

Explanatory Memorandum to the Education Workforce Council (Main Functions) (Wales) Regulations 2015

This Explanatory Memorandum has been prepared by the Department of Education and Skills and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Education Workforce Council (Main Functions) (Wales) Regulations 2015 ("the Regulations").

Huw Lewis

Minister for Education and Skills

3 February 2015

1. Description

1.1 This statutory instrument will revoke the following Regulations:

- General Teaching Council for Wales (Functions) Regulations 2000 as amended (“the 2000 Regulations as amended”);
- the Education (Specified Work and Registration) (Wales) Regulations 2010 (“the 2010 Regulations”);
- the General Teaching Council for Wales (Disciplinary Functions) Regulations 2001 (“the 2001 Regulations”); and
- the Education (Supply of Information) (Wales) Regulations 2009 (“the 2009 Regulations”).

1.2 This is as a consequence of the Education (Wales) Act 2014 (“the Act”). The Act reconfigures the General Teaching Council for Wales (‘GTCW’); extends the current remit of the body; and amends the composition of the GTCW’s membership, in order to create the new Education Workforce Council (EWC).

1.3 The sets of Regulations listed under paragraph 1.1 above have been consolidated, updated and added to, in order to create the Education Workforce Council (Main Functions) Regulations 2015. This is a composite set of Regulations that sets out the detail for the main functions of the EWC.

2. Matters of special interest of Constitutional and Legislative Affairs Committee

2.1. None.

3. Legislative background

3.1 The Act introduces a new, more robust registration system that will bring greater coherence and recognise the contribution of the whole education workforce to the education of all learners in Wales.

3.2 Workforce registration will help facilitate the improvement in the standards of teaching and the quality of learning in Wales, by ensuring that the wider education workforce are regulated and supported. It will enable us to recognise the valuable role all those supporting teaching and learning play and will ensure that they are all working to the highest standard.

3.3 The Act provides a sound basis for future development of greater coherence across the workforce in Wales. It will help install greater confidence in the wider education workforce and support them in gaining the necessary training and development to improve the service they provide to learners.

3.4 The Act introduces a new requirement on FE teachers, FE learning support workers and school learning support workers, while ensuring that the system that already exists for teachers continues without interruption.

3.5 The EWC will become operative from April 2015, upon commencement of the relevant provisions within the Act; and the coming into force of these Regulations. This will allow for a phased implementation of the registration of the wider education workforce, with FE teachers being the first addition to the existing register of school teachers; followed by FE and school learning support workers' registration to be phased in from April 2016. Upon commencement, the EWC will have a statutory duty to establish and maintain a register of both school and FE teachers; and all employers will be required to ensure that they only employ teachers who are registered with the EWC.

3.6 The Act recognises the increasing synergy between the school and FE sectors; and reinforces the need for a similar level of consistent, independent regulation across the whole education workforce. The Welsh Government believes that parents and the wider public are entitled to be reassured that all of those employed within the teaching professions, whether schools or institutions of further education, are subject to appropriate independent regulation and aspire to the highest professional standards.

3.7 The Welsh Government believes that suitability and disciplinary responsibilities are core functions of a professional regulatory body and that it is the role of the professional regulatory body, rather than government, to uphold the profession's standards of competence and conduct.

3.8 The EWC will continue to investigate cases of misconduct and serious professional incompetence reported to it, as was the case with the GTCW; enabling the EWC to continue to determine whether practitioners should stay on the register and continue to work in either a school or FE institution in Wales.

3.9 It is vital that we have an effective regime in place to tackle serious professional misconduct and that practitioners whose behaviour is unacceptable are no longer employed to teach or support learning.

3.10 These Regulations are made under powers conferred on Welsh Ministers by sections 10(2)(b), 13, 14, 15, 25, 26(6), 28, 33, 35(4), 36,(2), 37(2) and 47(1) of, and paragraph 12 of Schedule 2 to, the Education (Wales) Act 2014.

4. Purpose & intended effect of the legislation

4.1 These Regulations prescribe:

- the form and manner in which the register is kept;
- the requirement to register;
- specified work that may be carried out in schools by qualified teachers and persons who satisfy specified requirements;

- the provisions for committees of the Council to exercise the disciplinary powers conferred on the Council;
- the maintenance of records;
- the information to be supplied by employers, agents and contractors, and;
- the information to be supplied by the Council.

4.2 The Education Workforce Council is a body established under the Act; with the aim of contributing to improving the standards of teaching and the quality of learning and improving the standards of professional conduct amongst practitioners.

