

## **Explanatory Memorandum to the General Teaching Council for Wales (Disciplinary 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 (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 14(3) and 42(6) of, and paragraph 1(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. The disciplinary functions of the General Teaching Council for Wales need to be amended to take account of the requirements of the SVG Act 2006. The proposed amendments, which are minor and technical in nature, are:

(1) an amendment so that the functions of an Investigating Committee of the General Teaching Council for Wales are excluded if the ISA have barred or want to consider barring a teacher under the SVG Act 2006, for example, if a case raises issues of harm or risk of harm to children or vulnerable adults then the ISA are likely to want to consider it. The Council will also be under a separate duty under the SVG Act 2006 to provide the ISA with information if it considers that a registered teacher should be considered for barring by the ISA;

(2) an amendment to require the General Teaching Council for Wales to inform the Secretary of State, upon request, that the Council has made a prohibition order in relation to a person. The Secretary of State could require this information in relation to his functions under the Teachers Pensions Regulations 1997 in order to ensure that pensions are not being paid to those who are not entitled to them. The amendment is required to ensure that there is a clear statutory basis for sharing this information.

## Implementation

8. It is intended that these regulations 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 were to be annulled then the General Teaching Council for Wales and the ISA could both be investigating the same case at the same time. It is important that the ISA deal with cases that raise issues of harm or risk of harm to children as the ISA has the power to bar a person from working with children in any capacity (whereas the Councils powers are limited to the teaching profession). It would not be right for both bodies to bring proceedings against a person at the same time. If the ISA decide 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

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

Council to consider the case). It is also necessary to ensure that there is a sound legal basis for the General Teaching Council for Wales to pass on information to the Secretary of State when he requests it. He may for example require it in relation to teachers' pensions and if the Council did not advise the Secretary of State that it had issued a prohibition order against a person then he may not know whether a person is entitled to a pension.

### **Consultation**

9. 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. As the regulations are a direct consequence of the coming into force of the SVG Act 2006, and there was no scope for the Assembly Government to alter their provisions, consultees were informed of the new regulations as part of a wider consultation with stakeholders on other amending regulations relating to the General Teaching Council for Wales.

10. A 12 week consultation exercise was undertaken on 17 October 2008 until 9 January 2009 and included Local Education Authorities, those bodies on Schedule 1 to the General Teaching Council for Wales (Constitution) Regulations 1999, teaching unions, supply agencies, further and higher education institutions, church diocesan authorities, Governors Wales, the General Teaching Councils for Wales, England, Scotland and Northern Ireland and other interested bodies in the education sector. In responding to this consultation, the NASUWT expressed concern that comments were not invited on the proposed amendments to the 2001 Regulations but, as mentioned above, there was no purpose in doing so as the Assembly Government had no discretion to alter their scope.

### **Regulatory Impact Assessment**

11. 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.