

Proposed changes to the teacher disciplinary and induction regulations following the abolition of the General Teaching Council for England

Consultation Response Form

The closing date is: 12 October 2011

Your comments must reach us by that date.

THIS FORM IS NOT INTERACTIVE. If you wish to respond electronically please use the online response facility available on the Department for Education website (www.education.gov.uk/consultations).

Information provided in response to this consultation, including personal information, may be subject to publication or disclosure in accordance with the access to information regimes, primarily the Freedom of Information Act 2000 and the Data Protection Act 1998.

If you want all, or any part, of your response to be treated as confidential, please explain why you consider it to be confidential.

If a request for disclosure of the information you have provided is received, your explanation about why you consider it to be confidential will be taken into account, but no assurance can be given that confidentiality can be maintained. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

The Department will process your personal data (name and address and any other identifying material) in accordance with the Data Protection Act 1998, and in the majority of circumstances, this will mean that your personal data will not be disclosed to third parties.

Please tick if you want us to keep your response confidential.

Reason for confidentiality:

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If your enquiry is related to the policy content of the consultation you can contact the PCU helpline on:

Telephone: 0370 000 2288

e-mail: TeacherRegulation.CONULTATION@education.gsi.gov.uk

If you have a query relating to the consultation process you can contact the Consultation Unit on:

Telephone: 0370 000 2288

e-mail: consultation.unit@education.gsi.gov.uk

Please tick one category below that best describes you as a respondent.

Head
Teacher

Teacher

Governor/Chair of
Governors

Parent
Carer

Union/Professional
Association

Local Authority

Other

Please Specify:

Independent Professional Regulatory Body which maintains and enhances teaching standards in Scotland.

Proposed clarification of who is covered by the new regulatory arrangements by reference to "teaching work"

The current regulatory system applies to all those who are registered with the GTCE. In the new system there will be no requirement to register and the scope of the regulatory arrangements has been widened to include the independent sector and free schools, where Qualified Teacher Status (QTS) may not be required, and to include 6th form colleges, where some teaching staff may have Qualified Teacher Learning and Skills (QTLS) status. As a consequence, it is not possible to rely on either registration or qualifications as the basis for defining who is covered by the new regulatory system. The Education Bill defines who is in scope by reference to the nature of the work that an individual undertakes - "teaching work" - and the setting where they are employed and says that regulations will provide a definition of "teaching work".

Q1) Does the definition of "teaching work" achieve the desired effect and help to identify who is covered by the new regulatory system?

<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input checked="" type="checkbox"/> Not Sure
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Comments:

The **First Report of the Independent Review of Teachers' Standards** published in July quotes from the recent White Paper the desire to establish 'clear and unequivocal standards' for teachers and yet in the consultation document **Proposed changes to the teacher disciplinary and induction regulations following the abolition of the General Teaching Council for England** we read that:

'...it is not possible to rely on either registration or qualifications as the basis for defining who is covered by the new regulatory system.' (Para 4.2)

If there are clear and unequivocal standards for teachers it seems odd that it is then necessary to identify 'teachers' by having to depend on definitions of 'specified work' and 'teaching work'.

This all seems a bit vague and open to dispute, particularly through possible legal challenge. When is a teacher actually a teacher?

It is also noted that anyone who carries out 'teaching work' but does so under the 'direction and supervision of a qualified teacher' (Para 4.3) is excluded from these requirements. Could it not therefore be argued that if the Head Teacher is a qualified teacher (who quite rightly directs and supervises his/her staff), the staff are themselves excluded from the requirements of these regulations?

Might it not also be argued that the proposed system potentially excludes teachers being put through an employer's competence process and are therefore being made subject to direction and supervision as part of this?

Are Headteachers themselves actually being considered to carry out "teaching work". The definition of "specified work" set out in the consultation document seems entirely focused on classroom teachers, not those in management roles.

These arguments are clearly spurious and this is not what is meant by the regulations but the points are offered to illustrate the convoluted thinking which has to be entered into when a far simpler (and safer?) solution would be to retain a system of teacher registration.

The investigation of misconduct cases

Revised regulations will set out the procedures for making a decision as to whether to apply a prohibition order regarding cases referred to the Secretary of State. It is proposed that for the most part the procedures involved will remain the same as now except that it will be the Teaching Agency acting on behalf of the Secretary of State, rather than the GTCE, who will undertake the day to day administration of the regulatory processes.

Q2) Do you have any comments on the proposals for investigating misconduct referrals?

