

AGENDA ITEM
NOT FOR PUBLICATION

EXEMPT INFORMATION FALLING WITHIN
PARAGRAPH(S) 11 OF PART 1 OF
SCHEDULE 12A TO THE LOCAL
GOVERNMENT ACT 1972

COMMITTEE: **SCHOOLS JOINT NEGOTIATING AND CONSULTATIVE COMMITTEE**

DATE: **15TH OCTOBER 2003**

SUBJECT: **SCHOOL STAFFING (ENGLAND) REGULATIONS 2003**

REPORT BY: **CORPORATE DIRECTOR, LIFELONG LEARNING**

CONTACT OFFICER: **HAZEL BURGESS** **548050**

IMPLICATIONS:

LEGAL	✓	COMMUNITY SAFETY
EQUALITIES		ENVIRONMENT
FINANCIAL	✓	CONSULTATIONS
STAFFING	✓	OTHER

WARDS AFFECTED: ALL

PURPOSE

1. This report informs the Committee of the new Statutory Instruments, School Staffing (England) Regulations 2003 and their effect on model policies and procedures which have been commended to schools' governing bodies for adoption.

RECOMMENDATION(S)

2. **THE SCHOOLS JOINT NEGOTIATING AND CONSULTATIVE COMMITTEE is recommended to note the effect of the statutory changes of the School Staffing (England) Regulations 2003 on model policies and procedures which have been commended to governing bodies for adoption, to recognise the incorporation of the new Statutory Instruments in these documents and to agree to their immediate, corresponding amendment and distribution to schools, following ratification by the Administration Committee at the meeting on the 22nd October.**

BACKGROUND

3. Following DfES consultation with LEAs and relevant stakeholders on their revised content during July and August 2003, the Schools Staffing (England) Regulations 2003 came into force on 1 September 2003. These reflect the move of staffing arrangements from the School Standards and Framework Act 1998 to a blend of regulations and guidance under sections 35 and 36 of the Education Act 2002.
4. The LEA has commended a number of staffing procedures and guidance to schools' governing bodies, and their content will be overridden by these revised Statutory Instruments.

REPORT

5. The changes which affect staffing issues in schools are summarised as follows:
 - 5.1 Headteacher responsibility for staff appointments outside the leadership group and staff dismissals
 - 5.1.1 Headteachers will normally be expected to lead in determining staff appointments outside the leadership group. In normal circumstances the governing body should delegate the responsibility for these matters to the headteacher.
 - 5.1.2 Governing bodies will also, in normal circumstances, be expected to delegate the initial determination to dismiss to the headteacher (there is a subsequent right to appeal to a Governing Body Committee).
 - 5.1.3 In the circumstances outlined below the governing body should apply alternative arrangements:
 - A headteacher who is unwilling to perform these functions and whose previous history of service at the school did not include such responsibilities
 - A headteacher subject to suspension, disciplinary procedures, capability procedures or disciplinary sanction
 - Where the LEA has made representations to the chair of the governing body on grounds of serious concerns about the performance of the headteacher
 - Where the headteacher has failed to abide by financial limits agreed by the governing body for any school purpose
 - Where the governing body of a faith school has agreed staffing policies which provide for governor involvement in the interests of preserving the school's religious character
 - In the case of the appointment of a member of support staff required to act in a senior management capacity
 - 5.1.4 The governing body should review, at least annually or otherwise where necessary, the continuation of any circumstances where the headteacher does not lead on these staffing matters.

