

Explanatory Memorandum to the General Teaching Council for Wales (Disciplinary Functions) (Amendment No.2) 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 (Disciplinary Functions) Regulations 2001 (the 2001 Regulations) as a consequence of the coming into force of the Safeguarding Vulnerable Groups (SVG) Act 2006. The 2001 Regulations make provision about the disciplinary functions of the General Teaching Council for Wales in relation to registered teachers.

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 6, 14(3) and 42(6) of, and paragraph 1(1) and (4) of Schedule 2 to, 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 SVG 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 2006 Act

- 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. Legislation governing the functions of the General Teaching Council for Wales was recently amended to take account of the commencement of certain provisions of the 2006 Act in October 2009. As part of this process, the General Teaching Council for Wales (Disciplinary Functions) (Amendment) Regulations 2009 were made. They amended regulation 9 of the General Teaching Council for Wales (Disciplinary) Functions Regulations 2001 (the 2001 Regulations) so that the functions of an Investigating Committee of the General Teaching Council for Wales are excluded if the ISA want to consider a case under the 2006 Act (rather than the Secretary of State or Welsh Ministers wishing to consider it under section 142 of the Education Act 2002). If a case raises issues of harm or risk of harm to children or vulnerable adults then the IBB will want to consider it. The disciplinary functions of the General Teaching Council for Wales need to be further amended.

8. Although section 142 of the Education Act 2002 is repealed and replaced by the new barring system under the 2006 Act, there remain some cases under consideration under section 142 of the 2002 Act and which are unlikely to have been concluded by 12 October 2009. The functions of an investigating committee of the General Teaching Council for Wales need to be excluded in relation to those cases as well as the ones which the ISA wish to consider. The General Teaching Council for Wales (Disciplinary Functions) (Amendment No.2) Regulations 2009 will revoke an amendment made to the 2001 Regulations by the General Teaching Council for Wales (Disciplinary Functions) (Amendment) Regulations 2009 and instead will refer to cases under consideration by the Secretary of State or the Welsh Ministers under section 142 of the Education Act 2002 as well as cases to be considered by the IBB.

Implementation

9. It is intended that regulations 1 and 2 will come into force on 7 September 2009 and the remaining provisions will come into force on 12 October 2009 to coincide with the launch of the barring provisions of the new Vetting and Barring Scheme (registration with the ISA under the SVG Act is not being introduced until July 2010). If the legislation is annulled then there would be nothing to prevent the General Teaching Council for Wales and the Secretary of State from considering the same case at the same time which would not be appropriate. If the Secretary of State decides that a person should be barred

from working with children then that person is not eligible to be a registered teacher (so there is no need for the Council to consider the case).

Consultation

10. 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. This has been done and as the amendment is minor and technical there has been no wider consultation. There was consultation last year on the other amendments that have now been made to the legislation governing the General Teaching Council for Wales.

Regulatory Impact Assessment

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

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