Comments:

How will the employer's duty to consider referring be played out against the fact that members of the public can complain? This situation puts the Teaching Agency in a potentially ridiculous position that doesn't seem likely to serve the public interest particularly well. Does the plan mean that the Teaching Agency *itself* can initiate an investigation, for example where there is media coverage of a particular incident of potential misconduct involving a teacher? Taking away the regulator and changing how/when referrals are made changes the dynamics here and the consultation document does not seem to give comfort that the practicalities of this have been fully considered.

Teachers' Standards

Under the current arrangements GTCE Committees may take into account any failure by a registered teacher to comply with the Code of Conduct and the Professional Standards for Teachers in any disciplinary proceedings. An independent review of the standards is currently considering what changes might be needed to the standards. The review also provides the opportunity to bring teachers' standards together in one place, and to consider what elements of the current GTCE Code of Conduct are suitable to incorporate within the new standards in a simplified framework. Once these revised standards are in place (probably September 2012), it will no longer be appropriate to refer to the GTCE's Code of Conduct so revised regulations will reflect this by stating instead that any decision as to whether to prohibit may take into account any failure by a teacher to comply with the Personal and Professional Conduct Standards in Part Two of the teachers' standards issued by the Secretary of State. Until the revised standards are in place, the Teaching Agency and the Secretary of State will continue to take account of the current Professional Standards for Teachers and the GTCE's Code of Conduct in any disciplinary proceedings.

Q3) Do you have any comments about the use of professional standards within the disciplinary process?

Comments:

This puts a great deal of emphasis on the professional standards. The recent report, mentioned above in 1, attempts to give:

'...new standards that are clearly expressed and that can be used effectively to underpin teacher training, support performance management and guide teachers' ongoing professional development.' (Foreword)

The expression is perfectly clear in PART TWO: PERSONAL AND PROFESSIONAL CONDUCT where we read that teachers:

'...must have proper and professional regard for the ethos, policies and practices of the school in which they teach...'

but how is 'proper and professional regard' to be defined and identified?

If a teacher argues against a school policy from a well researched, fully considered and professional viewpoint could he or she be accused of not showing proper regard?

Putting such emphasis on standards to give clarity and robustness in disciplinary action is always going to be a fraught business and as such the GTCS intends to maintain both Standards and a Code of Professionalism and Conduct.

There is also the potentially negative effect of standards simply being seen as being about disciplinary matters rather than encouraging the professional development of teachers.

As the regime is changed, appropriate consideration will need to be given to transitional arrangements.

Membership and procedure of professional conduct panels

In a similar way to the current GTCE arrangements, it is proposed that regulations should provide for professional conduct panel hearings that will consider whether a teacher is guilty of unacceptable professional conduct, conduct that may bring the teaching profession into disrepute or whether they have been convicted (at any time) of a relevant offence.

Q4 a) Do you have comments on our proposals for the make-up of professional conduct hearings?

Comments:

Mix of teacher and lay members is entirely appropriate in forming a suitably balanced panel but, given the comments above, how are teacher members going to be finally identified?

The three areas of:

Unacceptable conduct;
Conduct that may bring the profession into disrepute; and
Conviction

are fair enough but how is incompetence to be dealt with?

This seems to be a huge gap in what is being proposed.

There is also a fundamental issue as to how the first and second types of conduct are to be distinguished: “conduct that may bring the profession into disrepute” is a sub-set of “unacceptable conduct”. This means the two will overlap in a high number of cases making it an inevitable duplication exercise when it comes to properly framing charges. This makes the process seem ill-thought through and confusing.

Q4 b) Do you agree with our definitions of who should be considered as a teacher for the purposes of the panels?

Agree

Disagree

Not sure

Comments:

The definition of teachers set out in the consultation document is a “serving teacher”. The GTCS would suggest that this must be further defined in order to have any meaning where there is no longer a Register of Teachers held and maintained. If the intention is to define a “teacher” with reference to “teaching work”, we would suggest that there are issues with this as set out at 1 above.

The GTCE produces guidance about its disciplinary procedures and revised regulations will enable the Secretary of State to produce guidance also. In the interests of transparency regulations will require that any provision made by the Secretary of State as to the procedure of a professional conduct panel must be published.

Q5) Do you agree that any provision the Secretary of State may make for the procedure of a professional conduct hearing should be published?

Agree

Disagree

Not sure

Comments:

Openness, transparency and public accountability matter.

As under the current arrangements, revised regulations will give teachers who are the subject of an allegation the right to appear at a panel and make oral representations and be represented by any person of their choice. The Secretary of State will be able to require anyone to attend, give evidence or to produce documents or other evidence at any panel. As now, witnesses may be required to give evidence under oath or affirmation.

