

Explanatory Memorandum to the General Teaching Council for Wales (Constitution) (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 (Constitution) Regulations 1999 (the 1999 Regulations) which provide for the constitution of the General Teaching Council for Wales. They are being introduced mainly as a consequence of the coming into force of the provisions of the Safeguarding Vulnerable Groups Act (SVG) Act 2006.

Matters of Special Interest to the Subordinate Legislation Committee

3. None

Legislative Background

4. The powers enabling regulations to be made in relation to the General Teaching Council for Wales' constitution are contained in section 1(5) and (7) of, and paragraph 3 of Schedule 1 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

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 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. Legislation governing the constitution of the General Teaching Council for Wales needs to be amended to take account of the requirements of the SVG Act 2006. The amending regulations are mainly technical in nature and are a direct consequence of the Act, or are needed to ensure that all legislative references are current and relevant. The proposed amendments are:

- (a) that a person who has been barred from “regulated activity” relating to children under the SVG Act 2006 is not eligible to be a member of the General Teaching Council for Wales (whether by appointment or election) nor to vote in an election;
- (b) if a member of the General Teaching Council for Wales is barred as described above, that member will cease to hold office;
- (c) updating of various references in the interpretation provisions in regulation 2 of the 1999 Regulations;
- (d) updating of Schedule 1 to the 1999 Regulations, which lists the bodies who are entitled to nominate persons for appointment to the General Teaching Council for Wales, to:
 - replace the incorrect reference to the Independent Schools Information Service Wales with a reference to the Independent Schools Council;
 - transfer the University and College Union from Part 1 of the Schedule to Part 2 following a request by the union as most of their members do not fulfill the eligibility criteria for appointments to be made to the Council under Part 1 (i.e. that they are employed as teachers); and
 - change the name of the Parent Teacher Associations Wales to the National Confederation of Parent Teacher Associations as the Wales office of that body no longer exists.

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

8. Amendments (a) to (c) are of a direct consequence of the SVG Act 2006 and simply update existing and similar references in the 1999 regulations. Amendment (d) is required to ensure that the list of bodies who are able to nominate persons for appointment to the General Teaching Council for Wales is up-to-date and accurate to avoid unnecessary delays.

Implementation

9. 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 is annulled then those barred under the SVG Act 2006 would not be disqualified from being members of the General Teaching Council for Wales and that would not be appropriate or acceptable. The existing legislation would also be out of date which could cause uncertainty as to its meaning.

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. 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.

11. 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).

12. Comments were, however, only invited on the proposed amendment to Schedule 1 of the 1999 Regulations (para 6(d) above). 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 discretion to alter their scope.

13. 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 the proposed amendment while one organisation noted the proposals. NAHT Cymru, while supporting the proposal to change the name of the Parent Teacher Associations Wales to the National

Confederation of Parent Teacher Associations suggested that Wales/Cymru should be retained in the title. The National Confederation of Parent Teacher Associations has subsequently confirmed that this would not be appropriate. The NASUWT expressed concern that comments were not invited on all the proposed amendments to the 1999 regulations.

Regulatory Impact Assessment

14. 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 SVG Act 2006.