

Explanatory Memorandum to the General Teaching Council for Wales (Functions) (Amendment) Regulations 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. These regulations amend the General Teaching Council for Wales (Functions) Regulations 2000 (the 2000 Regulations), which set out the content of the Council's register of teachers and make provision in relation to access to the Register of teachers maintained by the Council. They are being introduced mainly as a consequence of the coming into force of the provisions of the Safeguarding Vulnerable Groups Act 2006 or are required in order 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 these regulations to be made are contained in sections 3(3D), 4(2), 14(3) 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 are being made under 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 amending regulations are mainly technical in nature and are of direct consequence of the Act , or are needed to ensure that all legislative references are current and relevant. The proposed amendments are:

(1) an amendment to add to the matters (as set out in Schedule 1 to the 2000 Regulations) to be recorded in the register of qualified teachers maintained by the General Teaching Council for Wales to include details of:

- (a) a person's membership of the new Vetting and Barring Scheme;
- (b) any restriction imposed by the General Teaching Council for Northern Ireland; and
- (c) any restriction imposed by An Chomhairle Mhúinteoireachta or the Teaching Council for the Republic of Ireland.

(2) an amendment to add the following to the information set out in Schedule 2 to the 2000 Regulations (which must be provided by the Council to employers and others):

- (a) whether a person has been barred from regulated activity relating to children under the Safeguarding Vulnerable Groups Act 2006;
- (b) whether a person is a member of the new Vetting and Barring Scheme;
- (c) details of any restriction or prohibition imposed by the General Teaching Council for Northern Ireland; and
- (d) details of any restriction or prohibition imposed by An Chomhairle Mhúinteoireachta or the Teaching Council for the Republic of Ireland.

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

(3) An amendment to include An Chomhairle Mhúinteoireachta or the Teaching Council for the Republic of Ireland as a body to which the General Teaching Council for Wales must supply certain information, and to which they must also provide, if requested, particulars of the grounds on which they decide a person is not suitable to be a teacher. This will bring An Chomhairle Mhúinteoireachta or the Teaching Council for the Republic of Ireland in line with the General Teaching Councils for England, Scotland and Northern Ireland who are already entitled to this information;

(4) the removal of the existing requirement that a decision made by the General Teaching Council for England as to a teacher's suitability is binding on the General Teaching Council for Wales. A similar provision does not currently exist in England for those deemed suitable to teach in Wales nor with the other GTCs. The amendment will mean that each General Teaching Council will determine the question of suitability afresh.

8. Amendments 6(1)(a), 6 (2)(a) and 6 (2) (b) above are being made as a direct consequence of the Safeguarding Vulnerable Groups Act 2006.

9. Amendments 6(1) (b), 6 (1) (c), 6(2) (c), 6 (2)(d) and 6(3) are required in order to bring the Register of teachers, and the information made available to employers and others by the Council, up to date and relevant.

10. The amendment at 6 (4) above is being introduced following an approach made by the Council to the Assembly Government that only they should be able to determine a person's suitability to teach in Wales to ensure that only the highest standards apply when considering a teacher's suitability. In Wales, a very stringent approach is taken by the General Teaching Council for Wales when considering a teacher's suitability which involves a full CRB check at the time of registration.

Implementation

11. It is intended that these regulations will come into force on 1 July 2009 save amendment 6(2)a 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 (6(1) a) and 6(2) (b), relating to registration with the ISA, which will come into force on 26 July 2010 in line with the proposed commencement date for these provisions within the SVG Act which has been set by Home Office Minister's in relation to England and Wales.

12. If the legislation is annulled then the Council's Register of teachers would not be accurate as it would not have up-to-date information on whether a teacher has been barred by the ISA. This in turn would affect the information the Council supplies to employers and others, which would be unacceptable. The effect of not making the amendment at 6 (4) would mean that the

General Teaching Council for Wales would have to continue to automatically register a teacher that has been deemed suitable to teach in England.

Consultation

13. 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.

14. 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).

15. Comments were, however, only invited on amendments 6(1) (b), 6 (1) (c), 6(2) (c), 6 (2)(d), 6(3) and 6(4). 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.

16. 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 all the proposed amendments. One organisation (NASUWT Cymru) noted the proposed amendments but disagreed with the amendment 6(4) to remove the existing requirement that a decision made by the General Teaching Council for England (GTCE) as to a teacher's suitability is binding on the General Teaching Council for Wales. NASUWT Cymru considered that such a move would place an unnecessary financial burden on the General Teaching Council for Wales which in turn could lead to an increase in the annual registration fee.

17. The primary reason for removing the provision for automatic recognition of decisions on suitability made by GTCE is the need to uphold high standards within the teaching profession and the protection of children. Different procedures are currently being applied in England and Wales in relation to the suitability of applicant's applying for registration to teach. In Wales, as part of the registration process a teacher is subject to a suitability check by the General Teaching Council for Wales and this includes an enhanced Criminal Records Bureau (CRB) check. In England a CRB check does not form part of the registration process. The cost of undertaking this work is not expected to be significant as on average around 100 teachers who have registered with the GTCE apply to register with the GTCW. Any

additional costs will be absorbed by the GTCW and won't impact on the fee given the low numbers involved. NASUWT Cymru also expressed concern that comments had not been invited on all the amendments being made to the Regulations.

Regulatory Impact Assessment

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