

Explanatory Memorandum to The General Teaching Council for Wales (Disciplinary Functions) (Amendment) Regulations 2011

This Explanatory Memorandum has been prepared by the Department for Education and Skills (DfES) 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 General Teaching Council for Wales (Disciplinary Functions) (Amendment) Regulations 2011.

Leighton Andrews

Minister for Education and Skills, one of the Welsh Ministers

2 December 2011

1. Description

These Regulations amend the General Teaching Council for Wales (Disciplinary Functions) Regulations 2001 by replacing regulation 8 which makes provision about the membership and procedure of the Investigating Committees, Professional Conduct Committees and Professional Competence Committees of the General Teaching Council for Wales (GTCW). The new regulation 8 provides that a member of the Council cannot be a member of any of these committees.

2. Matters of special interest to the relevant committee

None.

3. Legislative background

The statutory powers of the Welsh Ministers to make the amending regulations are found in the sections 6 and 42(6) and (7) of, and paragraph 9 of Schedule 1 to, Teaching and Higher Education Act 1998.

The Regulations follow the negative resolution procedure.

4. Purpose & intended effect of the legislation

The GTCW is the independent professional body for teachers in Wales established under the Teaching and Higher Education Act 1998 on 1 September 2000. The GTCW (Disciplinary Functions) Regulations 2001 (“the 2001 Regulations”) provide the GTCW with powers to investigate and hear cases of alleged professional misconduct and incompetence against a registered teacher.

The 2001 Regulations set out the process that has to be followed in dealing with such cases, including the composition of the Investigating Committees, Professional Conduct Committees and Professional Competence Committees of the Council. Regulation 8(1) (c) of the 2001 regulations provides that these Committees **must** include:

- (a) one or more lay members;
- (b) one or more registered teacher; and
- (c) if none of the lay members or registered teacher is a Council member, one
or more Council members.

The requirement to have one Council member on these committees has been called into question following a recent Court of Appeal case relating to a professional conduct hearing involving a member of the Institute of Legal Executives (ILEX) (R (Kaur) v Institute of Legal Executives Appeal Tribunal [2011] EWCA Civ 1168). The Court of Appeal found that because

the ILEX disciplinary panel comprised members of the Institute, the impartiality of the disciplinary panel was compromised and the doctrine that “no one may be a judge in his own cause” was breached. On the 19 October 2011 the Court of Appeal overturned a decision of the ILEX disciplinary panel in relation to a member of ILEX on these grounds.

Counsel’s advice was sought by the Welsh Ministers on the implications of the judgement. Counsel advised that regulation 8(1) (c) of the 2001 Regulations could be deemed unlawful by the Courts and that the Welsh Government should amend the regulations as soon as possible. The General Teaching Council for Wales (Disciplinary Functions) (Amendment) Regulations 2011 aim to achieve this by making provision that a member of the Council cannot be a member of the Investigating Committees, Professional Conduct Committees and Professional Competence Committees of the Council.

5. Consultation

No formal consultation exercise has taken place as the proposed amendment is technical and is essential to correct a requirement which could render the outcome of GTCW professional conduct and competence hearings unlawful. Any consultation would be valueless as in practice no alternative could be considered.

The GTCW has, however, been consulted on the amending regulations in line with regulation 42(9) of the Teaching and Higher Education Act 1998, and they support the proposed change.

6. Regulatory Impact Assessment (RIA)

A Regulatory Impact Assessment has not been prepared as the Regulations do not impose any additional costs on businesses or employers. In reviewing its procedures as a consequence of the Court of Appeal case, the Council may incur some additional costs but these will be minimal and met from within the Council’s own budget, the latter being funded through the GTCW annual registration fee it receives from teachers.

