board the appointment of such a candidate.

LA rights

The LA may make written representations to the selection panel within seven days of receiving notification of the proposed appointment setting out reasons why the applicant is not a suitable person for the post.

In these circumstances, the panel must consider those representations. Where the panel determines to proceed with a recommendation for appointment of any person about whom representations have been made, the governing board and the LA must be notified in writing stating the panel's reasons.

Where the governing board confirms the recommendation of the selection panel to offer a contract of employment to a candidate, the LA must appoint that person.

If the selection panel does not recommend a person to the governing board or the governing board declines to approve the person recommended by the selection panel, the latter may recommend another suitable person for appointment.

Similarly the panel may recommend another suitable appointee should the LA decline to appoint the person originally identified. Such circumstances would only relate to pre-employment checks.

Where the governing board decides for good reason not to advertise and conduct a selection process and to offer a contract of employment to fill the vacancy, the LA must appoint the identified person.

Schools must not require appointment of any candidate who does not satisfy the regulations in respect of pre-employment checks.

Appointment of other teachers

For teachers other than headteachers and deputies, where the governing board identifies any post to be filled for a period of more than four months, it must provide the LA with a specification for the post.

Where a person is selected by the governing board for contractual appointment, the LA must appoint that person.

In circumstances where the regulations on pre-employment checks have not been satisfied, the LA may decline to appoint a person that the governing board has selected. The governing board may then select another person for appointment, who satisfies such checks.

Appointment of support staff

The regulations in respect of support staff are similar to those for teachers, but governing boards should pay particular regard to the remuneration provisions.

Where the governing board identifies a support staff post to be filled, it may recommend a person to the LA for appointment. Where the governing board recommends a person to the LA for appointment it must provide the LA with the name of the person recommended together with a job description/specification for the post.

Any job details must include the governing board's recommendations/requirements regarding the duties to be performed; in the case of a part time post, the hours of work; how long any fixed term post is expected to last; and the grade and remuneration.

The grade must be on the scale of grades applicable in the LA and represent what the governing board considers appropriate.

It is important to recognise that, where the LA has discretion with respect to remuneration, it must exercise that discretion in accordance with the governing board's recommendation.

The LA may make written representation to the governing board in respect of pay and/or remuneration up to seven days after receiving the job details. In these circumstances, the governing board must consider those representations; and where it decides not to change the grade and/or remuneration to be paid, shall notify the LA in writing of its reasons.

Providing the pre-employment checks are satisfactory the LA must appoint the person recommended by the governing board.

The regulations indicate that there are certain circumstances where an appointment might not be subject to a contract of employment. In these cases, the LA does not have the same rights. However, such circumstances should be few and far between and member schools are advised to check with CEFM to ensure compliance with employment law.

Supply staff

The governing board must ensure that no person supplied by an employment business (agency) to a school is allowed to begin work as a teacher or member of support staff unless there is written notification from the agency that it has made the pre-employment checks listed above. There must be confirmation that a valid enhanced criminal record certificate is in place and where there is any associated additional information on the certificate, the agency must pass a copy of that certificate to the school.

Where the agency has obtained an enhanced criminal record certificate, the certificate must have been obtained not more than three months before the person is due to begin work at the school, except where immediately before they worked in a school or further education establishment in England, in a post which brought them regularly into contact with children or young persons.

Similarly, if the person worked in a school in a post to which they were appointed on or after 12 May 2006, and which did not bring them into regular contact with children, and that employment has been continuous, no further DBS check is necessary.

It is an absolute requirement that, before taking up a supply post at the school, the governing board itself must check the person's identity.

Additional regulations

There are some relatively minor additional regulations affecting roman catholic religious order schools, collaborating schools and new schools and such establishments. Any such establishments that are members should consult CEFM if in any doubt.

Other provisions

There are a number of other key provisions in the regulations, although it is unlikely that they will have significant impact on schools, many of which already incorporate the good practice included.

Delegation of authority

The governing board may delegate many of its powers included in the regulations, but excluding those relating directly to appointments panels for headteacher posts, responsibility for disciplinary and capability procedures, for undertaking safer recruitment training and for ensuring the work/life balance for the headteacher.

Such delegation may be to the headteacher, one or more governors; or one or more governors and the headteacher, working together.

Where the governing board has made any delegation to one or more governors and the function delegated does not directly concern the headteacher, then the headteacher may attend and offer advice at all relevant proceedings; and the governor or governors to whom the delegation has been made must consider any such advice.

Performance of headteacher

If a LA has any serious concerns about the performance of a headteacher of a school, it must make a written report of its concerns to the governing board of the school; and at the same time, send a copy of the report to the headteacher.

In such circumstances, the governing board must notify the LA in writing of the action it proposes to take in the light of the LA's report.

Conduct and discipline of staff

The governing board must establish staff disciplinary and grievance procedures.

Where as a result of any disciplinary decision taken by the governing board, the required action falls within the LA's remit, the LA must take the action determined at the request of the governing board.

Capability of staff

The governing board must establish procedures for dealing with lack of capability on the part of staff at the school. The regulations do not differentiate between teaching staff and support staff.

Suspension of staff

The governing board or the headteacher may suspend any person employed or engaged otherwise than under a contract of employment to work at the school where, in the opinion of the governing board or the headteacher, such suspension is required.

The governing board or the headteacher must immediately inform the LA when a person is suspended.

Only the governing board may end a suspension and, on ending such a suspension, must immediately inform the LA and the headteacher.

School meals staff, employed directly by the LA, are subject to disciplinary procedures determined by that LA, although the governing board have a right to require them to cease working at the school.

Dismissal of staff

Where the governing board determines that any person employed or engaged by the LA to work at the school should cease to work there, it must notify the LA in writing of its determination and the reasons for it.

If the person concerned is employed or engaged to work solely at the school, the LA must, before the end of the period of fourteen days beginning with the date of the notification, either terminate the person's contract with the LA, giving such notice as is required under that contract; or terminate the contract without notice if the circumstances are such that it is entitled to do so.

If the person concerned is not employed or engaged by the LA to work solely at the school, the LA must require the person to cease to work at the school.

Suspension and dismissal in aided and foundation schools

The LA has no function in respect of suspension and dismissal in aided and foundation schools, but governing boards should ensure that they take professional advice in cases subject to such procedures. The regulations as set out above apply other than the LA functions.

Work/life balance of headteachers

There is a responsibility for the governing board to recognise and act upon the 'desirability' to ensure the work/life balance of the headteacher have been transferred to these regulations.

Requirement to comply with pay and conditions for teachers

The regulations require a governing board to ensure the headteacher complies with the duties imposed on her/him by the STPCD, which include a duty to manage their staff in accordance with their terms and conditions.

Conclusion

Many of the provisions consolidate what already happens in schools but there are penalties for non-compliance in the key areas and as ever Ofsted will have a role in monitoring. There have been occasions in the past where procedures may not have been followed precisely. Our recommendation is that headteachers and governors should familiarise themselves with the regulations and ensure compliance.

CEFM is available to advise members at all times. For specific advice member schools are advised to contact CEFM via the CEFM 'Help and advice line'.