4.3 In February 2011, the then Minister for Education and Skills set out his agenda to raise standards of education in Wales. Through the Programme for Government, the Welsh Government committed to review the GTCW. This is part of a series of measures that will help to improve educational standards and attainment for the people of Wales; and ensure that wider education workforce practitioners work together more effectively.

Registration

4.4 Section 9 of the Act sets out the function of establishing and maintaining a register of practitioners; Schedule 2 to the Act sets out the categories of registration and the persons who fall within it. Accordingly, these Regulations make provision as to the form and manner in which the register is to be kept, and other matters relating to registration; mirroring many of the existing provisions, but expanding them to incorporate the wider workforce - in particular FE teachers.

4.5 A key feature of many professions is a requirement to register with a professional body that sets and maintains professional standards. The benefits to all education practitioners are that they will be recognised as a single and coherent education workforce. In addition, registrants will be seen as:

- part of a credible and valued workforce;
- having professional status, with specific standards for entry and continued membership of that profession; and
- suitable to be a member of the profession – maintaining public trust and confidence.

4.6 A qualified teacher working in a maintained school has, in the context of the Act, the same meaning as a qualified teacher under section 132 of the Education Act 2002. There will be no changes to current arrangements for this category of registrants.

Specified work and requirement to be registered with the EWC

4.7 Part 2 of the Regulations re-make many of the provisions of the 2010 Regulations with some minor changes. They provide for qualified teachers carrying out specified work in schools to be registered with the Council. Schedule 3 to these

Regulations provide for those persons who were mentioned in Schedule 2 to the 2010 Regulations to carry out specified work in schools, in the same circumstances as previously.

4.8 Under Section 15 of the Act, the Welsh Ministers have the power to exempt some persons, who otherwise would be required to register under the category of FE teacher, from that requirement. This means that persons providing or engaged in types of activity set out in these regulations (which would ordinarily fall within the definition of FE teacher set out in the Act) will be exempt from the requirement to register in relation to that activity. Part 4 provides that unless a person meets any of the conditions prescribed in these Regulations they may not provide further education at a further education institute, unless they are registered with the EWC. It is proposed that a requirement to register will not be a requirement if the conditions set out in regulation 19 (Part 4) are met.

4.9 It's important to note that, notwithstanding if a person falls within one of the exempt conditions, that person will still be required to register if that person is also providing or engaging in an activity which falls within the definition of FE teacher. So, for example, a person who teaches FE in an FE institution in Wales who also hires a room each week in that institution to put on their own private lessons will still be required to register.

4.10 The Welsh Government believes that providing for these exemptions is a proportionate approach to registration for this category of practitioners.

Disciplinary functions of the EWC

4.11 The Regulations make provisions for committees of the EWC to exercise the disciplinary powers conferred on the EWC by the Act in relation to registrants and persons applying to the Council for registration; re-making many of the provisions of the 2001 Regulations, once again with minor changes.

4.12 The Regulations provide for the establishment of Fitness to Practice Committees which will replace the "Professional Conduct" and "Professional Competence" Committees; as experience has shown that the work of these two committees can be efficiently and effectively carried out by a single committee - an approach taken by most other regulators.

4.13 The committees will hear professional disciplinary proceedings concerning unacceptable professional conduct, serious professional incompetence and a conviction of a relevant offence. The EWC will have the power to make disciplinary orders (prohibition orders, suspension orders, conditional registration orders or reprimands) and hear applications in relation to those orders, with the exception of reprimands.

4.14 It is important that the existing arrangements and high standards for teachers are maintained; and that these are extended to cover the wider education workforce. The Code of Professional Conduct and Practice sets out the key principles and

standards expected of all those required to register, in relation to their day to day behaviour and practice.

4.15 The Code sets out the key principles of good conduct and practice for registered practitioners in Wales. It is intended to guide registrants' judgement and decisions and inform parents, pupils and the general public of the standards they can expect from practitioners.

4.16 The first Code of Professional Conduct and Practice will be published alongside the regulations on disciplinary proceedings. Following this first publication, future responsibility for reviewing and revising the Code will pass to the EWC.

4.17 Provisions within the current Regulations (2001 Regulations) will be mirrored, where a committee may take into account any failure by a registered person to comply with the Code of Practice; and the 2000 Regulations, as amended, where the EWC must make copies of the Code of Practice available free of charge to all registrants.

