

**2012 No. 762**

**EDUCATION, ENGLAND**

**The Education (Specified Work) (England) Regulations 2012**

*Made* - - - - *8th March 2012*

*Laid before Parliament* *9th March 2012*

*Coming into force* - - *1st April 2012*

The Secretary of State for Education makes the following Regulations in exercise of the powers conferred by sections 133, 134, 145 and 210(7) of the Education Act 2002(a):

**Citation, and commencement and application**

1.—(1) These Regulations may be cited as the Education (Specified Work) (England) Regulations 2012 and come into force on 1st April 2012.

(2) These Regulations apply in relation to England.

**Interpretation**

2. In these Regulations—

“the ERA 1996” means the Employment Rights Act 1996(b);

“the 1982 Regulations” means the Education (Teachers) Regulations 1982(c);

“the 2003 Qualifications Regulations” means the Education (School Teachers’ Qualifications) (England) Regulations 2003(d);

“employment-based teacher training scheme” means a scheme established by the Secretary of State under paragraph 19 of Schedule 2 to the Education (Teachers’ Qualifications and Health Standards) (England) Regulations 1999(e) or paragraph 10 of Schedule 2 to the 2003 Qualifications Regulations.

**Requirement to be qualified**

3.—(1) Subject to regulation 4, a person may not carry out specified work in a school unless that person—

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(a) 2002 c. 32; section 133 was amended by S.I. 2010/1158. Section 134 was amended by S.I. 2010/1158 and is amended by the Education Act 2011 (c. 21), Schedule 2, paragraph 19(1) and (3) (not in force at the time of making these Regulations). Section 145 was amended by paragraph 24 of Schedule 14 to the Education Act 2005 (c. 18) and is amended by paragraph 19(1) and (4) of Schedule 2, and paragraph 17 of Schedule 5, to the Education Act 2011 (c. 21) (not in force at the time of making these Regulations). For the meaning of “regulations” see section 212(1) of the Education Act 2002.

(b) 1996 c. 18.

(c) S.I. 1982/106, amended by S.I. 1988/542 and 1989/329.

(d) S.I. 2003/1662; there are amending Regulations but none is relevant.

(e) S.I. 1999/2166, amended by S.I. 2000/2704, 2001/1391, 2001/2896, 2001/3737, 2002/1434 and 2003/107.

- (a) is a qualified teacher<sup>(a)</sup>; or
- (b) satisfies at least one of the requirements or conditions specified in the Schedule.

(2) Where a provision in the Schedule allows a person to carry out specified work for a specified period, that period shall be extended to take account of any period when the person is absent from work—

- (a) in exercise of—
  - (i) her right to maternity leave conferred by section 71 or 73 of the ERA 1996<sup>(b)</sup> or her contract of employment and has the right to return to work by virtue of either of those sections or her contract of employment;
  - (ii) the right to parental leave conferred by section 76 of the ERA 1996;
  - (iii) the right to paternity leave conferred by section 80A, 80AA, 80B or 80BB of the ERA 1996<sup>(c)</sup>; or
  - (iv) the right to adoption leave conferred by section 75A or 75B of the ERA 1996<sup>(d)</sup>; or
- (b) because of her pregnancy.

### **Qualified teachers: further provision**

4.—(1) This paragraph applies in the case of a teacher who—

- (a) has been determined to be unsuited for further employment as a qualified teacher pursuant to paragraph 2(c) of Schedule 2 to the Schools Regulations 1959<sup>(e)</sup>, or
- (b) has received written notice under paragraph 5(2) of Schedule 6 to the 1982 Regulations.

(2) On and after 1st September 2012 a teacher mentioned in sub-paragraph (1) may only carry out specified work in a school if the teacher has, before that date, obtained the consent of the Secretary of State.

### **Specified work**

5.—(1) Each of the following activities is specified work for the purposes of these Regulations—

- (a) planning and preparing lessons and courses for pupils;
- (b) delivering lessons to pupils;
- (c) assessing the development, progress and attainment of pupils; and
- (d) reporting on the development, progress and attainment of pupils.

(2) In paragraph (1)(b) “delivering” includes delivery via distance learning or computer aided techniques.

