

Explanatory Memorandum to the General Teaching Council for Wales (Additional Functions) (Amendment) Order 2009

1. This Explanatory Memorandum has been prepared by the Department for Children, Education, Lifelong Learning and Skills and is laid before the National Assembly for Wales in accordance with Standing Order 24.1.

Description

2. The Order amends the General Teaching Council for Wales (Additional Functions) Order 2000 which requires the General Teaching Council for Wales to maintain records relating to specified categories of persons who are not registered teachers. The Order is being introduced mainly as a consequence of the coming into force of the provisions of the Safeguarding Vulnerable Groups Act 2006 or to ensure that existing legislation relating to the Council is up-to-date and relevant.

Matters of Special Interest to the Subordinate Legislation Committee

3. None

Legislative Background

4. The powers enabling this Order to be made are contained in sections 7(1) and (4) and 42(6) and (7) of the Teaching and Higher Education Act 1998. These powers have been transferred to Welsh Ministers by virtue of the National Assembly for Wales (Transfer of Functions) Order 1999 and paragraph 30 of Schedule 11 to the Government of Wales Act 2006. The regulations follow the negative resolution procedure.

Purpose and intended effect of the legislation

5. The Safeguarding Vulnerable Groups Act 2006 provides the legal framework for a new Vetting and Barring Scheme for people who work with children and vulnerable adults. The purpose of the new scheme is to minimise the risk of harm posed to children and vulnerable adults. It aims to do this by preventing those who are deemed unsuitable to work with children and vulnerable adults from gaining access to them through their work.

6. The 2006 Act provides that certain activities in relation to vulnerable groups are regulated. This is known as “regulated activity” and includes:

- any activity that involves **contact** with children and/or vulnerable adults and is of a specified nature e.g. teaching, training, care, supervision;
- any activity allowing contact with children or vulnerable adults and that is in a specified place e.g. schools; and
- any activity that involves people in certain defined positions of responsibility e.g. school governor.

Under the SVG Act 2006

- a barred individual must not undertake or seek to undertake regulated activity. It will be an offence for an individual, knowing they are barred, to seek work in a regulated activity ;
- to undertake regulated activity the individual must be a member of a new Vetting and Barring Scheme (i.e anyone providing a regulated activity must be registered with the Independent Safeguarding Authority (ISA)* ;
- an employer must not engage in regulated activity a barred person or a person who is not a member of the scheme.

7. The legislation governing the functions of the General Teaching Council for Wales needs to be amended to take account of the requirements of the Safeguarding Vulnerable Groups Act 2006. The proposed Order is technical in nature and is being introduced mainly as a direct consequence of the Act , or to ensure that all legislative references are current and relevant. The proposed amendments are:

- (a) the Council must keep records on any qualified teacher that has been barred from regulated activity relating to children under the Safeguarding Vulnerable Groups Act 2006;
- (b) the Council must keep records on any qualified teacher who has ceased to be a member of the new Vetting and Barring Scheme;
- (c) the Council must include in its records information on:
 - (i) whether a person has been barred from regulated activity relating to children under the Safeguarding Vulnerable Groups Act 2006;
 - (ii) whether a person is a member of the new Vetting and Barring Scheme or has ceased being a member;
 - (iii) the terms of any restriction or prohibition imposed by the General Teaching Council for Northern Ireland; and
 - (iv) the terms of any restriction or prohibition imposed by An Chomhairle Mhúinteoireachta or the Teaching Council for the Republic of Ireland.

8. Amendments 6 (a), (b) and (c) (i) and (c) (ii) above are being made as a direct consequence of the Safeguarding Vulnerable Groups Act 2006. The amendments at 6 (c) (iii) and (c) (iv) are required in order to bring the records kept by the General Teaching Council for Wales up to date.

* ISA is the corporate name given to the Independent Barring Board set up under the SVG Act.

Implementation

9. It is intended that the Order will come into force on 1 July 2009 save amendments 6(a) and 6 (c) (i) which will come into force on 12 October 2009 to coincide with the launch of the barring provisions of the new Vetting and Barring Scheme; amendments(b) and 6 (c) (ii) relating to registration with the ISA will come into force on 26 July 2010 in line with proposed commencement date for these provisions within the SVG Act which has been set by Home Office Ministers in relation to England and Wales.
10. If the legislation is annulled then the General Teaching Council for Wales would not have up-to-date information on whether a qualified teacher or other person is a member of the new vetting and Barring scheme; if they have been barred by the ISA or if a restriction or prohibition order has been imposed by the General Teaching Council for Northern Ireland or the Teaching Council for the Republic of Ireland. This in turn would affect the information the General Teaching Council for Wales supplies to employers and others as well as its ability to determine the suitability of people applying for registration, which would be unacceptable.

Consultation

11. Under section 42 of the Teaching and Higher Education Act 1998, Welsh Ministers are required to consult the General Teaching Council for Wales on regulations relating to the Council. The Assembly Government, in the interests of openness, took the opportunity to consult other stakeholders on the proposed legislation and these included Local Education Authorities, those bodies on Schedule 1 to the 1999 Regulations, teaching unions, supply agencies, further and higher education institutions, church diocesan authorities, Governors Wales, the General Teaching Councils for England, Scotland and Northern Ireland and other interested bodies in the education sector.

12. Given the very specific nature of the proposed legislation and that, in the main, it is being introduced as a direct consequence of the coming into force of the SVG Act 2006, consultation with stakeholders was limited to 12 weeks (from 17 October 2008 and 9 January).

13. Comments were, however, only invited on amendments 6 (c) (iii) and (c) (iv) above. This was because all the other amendments are of a direct consequence of the coming into force of the SVG Act 2006 upon which the Welsh Assembly Government had no scope to alter their provisions.

14. Eleven responses were received to the consultation, comprising five teaching unions, two Local Education Authorities, two schools, and one teaching supply agency and the General Teaching Council for Wales. Ten

organisations agreed with the proposed amendments. NASUWT Cymru noted the proposed amendments but expressed concern that comments had not been invited on all the amendments being made to the Order.

Regulatory Impact Assessment

15. A Regulatory Impact Assessment has not been prepared as, in the main, the proposed legislation is being introduced as a direct consequence of the coming into force of the Safeguarding Vulnerable Groups Act 2006.