Supply of Information

4.18 These Regulations mirror the 2009 Regulations requiring the employer of practitioners registered with the EWC and supply agencies to report cases of misconduct and incompetence to the EWC, other than those cases they are required to provide information about the Disclosure and Barring Service under the Safeguarding Vulnerable Groups Act 2006.

4.19 Employers and supply agencies must make a report to the EWC if they cease to use a registered practitioner's service on a specified ground or if they might have done so had that practitioner not already ceased to provide his or her services. The specified grounds are misconduct, professional incompetence and conviction of a relevant offence. A relevant offence is an offence other than one having no material relevance to a person's fitness to be a registered practitioner.

4.20 These Regulations are made under sections 10(2)(b), 13, 14, 15, 25, 26(6), 28, 33, 35(4), 36(2), 37(2) and 47(1) of, and paragraph 12 of Schedule 2 to, the Education (Wales) Act 2014.

5. Consultation

The Registration of Further Education Teachers with the Education Workforce Council

5.1 Two consultations have been undertaken. The first consultation "*The Registration of Further Education Teachers with the Education Workforce Council*" ran for 13 weeks (7 July – 6 October 2014) and sought the views of stakeholders on the proposed categories of service providers within a FE institute that will not be required to be registered with the Council from 1 April 2015.

5.2 Twenty three responses were received in total, from colleges, unions, training providers, other regulatory bodies and organisations across the education sector. In most cases respondents simply answered the question, and did not provide supporting comments. This was a noticeable pattern across all questions. The key messages received were:

- The majority of respondents were happy with the exemptions set out at paragraph 7.3 of the consultation (now regulation 19 (2) of the Regulations); and thought that they provided clarity on those required to register.
- Some respondents thought there were some grey areas as to whether certain providers would be required to register; with a call for guidance and a clearer definition of a FE teacher.
- It was recognised that creating a definition was not easy. The GTCW will, however, produce best practice guidance for registrants and employers ahead of the EWC going live on 1 April 2015. Whilst the exemptions are not exhaustive, and where there are anomalies the GTCW can advise on whether there is a requirement to register.
- There were some differences of opinion. A few respondents queried why certain specific service providers were exempted, especially those from the HE sector who taught in FE colleges. Others suggested some further examples of those who should be exempt and some stated that listing examples was very restrictive. The issue of registering other practitioners was outside the scope of this consultation.

5.3 A summary of responses is published at:

<http://wales.gov.uk/consultations/education/registration-of-further-education-teachers-with-the-education-workforce-council/?status=closed&lang=en>

Proposals for the disciplinary functions of the Education Workforce Council and a new Code of Professional Conduct and Practice for registrants

5.4 The second consultation “*Proposals for the disciplinary functions of the Education Workforce Council and a new Code of Professional Conduct and Practice for registrants*” ran for 8 weeks (7 October – 1 December 2014) and sought the views of stakeholders relating to the disciplinary functions for the Education Workforce Council and a new code of professional conduct and practice for registrants.

5.5 Twenty one responses were received in total, from awarding bodies, unions, local authorities Schools Colleges and Universities, Work based Learners, education training providers, and National Organisations and Charities. The key messages received were

- The overwhelming majority of respondents agreed that the professional conduct and professional committees should be amalgamated to form one

fitness to practice committee. Those who did provide comments welcomed the proposal as a sensible and sound approach, which was beneficial providing consistency across all practitioner groups, avoiding duplication; and bringing the Education Workforce Council in line with other regulators.

- Majority of respondents agreed with the proposal to have a single code but did not elaborate further. The respondents that provided comments thought it was sensible to have one code for the whole education workforce.
- A number of respondents thought that the code was well drafted, simple and concise; and appropriately covered the key aspects of professional conduct that the whole workforce should exhibit. One respondent did question whether a code was required at all; however this is a requirement of the Act.
- A handful of respondents suggested amendments to the code to ensure that it was appropriate for the wider workforce; some of these changes were minor whilst others suggested substantial changes. Officials have considered the comments supplied and have amended the Code where appropriate.
- Some respondents did acknowledge that each sector is slightly different so the code may need to be backed up by some sector specific guidance.

5.6 A summary of responses is published at:

<http://wales.gov.uk/consultations/education/proposals-for-the-disciplinary-functions-of-the-education-workforce-council/?status=closed&lang=en>

6. Regulatory Impact Assessment

6.1 A Regulatory Impact Assessment has not been prepared as the regulations do not impose any additional costs on business, employers or third parties.