

## **DCSF response to the consultation on the Education (Specified Work and Registration) (England) Regulations 2003**

### **Introduction**

1. The Department consulted for six weeks, between 11 May and 22 June 2007, on proposed amendments to the Education (Specified Work and Registration) (England) Regulations 2003, made under section 133 of the Education Act 2002. This response provides an analysis of the consultation responses submitted, the main issues raised and the consequent amendments we have taken forward.
2. The responses have led us to review two of our proposals.
  - We have deferred by one year the closing of the loophole which allows overseas trained teachers (OTTs) to carry on teaching after their four year period has expired if they join the employment-based teacher training scheme (EBTTS) before that period expires; and
  - We have dropped the proposal to make it unlawful for an OTT who has not obtained Qualified Teacher Status (QTS) within four years to be redeployed as an instructor and have clarified our guidance on the redeployment of OTTs as instructors.
3. The amendments to the Regulations have now been made and came into force on 1 September 2007 (apart from the closing of the loophole above, which comes into force on 1 September 2008).

### **Amendments to the Regulations**

#### **Trainee teachers who have yet to pass the skills tests**

4. We consulted on amendments to the Regulations to remove the five year grace period which allowed trainee teachers who have completed their Initial Teacher Training (ITT) course, but not passed all their skills tests (in English, Numeracy and ICT), to teach as unqualified teachers. We proposed that the five year grace period be replaced with a fixed deadline of 31 August 2008. This would also allow teachers employed on or after 1 September 2007 a reasonable period of time in which to take and pass these tests.
5. 76% of the consultation respondents agreed that those seeking to teach in our schools should have passed all the skills tests before they can do so. Some of these respondents indicated that the present situation is ambiguous and they do not want to see competent teachers having to leave the profession because they have not passed the skills tests. As the existing law requires that the skills tests must be passed, this may be unavoidable in some cases, but the proposed fixed deadline allows an unlimited number of attempts and for those with particular difficulties such as a disability, special arrangements are available.
6. Of the 22% who disagreed with the proposed amendment (2% neither agreed nor disagreed), some voiced the same concern that this would prevent competent teachers from continuing to teach, some thought the tests reductive and should be removed, and others felt that specialist teachers should not have to take skills tests in their subject.

7. Given the balance of these responses and that our policy remains that teachers must pass the skills tests, **we have amended the Regulations in line with the proposal that we consulted on.** However, as with OTTs, trainee teachers who do not pass the skills tests may work in schools as instructors, provided all of the requirements for employing instructors are satisfied. (There should be no automatic reclassifying of them as such.)

#### OTTs on the EBTTS

8. We consulted on a proposed amendment to the Regulations to close an unintentional loophole that allows OTTs to teach for more than four years without QTS if they are on the employment-based teacher training scheme when the four year period they are allowed to teach without QTS expires. Since September 2006 we had been warning local authorities, schools, and agencies that we would close this unintentional loophole in the Regulations this summer, effective from 1 September 2007.

9. 55% of respondents to the consultation agreed that OTTs must have secured QTS to be able to teach in maintained schools within four years of first teaching. Many responded that this would clarify an ambiguous situation and that clear guidance on the routes available for OTTs to gain QTS should be promoted. Some respondents emphasised that the changes may not be known to all OTTs in this position and so many would not be able to gain QTS by 1 September 2007. They strongly suggested a postponement of the date that this provision should come into effect.

10. 40% of respondents disagreed with the proposed amendment (5% neither agreed nor disagreed), saying that headteachers should have the discretion to employ those without QTS. Some respondents highlighted the difficulty for OTTs to gain QTS in four years, although others considered four years to be too long a period.

11. Taking into account these responses, **we have made this amendment, but it will not come into force until 1 September 2008. In deferring this amendment, we are allowing until 31 August 2008 for OTTs who are on the employment-based teacher training scheme when their four year period expires to complete their QTS. After this date no OTT will be able to teach beyond four years, even if they are on the employment-based teacher training scheme at the time the four year period expires, except where that period has been extended by statutory leave (see para 15 below)**

#### OTTs redeployed as instructors

12. We consulted on a proposed amendment to the Regulations that OTTs who have not achieved QTS within four years should not be able to be redeployed as instructors, effective from 1 September 2007.

13. 58% of respondents to the consultation disagreed with the statement that OTTs who have not gained QTS within four years should not be employed by schools as instructors. Responses said the proposed amendment was overly restrictive, emphasising the many good cases for a school to employ an OTT as an instructor despite them not having gained QTS in four years and that the school is best placed to judge the suitability. Many respondents felt that OTTs should be able to be employed as instructors given that unqualified teachers from England can be. 29% agreed with the proposed changes and 14% neither agreed nor disagreed.

14. In the light of these responses **we have dropped this proposal, but clarified in new guidance that, whilst OTTs who have not obtained QTS within four years may be redeployed as instructors, they should not automatically be reclassified as instructors. Instructors, including OTTs employed as instructors, may only be employed as unqualified teachers where and for as long as there is no suitable qualified teacher or teacher on the employment-based teacher training scheme available to fill the post.**

#### Unqualified teachers (including OTTs) who take statutory leave

15. We consulted on a new provision in the Regulations to extend any deadline imposed on unqualified teachers who carry out specified work, including OTTs, to take account of any absence from work because of pregnancy or in the exercise of statutory rights to take adoption, paternity or parental leave or in the exercise of statutory or contractual rights to take maternity leave, effective from the start of the 2007/08 school year.

16. 88% of respondents to the consultation agreed with this amendment. Some respondents thought that the criteria should be extended to take account of teachers' absence due to sickness, bereavement and disability. 9% of respondents neither agreed nor disagreed and 4% disagreed with the proposed amendment, citing that they already have long enough to gain QTS.

17. The purpose of this amendment was only to ensure that the Regulations do not discriminate unlawfully against those who exercise their statutory rights to take leave or who are absent from work because of pregnancy. We have therefore **inserted this new provision into the Regulations in accordance with our original proposal, effective from 1 September 2007. In effect, this means the 31<sup>st</sup> August 2008 deadline for trainee teachers who have yet to pass the skills tests and the four year period during which OTTs can be employed as unqualified teachers can be extended by a period equivalent to the length of the absence from work because of pregnancy, the amount of leave taken in the exercise of their rights under the Employment Rights Act 1996 or, in the case of maternity leave, their amount of leave taken in the exercise of their rights under that Act or under their contract of employment (which may be more generous).**

#### Minor and consequential amendments

18. There were no responses to the proposed minor amendments which tidy up the wording of Schedule 2 and delete a number of redundant provisions in the Regulations. **We have therefore made these amendments, which came into force on 1 September 2007.**

#### **Guidance to the Regulations**

19. Guidance accompanying the Regulations and these amendments can be found at: <http://www.teachernet.gov.uk/wholeschool/remodelling>