

Explanatory Memorandum to the Education (Supply of Information) (Wales) 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 require the employers of teachers registered with the General Teaching Council for Wales (the Council), and supply agencies, to report cases of misconduct and incompetence to the Council other than those cases they are required to provide information about to the Independent Safeguarding Authority (ISA) under the Safeguarding Vulnerable Groups (SVG) Act 2006. They revoke the Education (Supply of Information) (Wales) Regulation 2003 which required misconduct cases to be reported to the Welsh Ministers and incompetence cases to be reported to the Council. Under these new regulations all cases are to be reported to the Council.

3. The regulations are being introduced as a direct consequence of the coming into force of the provisions of the SVG Act 2006.

Matters of Special Interest to the Subordinate Legislation Committee

4. None

Legislative Background

5. The powers enabling these regulations to be made are contained in sections 15, 15A, 42(6) and (7) and Schedule 2 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

6. 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.

7. 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 ISA*);
- an employer must not engage in regulated activity a barred person or a person who is not a member of the scheme.

8. At present, employers and teacher supply agencies are required, under the Education (Supply of Information) (Wales) Regulations 2003, to report cases of professional misconduct cases to the Welsh Ministers, and cases of professional incompetence to the General Teaching Council for Wales. As a result of provisions contained within the SVG Act, however, these arrangements will change from October 2009.

9. Under sections 35, 36 and 39 of the SVG Act 2006 local authorities, other employers and agents will be required to provide information on a person **direct** to the ISA in certain circumstances. These circumstances essentially relate to whether the “harm test” is satisfied and/or if the conduct of a person endangers a child.

10. As a direct consequence of this, new arrangements need to be put in place to enable employers and agents to be able to continue to report cases involving the professional misconduct of registered teachers (other than those cases that they are required to provide information about to the ISA as described above) and cases of professional incompetence. The Education (Supply of Information) (Wales) Regulations 2009 set out the new reporting arrangements that will apply from October 2009.

11. Under the new regulations, employers must make a report to the General Teaching Council for Wales if they cease to use a registered teacher’s services on a specified ground or if they might have done so had that teacher not already ceased to provide his or her services. Supply agencies must make a report to the Council if they have arranged for a registered teacher to carry out work on behalf of a local education authority, a governing body or a proprietor of an independent school and terminate those arrangements on a specified ground, or might have done so had the teacher not already terminated the arrangements or ceased to be available for work. The specified grounds are misconduct, professional incompetence and conviction of a relevant offence. A relevant offence is an offence other than one having no material relevance to a person’s fitness to be a registered teacher.

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

Implementation

12. 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 26 July 2010). If the legislation is annulled then there would be no mechanism for employers and agents to report cases of teacher misconduct and incompetence (other than those cases they are required to provide information about to the ISA under the SVG Act 2006). The Council would also be unable to fulfil its statutory function of investigating and hearing cases of unacceptable professional conduct and serious professional incompetence involving registered teachers.

13. Similar arrangements have been introduced in England by the Department for Children, Schools and Families.

Regulatory Impact Assessment

(a) Options

There are three options:

(i) **Do nothing** - there would be no mechanism for employers and agents to report cases of teacher misconduct and incompetence (other than those cases they are required to provide information about to the ISA under the SVG Act 2006). This would have a negative impact on standards within the profession as teachers who have had their working arrangements terminated on grounds of incompetence or misconduct would remain on the Council's register of teachers and be able to apply for other teaching posts. This is therefore not a feasible option.

(ii) **Voluntary approach** - although the Assembly Government could issue guidance to employers on the need to report cases of teacher misconduct and incompetence there is no guarantee that all employers and agents will follow the guidelines and the problems identified at (i) above would still remain. Provisions of the Data Protection Act 1998 might also prevent the passing on of information on a voluntary basis. This is therefore not a feasible option.

(iii) **legislate** - as there is already an established statutory mechanism for reporting cases of teacher misconduct and incompetence in Wales, the legislative approach would provide continuity, ensure that necessary information is passed and ensure that standards are maintained within the teaching profession.

(b) Benefits

The overall benefit from these regulations is that standards will be maintained within the profession which currently comprises over 30,000 teachers. The General

Teaching Council for Wales investigates cases of teacher misconduct and incompetence reported to it. Under the new regulations it will receive the required information to enable it to continue to determine whether a teacher should stay on the register and continue to work in Welsh schools. This will help drive up standards.

(c) Costs

Although the new regulations will place a small administrative cost to employers and agents as they will have to forward information on misconduct and incompetence cases to the General Teaching Council for Wales (photocopying, postage costs, for example), this is not new as employers and agents are already reporting cases. The key difference is to whom reports are made. Under the current arrangements all misconduct cases are referred to the Welsh Ministers and incompetence cases are sent direct to the General Teaching Council for Wales. Under the new regulations, employers and agents will be required to provide information on a person direct to the ISA in circumstances which essentially relate to whether the "harm test" is satisfied and/or if the conduct of a person endangers a child. All other misconduct cases and those relating to incompetence will be referred to the General Teaching Council for Wales.

The number of misconduct and incompetence cases currently being reported to the Assembly Government and the GTCW is low. In 2008-09 48 misconduct cases were referred to the Assembly Government which represents less than 1 % of the workforce. The General Teaching Council for Wales has had one incompetence case referred to it since 2001 when the Council first assumed its disciplinary functions. Consequently, the overall cost of introducing these regulations is de minimus.

(d) Consultation

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 the new reporting arrangements, 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 that are being introduced as a result of the SVG Act.

A 12 weeks 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 the consultation, NASUWT Cymru expressed concern that comments were not invited on the new regulations and suggested that the Assembly Government should retain its current role of receiving teacher misconduct cases as the new reporting arrangements could lead to a misdirection of cases.

Comments were not invited on the new Supply of Information (Wales) Regulations 2009 because they are being introduced as a direct consequence of the SVG Act and the Assembly Government had no scope to influence matters. On the new reporting arrangements, as a result of provisions already contained within the SVG Act (upon which there was full consultation with stakeholders during its passage through Parliament) Welsh Ministers will, in future, have no role in handling of misconduct cases. Employers and agents will be required, from October 2009, to forward certain information direct to the ISA in relation to person if the “harm test” is satisfied and/or if the conduct of a person endangers a child. All other cases will be sent direct to the General Teaching Council for Wales.

(e) Post implementation review – the ISA has a statutory duty under the SVG Act 2006 to provide information to the Assembly Government on the decisions it has made on cases referred by employers and agents. It is likely that this will take the form of an annual report although this has yet to be determined. The General Teaching Council for Wales will feed into this exercise. The information from the ISA will be used by Assembly officials to advise the Minister for Children, Education, Learning and Skills on the nature and scale of teacher misconduct in Wales which in turn will help the Assembly Government develop appropriate policies. Detailed guidance will be issued to employers and agents about the new reporting arrangements in advance of the coming into force of the regulations.

(f) Summary – the existing statutory arrangements for the reporting of cases of professional misconduct to the Welsh Ministers and incompetence cases to the General Teaching Council for Wales in relation to registered teachers will cease to exist in October 2009 with the coming into force of the SVG Act 2006. While employers and agents will be required under the SVG Act to report certain information direct to the ISA, there needs to be a mechanism put in place to enable them to continue to report other misconduct cases and cases of professional incompetence. The new regulations make provision for this.