### **Revocations and saving**

6.—(1) The following instruments are revoked—

- (a) the Education (Specified Work and Registration) (England) Regulations 2003<sup>(f)</sup> (“the 2003 Regulations”);

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(a) As to status as a qualified teacher see section 132 of the Education Act 2002 and the Regulations made under that section (S.I. 2003/1662).

(b) Section 71 was amended by paragraph 31, and section 73 by paragraph 32, of Schedule 1 to the Work and Families Act 2006 (c. 18) and both sections were amended by section 17 of the Employment Act 2002 (c. 22). The application of section 71 to a school governing body with a delegated budget was modified by article 3 of, and the Schedule to, S.I. 2003/1964.

(c) Sections 80A and 80B were inserted by section 1 of the Employment Act 2002, and sections 80AA and 80BB were inserted by sections 3 and 4 respectively of the Work and Families Act 2006 (c. 18).

(d) Sections 75A and 75B were inserted by section 3 of the Education Act 2002 and section 75A amended by paragraph 33, and section 75B amended by paragraph 34, of Schedule 1 to the Work and Families Act 2006.

(e) S.I. 1959/364, amended by S.I. 1968/1281, 1969/1777, 1971/342, 1973/2021 and 1978/1144.

(f) S.I. 2003/1663.

(b) the Education (Specified Work and Registration) (England) (Amendment) Regulations 2007<sup>(a)</sup>; and

(c) the Education (Specified Work and Registration) (England) (Amendment) Regulations 2008<sup>(b)</sup>.

(2) Despite the revocation of the 2003 Regulations, paragraph 1(1) of Part 2 to those Regulations continues to have effect.

8th March 2012

*Nick Gibb*  
Minister of State  
Department for Education

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(a) S.I. 2007/2117.  
(b) S.I. 2008/1883.

## SCHEDULE

Regulation 3

### THE REQUIREMENTS TO BE SATISFIED BY PERSONS WHO ARE NOT QUALIFIED TEACHERS IN ORDER TO CARRY OUT SPECIFIED WORK

#### **Existing unqualified teachers in nursery classes and at nursery schools**

1.—(1) This paragraph applies in the case of—

- (a) an assistant teacher at a nursery school, or
- (b) a teacher of a nursery class,

who was permitted to be employed as a teacher by paragraph 4 of Schedule 4 to the 1982 Regulations and who was so employed immediately before 1st September 1989.

(2) A person mentioned in sub-paragraph (1) may continue to carry out specified work in a school in that same capacity.

#### **Instructors with special qualifications or experience**

2.—(1) This paragraph applies in the case of a person appointed, or proposed to be appointed, to give instruction in any art or skill or in any subject or group of subjects (including any form of vocational training), where special qualifications or experience or both are required in order to carry out the specified work.

(2) A person mentioned in sub-paragraph (1) may carry out specified work in a school if—

- (a) at the time of appointment—
  - (i) the local authority, in the case of a school which has no delegated budget or a pupil referral unit;
  - (ii) the governing body acting with the consent of the local authority, in the case of a school which has a delegated budget; or
  - (iii) the governing body in the case of a special school not maintained by a local authority,

is satisfied as to that person's qualifications or experience or both; and

- (b) no suitable qualified teacher or teacher on the employment based training scheme is available for such appointment or to give such instruction.

(3) A person appointed pursuant to sub-paragraph (1) and (2) may carry out specified work in a school, subject to sub-paragraph (4), only for such period of time as no suitable qualified teacher or teacher on the employment-based teacher training scheme is available for appointment or to give instruction.

(4) Sub-paragraph (3) does not apply in the case of a person mentioned in that sub-paragraph appointed before 8th April 1982 where—

- (a) that person's appointment was for a specified period, for so long as that period has not expired; or
- (b) the appointment was for an unspecified period, if it was not otherwise expressed to be temporary only.

### **Overseas trained teachers**

3.—(1) This paragraph applies to a person who has successfully completed a programme of professional training for teachers in any country outside of the United Kingdom, which programme is recognised as such by the competent authority in that country.

(2) A person mentioned in sub-paragraph (1) may carry out specified work in a school (other than a pupil referral unit) for a period of up to four years commencing on the day on which that person first carries out specified work in a school.

