WELSH STATUTORY INSTRUMENTS

2004 No. 2733 (W.240)

EDUCATION, WALES

The Education (Health Standards) (Wales) Regulations 2004

Made - - - -	*19 October 2004*
Coming into force - -	*31 October 2004*

The National Assembly for Wales makes the following Regulations in exercise of the powers conferred on it by sections 141 and 210(7) of the Education Act 2002(**1**).

Name, commencement and application

1. These Regulations are called the Education (Health Standards) (Wales) Regulations 2004 and come into force on 31 October 2004.

2. These Regulations apply in relation to Wales.

Interpretation

3. In these Regulations —

"the 2002 Act" ("*Deddf 2002*") means the Education Act 2002;

"employer" ("*cyflogwr*") includes a person who engages another person to provide services otherwise than under a contract of employment;

"part-time" ("*rhan-amser*") means not more than two and a half normal working days, or an equivalent period, in any working week;

"relevant activity" ("*gweithgaredd perthnasol*") means an activity of the kind prescribed by regulation 5(1)(a) to (h); and

"teaching" ("*addysgu*") means carrying out any activity of the kind prescribed by regulation 5(1)(a) to (d), and "to teach" is to be construed accordingly.

Revocations

4. Regulations 5, 6 and 7 of the Education (Teachers' Qualifications and Health Standards) (Wales) Regulations 1999(**2**) are revoked.

(**1**) 2002 c. 32. For the meaning of "prescribed" and "regulations" *see* section 212.
(**2**) S.I.1999/2817 (W.18), as amended by S.I. 2002/1663 (W.158), 2002/2938 (W.279), 2003/140 (W.12), 2003/2458 (W.240) and revoked in large part by S.I. 2004/1729 (W.173) and 2004/1744 (W.183).

Prescribed activities

5.—(1) Each of the following kinds of activity is prescribed for the purposes of section 141 of the 2002 Act —

(a) planning and preparing lessons and courses for children;

(b) delivering lessons to children;

(c) assessing the development, progress and attainment of children;

(d) reporting on the development, progress and attainment of children;

(e) an activity which assists or supports teaching;

(f) supervising, assisting and supporting a child;

(g) an administrative or organisational activity which supports the provision of education; and

(h) an activity which is ancillary to the provision of education.

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

Health standards

6.—(1) A relevant activity may only be carried out by a person if, having regard to any duty of the employer under Part II of the Disability Discrimination Act 1995(**3**), the person has the health or physical capacity to carry out that activity.

(2) Subject to paragraph (3), a person who is in receipt of a retirement pension by virtue of regulation E4(4) of the Teachers' Pensions Regulations 1997(**4**) (ill health retirement) is not to be regarded as having the health or physical capacity for teaching.

(3) Paragraph (2) does not apply to a person appointed on a part-time basis to teach if the person's entitlement to receive such pension, as therein described, took effect before 1 April 1997.

(4) Where any question arises as to whether a person who has been engaged to carry out a relevant activity has the health or physical capacity to do so, that question is to be determined in accordance with regulation 7.

Determinations as to health or physical capacity

7.—(1) Any such question as is referred to in regulation 6(4) is to be determined by the employer who, in order to do so —

(a) must afford the person an opportunity to submit medical evidence and make representations to the employer;

(b) must consider such evidence and representations and any other medical evidence available to the employer, including medical evidence relating to the person which has been supplied to the employer in confidence on the ground that, in the opinion of the person who supplied it, its disclosure to the person to whom it relates would not be in the best interests of that person;

(c) may require the person to submit to an examination by a qualified medical practitioner appointed by the employer;

(d) must, if the person in question so requests, arrange for such an examination;

(e) may, if the person fails to submit to such an examination without good reason or fails or refuses to make available to the medical practitioner who carries out such examination

(**3**) 1995 c. 50.
(**4**) S.I. 1997/3001 as amended by S.I. 1998/2255, 1999/607, 2000/665, 2000/2431, 2000/3028, 2001/871 and 2002/3058.