- 5.2 The revised statutory instruments also state that, following the initial determination to dismiss, the LEA (or governing body in a foundation or VA school) should either withdraw that person from the school (summary dismissal) or issue notice. If a subsequent appeal reverses the dismissal decision the notice of termination, or withdrawal, must be rescinded. This means that in a summary dismissal, employment and pay cease when the initial determination to dismiss is made.
- 5.3 Relaxation of requirement to advertise headteacher and deputy headteacher posts at schools subject to a reorganisation
- 5.3.1 The revised statutory instruments set out the circumstances in school reorganisations where headteacher and deputy headteacher posts will not need to be advertised as follows:
- The new or merged school is formed from pre-existing schools
 - For each headteacher or deputy headteacher post available in the new or merged school there is only one person from the pre-existing schools available for continued employment in that role in the new school
 - Any such person so accepted for a headteacher or deputy headteacher post has suitable qualifications, experience and ability to undertake the role in the new or merged school
- 5.4 Appointment of support staff in community, voluntary controlled, community, special and maintained nursery schools
- 5.4.1 There is no longer a requirement on the governing body to consult the LEA in all cases where they are appointing a member of support staff, in advance of making a formal recommendation to the authority. Schools are, however, advised to consult the LEA in all cases where issues of pay and grading may not be straight forward. There is a new right for the LEA to make representations after receiving a recommendation if they have outstanding concerns about pay and grading.
- 5.5 Redundancy for LEA employed staff
- 5.5.1 There is a new requirement for the governing body to give the LEA six weeks' notice of an impending redundancy of any member of staff employed by the LEA. This will ensure there is time to try and find suitable alternative work at some other school within the LEA.
6. Clearly, in delegating the responsibility for dismissal to the headteacher, governing bodies will want to ensure that employment issues and disciplinary investigations are managed with as much objectivity as is possible, to comply with the requirements of natural justice. In an issue of potential misconduct, it will therefore be recommended to governing bodies that a senior member of staff other than the headteacher investigates the allegations. Where the issue is one of performance or ill health it will be advisable for headteachers to obtain an objective view from the relevant officer of the LEA, or from an external consultant. In determining a selection for redundancy, the governing body will still be required to determine objective criteria.

7. In all circumstances which may result in dismissal, schools other than Foundation and VA, are required to have an officer of the LEA present, and advice should be sought from Lifelong Learning Personnel. Similarly, this is the case where Foundation and VA schools have accorded the LEA advisory rights under Schedule 17 of the School Standards and Framework Act.

PROPOSAL/OPTION

8. Governing bodies have already been advised on these new requirements, which include a full governing body consideration and resolution on the delegation of the power to dismiss to headteachers. It is proposed that the following model policies and procedures be amended to include the new statutory provisions as outlined above:
 - Code of Practice: Recruitment and Selection for Schools with Delegated Budgets (including Probationary Procedure – Appendix 16)
 - Disciplinary Procedures for All Staff in Schools with Delegated Budgets
 - Capability Procedures for Teaching Staff in Schools with Delegated Budgets
 - Capability Procedures for Non-Teaching Staff in Schools with Delegated Budgets
 - Redundancy Procedure for All Staff in Schools with Delegated Budgets
 - Guidance for Governors on Staffing in a School Merger
 - Ill Health Procedures for All Staff in Schools with Delegated Budgets
 - Procedures for centrally employed teachers to allow for the change to issue notice of dismissal prior to any submission of appeal to the Teachers' Appeals Panel
9. Governing bodies have a statutory duty to adopt procedures for the conduct and discipline of staff and for the capability of teachers. In the absence of a model from the LEA there is a risk that schools will adapt their procedures in an ad hoc way to comply with this statute. However, there is the option that the LEA could determine not to supply standard model procedures to schools which ensure compliance with both the law and good employment practice, and act as a safeguard against future litigation and potential compensation costs. In this scenario, the likelihood of claims to Employment Tribunal is significantly increased.

LEGAL IMPLICATIONS

10. The School Staffing (England) Regulations 2003 are a Statutory Instrument and, therefore, are legally binding.

STAFFING IMPLICATIONS

11. The provision of model, locally agreed procedures to schools' governing bodies ensure the equitable and fair treatment of all Luton employees. In incorporating these changes, the LEA will wish to ensure compliance with natural justice and the determination of objective decisions. The LEA will, therefore, wish to exercise its right to have an officer present when schools are likely to make a determination to dismiss. Headteachers and senior staff will require support in their changing roles, and this will be provided by the Lifelong Learning Department, either on a one to one basis or by means of training provision.

FINANCIAL IMPLICATIONS

12. There are no cost implications to the LEA, provided schools follow a fair procedure, take the advice of the LEA and conform to legal requirements. Subject to them taking the advice of the LEA, any compensation for unfair dismissal must be met by the LEA. The changes to the timing of notice requirements for a dismissal will mean there is a financial saving to schools, which hitherto have had to await the outcome of an appeal before reaching a determination to dismiss. In a redundancy situation this has, in the past, sometimes incurred an additional term's pay when the teachers' notice provisions for termination of employment at fixed calendar dates could not be met. The Finance Manager has seen and cleared this report, 1st October 2003.

APPENDIX

13. There are none.

LIST OF BACKGROUND PAPERS **LOCAL GOVERNMENT ACT 1972, SECTION 100D**

14. Statutory Instruments: School Staffing (England) Regulations 2003