### **Teacher trainees who have yet to pass the skills test**

4.—(1) This paragraph applies in the case of a person who—

- (a) is required to pass the teacher trainee skills tests in order to satisfy the specified standards;
- (b) is mentioned in paragraph 9 or 10 of Schedule 2 to the 2003 Qualifications Regulations; and
- (c) would have qualified teacher status but for the fact that the person has not passed the teacher trainee skills tests.

(2) A person mentioned in sub-paragraph (1) may carry out specified work in a school (other than a pupil referral unit) until 1st April 2013.

(3) In this paragraph—

- (a) the “specified standards” means the standards set out in “Teachers’ Standards” published by the Secretary of State in July 2011(a);
- (b) the “teacher trainee skills tests” means the literacy and numeracy teacher trainee skills tests administered by the Secretary of State.

### **Employment-based teacher training schemes**

5.—(1) This paragraph applies to a person who is undertaking training for the purposes of a employment-based teacher training scheme.

(2) A person mentioned in sub-paragraph (1) may carry out specified work in a school until such time as —

- (a) that person successfully completes the scheme;
- (b) that person ceases to undertake the scheme; or
- (c) where the person is also a person mentioned in paragraph 3(1), the period specified in paragraph 3(2) expires, if that occurs first.

### **Persons who may carry out specified work under supervision**

6.—(1) This paragraph applies to a person who carries out specified work in a school where—

- (a) the person carries out such work in order to assist or support the work of a qualified teacher or a nominated teacher in the school;
- (b) the person is subject to the direction and supervision of a qualified teacher or nominated teacher in accordance with arrangements made by the head teacher of the school; and
- (c) the head teacher is satisfied that the person has the skills, expertise and experience required to carry out specified work.

(2) In this paragraph a “nominated teacher” means a person who is mentioned in paragraphs 2, 3 or 4 of this Schedule and who is nominated by the head teacher where the head teacher considers that appropriate in the circumstances.

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(a) The Teachers’ Standards can be found at <http://www.education.gov.uk/>.

(3) In determining whether the person mentioned in sub-paragraph (1) has the skills, expertise and experience required to carry out specified work in a school, the head teacher may have regard to—

- (a) such standards for higher-level teaching assistants, or guidance concerning school support staff as may be published from time to time by the Secretary of State; and
- (b) such guidance as to contractual matters relating to school support staff as may be published from time to time by any local authority or other employer.

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations revoke and replace the Education (Specified Work and Registration) (England) Regulations 2003 (“the 2003 Regulations”) as amended. They come into force on 1st April 2012.

*Regulation 3* provides that only certain persons may lawfully carry out “specified work” (as to which, see *regulation 5*). The persons are qualified teachers (with a limited exception explained in *regulation 4*) and persons who satisfy requirements set out in the Schedule. The Schedule provides that, amongst others, existing unqualified teachers in nursery classes or nursery schools (*paragraph 1*); instructors with special qualifications and expertise (*paragraph 2*), and individuals who are working towards gaining qualified teacher status (*paragraph 4*), may carry out specified work. (Individuals who are working towards gaining qualified teacher status include teacher trainees who have yet to pass the skills test; these trainee teachers have until 1st April 2013 to pass the skills test, after which they will no longer be permitted to carry out specified work.) The Schedule provides for certain persons to carry out specified work under supervision (*paragraph 6*).

*Regulation 4* provides that teachers who have failed their probation will only be permitted to carry out specified work on and after 1st September 2012 if they have received the Secretary of State’s consent to do so.

*Regulation 5* specifies the activities that are “specified work” for the purposes of section 133 of the Education Act 2002. The activities include planning, preparing and delivering lessons, assessing pupils’ progress and reporting on their progress.

An impact assessment has not been produced for this instrument as it has no impact on businesses or civil society organisations. The instrument has a minimal impact on the public sector.

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STATUTORY INSTRUMENTS

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**2012 No. 762**

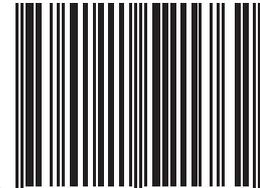
**EDUCATION, ENGLAND**

The Education (Specified Work) (England) Regulations 2012

£5.75

E2904 03/2012 122904T 19585

ISBN 978-0-11-152176-2



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