

# **School Staffing (England) (Amendment) Regulations 2012**

## **Consultation report**

## Introduction

The White Paper, "The Importance of Teaching", set out our plans to simplify current arrangements for managing teachers' performance and capability. To complement these arrangements, we consulted on arrangements to introduce a new requirement for governing bodies to share information about whether or not a teacher or head teacher has been in capability procedures when this information is requested by prospective employers. This will provide prospective school 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.

Through a formal consultation exercise that took place over a 6 week period ending on 24 February, we have sought the views from head teachers, school staff, governors, local government, religious organisations, teaching unions and professional bodies. A total of 45 responses were received, by email, paper and on line via the Department's website.

The Department would like to express its sincere thanks to all those who took the time and care to respond.

The organisational breakdown of respondents was as follows:

Local Authority	12
*Other organisation	8
Union/Association Representative	5
Governor	4
Headteacher	9
Teacher (other than a headteacher)	6
Non-Teaching Workforce	1

*\* Those responses that fell into this category included: The Catholic Education Service, The Diocese of London, and the Information Commissioners Office.*

The report begins with an overview followed by an analysis of each question within the consultation together with details of next steps.

Annex A provides a statistical analysis of responses by respondent type.

Annex B lists all respondents to the consultation.

## Overview

A total of 45 responses were received, with the majority 12 (26.6%) submitted by local authorities, 9 (20%) from head teachers, and 6 (13.3%) from teachers. Responses were also received from head teacher and teacher unions, Local Government Employers and the National Governors Association (representing maintained school employers and governing bodies). The Catholic Education Service and London Diocesan Board for Schools, representing faith schools also responded on how they would like to see the new requirement implemented.

Some 27 responses (60%) indicated broad support for the proposal whilst only a small minority of 3 (6.6%) expressed fundamental opposition on the grounds that the new requirement was flawed and a retrospective step. The remaining respondents chose not to confirm support or opposition to the proposal; instead preferring to comment on how they expected the new requirement to operate once implemented. Within these responses were questions asking for clarification about the scope of the requirement, equality issues, data protection and confidentiality. The response from the Information Commissioner's Office reminded of the legal obligations and responsibilities schools have regarding the exchange and collection of information.

A wide range of themes were identified. These included a desire to see Academies, and Free Schools, fee paying and independent schools included within scope of the new provision, linked to concerns that underperforming teachers moving from these schools into maintained schools could undermine the policy. Assurances were sought for the underlying reasons surrounding teacher capability to be considered by schools receiving the required information, including ill-health and family bereavement. Questions were also raised about teachers who had successfully gone through capability procedures and were now performing to a satisfactory standard, but were unlikely to be appointed by another school due to the proposal.

## Summary

The consultation comprised of four questions focussing on the policy's intention and associated guidance. An analysis of responses for each question is set out here.

### **Q1. Do you have any comments about the proposal to require schools to provide information on request to any schools to which teachers or head teachers have applied for work, in order to confirm whether they have been the subject of capability procedures in the previous two years?**

More than half (54%) of those that responded to Question 1 fully agreed with the proposal for schools to provide information about whether head teachers and teachers had been the subject of capability procedures. Of these, 7 head teachers (15.5%) and 5 (11.1%) employers were receptive to the overall intention. The teacher unions were either opposed to the proposal or expressed reservations about how it would work in practice. In addition concerns were expressed about the overall policy intention.

### **Q2. Do you think the requirement to provide information about periods of capability in the last two years is right? If not, what alternative period would be more appropriate?**

More than half of the 39 (59%) responses to this question agreed that the two year period provided a reasonable timeframe to evaluate capability outcomes, and that it provided an underperforming teacher sufficient time to respond positively. Respondents felt that two annual appraisal periods seemed sufficient time for a teacher to demonstrate the necessary improvement to performance and to go beyond this would seem unfair. Those that disagreed (31%) in the main took the view on the grounds that 3 to 5 years was a more realistic period to enable schools to make informed judgements to establish improved performance. An alternative view suggested a 12 month coverage period supplemented by a 6 month probation period following appointment. A full statistical breakdown of the responses to this question is set out in Annex B.

### **Q 3. Do you have comments on how this proposal should be incorporated into the supporting guidance?**

We received 33 (73% of the overall total) responses to this question. Eight respondents who answered this question (24.24%) wanted the guidance to clarify the type of information schools would be expected to provide. Others wanted guidance to distinguish between formal and informal capability and ensure schools provided mandatory references to establish the rationale for placing teachers on capability proceedings. Similarly, one response (3%) suggested that the guidance should assist schools to establish teacher suitability if he/she accepted a compromise agreement during capability proceedings while employed at a previous school.

**Question 4. Do you have comments on what procedures you would like to see referred to in the guidance to support the appointment process in addition to those highlighted in this consultation?**

Whilst some of the responses to this question covered topics previously raised elsewhere, others looked to additional requirements to be covered in guidance. Three respondents (9.7%) out of the 31 that answered the question touched on the feasibility of a school asking for a teacher's sickness records to support appointment decisions. Linked to this were questions about the legalities surrounding this requirement, given the restrictions placed on employers when looking to appoint teachers with disabilities by virtue of the 2010 Equalities Act. An additional area that generated comment touched on appointment panels observing teachers in the classroom either in their existing school, or as a practical lesson as part of the interview day, to establish their suitability.

## **Next Steps**

The consultation has helped us establish a valuable and clearer understanding of the issues associated with the proposal. The responses to the consultation have in turn enabled Ministers to make informed decisions about how the new arrangements will apply. The School Staffing (England) Regulations have been amended to reflect this and were laid before Parliament on 10 July 2012 to come into force from September 2012. Amended guidance will be provided to support the Regulations and this will be available to schools by September 2012.

## Responses to Consultation – Statistics

## Annex A

**Q2 Do you think the requirement to provide information about periods of capability in the last two years is right? If not, what alternative period would be more appropriate?**

There were 39 responses to this question.									
	Headteacher	Teacher (other than headteacher)	Governor	Local Authority Employee	Non- Teaching Workforce	Union/Association Representative	Other	Total	
<b>Yes</b>	3	3	3	9	1	2	2	23	59%
<b>No</b>	3	3	0	0	0	2	4	12	31%
<b>Not Sure</b>	2	0	0	2	0	0	0	4	10%

## List of respondents

## Annex B

<b>Individual/Organisation</b>
Afolabi, Helen
Armstrong, Jane (Farnborough Grange Nursery Infant Community School)
Association of School and College Leaders (Martin Ward)
ATL (Martin Freedman)
Baker, Vivien
Bates, Sharon (self-employed education consultant)
Beck, Jon
Buckinghamshire County Council (Steve Edgar)
Caseby, Rodger (St Gregory the Great Catholic School)
Catholic Education Service (Christine Fischer)
Cheshire West and Cheshire Council (Janis Maloney)
Coleman, David
Egglescliffe CE Primary (Mary Rothwell)
Gloucestershire County Council (Maryanne Carter)
Halford, Anna
Haselgrove, Robin (Maintained Primary School)
Harvey, Penelope
Horton, Rosemary

Hull City Council (Sharon Herrick)
Hyman, Phil (Kirkbie Kendal School)
Information Commissioner's Office (Victoria Cetinkaya)
James, David
Jenner, Dennis
Jenner, Dennis
Kellett, Clare (West Somerset Community College)
Kent County Council (Karen Watson)
Kings Forest Primary School (Eileen Whiting)
London Borough of Enfield (Bev Banks)
NASUWT (Bob Johnson)
National Association of Head Teachers (David Beresford)
National Employers' Organisation (Anita Jermyn)
National Governors' Association (Gillian Allcroft)
Newcastle City Council (Jill Jaffray)
North Tyneside Council (Paul Stewart)
NUT (Eddie Badgie)
Parker, Nicki (Independent governance consultant)
Pennington, Adele (Milerton primary school)
Portsmouth City Council (Anna Buxcey)
Staffordshire County Council (Anne Birch)

Turvey, Julie
Wandsworth Council - Children's Services (Pete Gaskin)
Wood, George (Yew Tree Primary School)
West Sussex County Council (Brin Martin)