Also as now, panels will normally be expected to take place in public but will deliberate in private when reaching their verdict at the end of the hearing process. Panels will have the discretion to exclude the public from any hearing or part of a hearing:

- where it appears in the interests of justice to do so;
- where the teacher who is the subject of the allegation requests that they do so and the hearing does not consider it to be contrary to the public interest; or
- where it appears in the public interest to do so.

As now, where a panel finds the facts of the allegations proven against a teacher, or that they have been convicted of a relevant offence, it must then consider whether this amounts to unacceptable professional conduct or conduct that brings the teaching profession into disrepute. Guidance will be available to panel members and teachers which will set out the criteria for making decisions about whether a teacher is guilty or not. We will be consulting separately on draft guidance shortly.

If the panel decide that a teacher is guilty of unacceptable professional conduct or conduct that brings the profession into disrepute, the panel will then make a recommendation to the Secretary of State as to whether a prohibition order would be appropriate. Such an order would have the effect of barring a teacher from teaching.

Q6) Do you have comments on these proposals for the proceedings of professional conduct hearings?

Comments:

It is noted that the Panel only recommends to the Secretary of State and it is his final decision.

Should there be a mechanism for a Panel to appeal/complain/challenge if the Secretary of State does not accept a recommendation?

Why also is there only the one possible sanction?

For the decisions on the “prohibition margins”, the GTCS view is that this raises significant issues. Where there is a fairly serious misconduct issue, it means a panel can only take the extreme prohibition step or risk the public interest and not prohibit. If a teacher cannot apply for review of a prohibition until a minimum of 2 years has passed, this adds to the problems of proportionality. Obviously if there are options like reprimands or conditions, you have more tools at your disposal to deliver both protection and proportionality.

The GTCs would also suggest that great care will need to be taken in terms of suggesting “criteria for making decisions about whether a teacher is guilty or not.” This would be wide open to legal challenge if the discretion of the panel to weigh up evidence and make a decision is fettered by another party.

Consideration should also be given to the private hearing test which is vague and seems to duplicate itself. Is this in the public interest? It also makes the criteria very unclear for the panel and respondent alike.

What intentions are there to maintain some level of distinction in terms of investigation/prosecution of cases as against adjudication within both the Teaching Agency and at Secretary of State level? The wording of the consultation document seems quite vague around any of this which is obviously central to the good governance of any regulatory process.

Prohibition Orders

A prohibition order has the effect of preventing a teacher from being employed as a teacher as set out in the consultation document. Once a prohibition order is made it must record the decision of the Secretary of State, the date on which the order is made, and the date on which the order takes effect. In addition, it must specify the period, which must not be less than two years from the date on which the order takes effect, before which no application may be made for a review of the order by the Secretary of State. When a prohibition order is made, the teacher's name, Teacher Reference Number, the school at which they were last employed and a brief description of why they have been prohibited (ie, "misconduct"), will be placed on the Prohibited List which will be available online to employers and to the public on written request.

Interim prohibition orders

The Education Bill provides the Secretary of State with the facility to make an interim prohibition order, at any time prior to his final decision as to whether a prohibition order should be made, in the most serious cases where it appears to the Secretary of State in the public interest to do so. This is a new power that wasn't available to the GTCE but which many other regulators have. The use of interim prohibition orders is likely to be very rare and will be used only where there is a clear public interest in doing so. The kinds of things that might be in the public interest are where the allegations and evidence against a teacher suggests that children's welfare and education or parents or other school staff may be seriously at risk if the person were allowed to continue to teach before a panel hearing can be scheduled and their case concluded.

Q7) Do you have any comments the procedures for making prohibition orders?

Yes

No

Not Sure

Comments:

A sensible development.

Such a move may well safeguard children and/or protect the reputation of the teaching profession.

However, why is the “barred list” only to be available on “written request”. Is this open and transparent?

Review of prohibition orders

As with the current GTCE procedure, where a prohibition order has been made following the recommendation of a professional conduct panel, the order will have the effect of barring the teacher from teaching for life. However, in some circumstances, the Secretary of State may decide to allow a teacher to apply to have the prohibition order reviewed after a minimum period of time. This time would be recommended by the professional conduct panel and will not be less than 2 years. The circumstances in which it is likely that the Secretary of State would not allow a prohibition order to be considered for review are where a teacher has been convicted and jailed for a serious criminal offence. Applications for a review must be made in writing and must specify the grounds upon which they are made. The Secretary of State may require any person to produce documents or other material evidence for the purposes of such an application and must decide whether the application should be allowed or referred to a professional conduct panel for a recommendation as to whether it should be allowed.

Q8) Do you agree that a minimum period of 2 years before which a teacher can apply to have their prohibition order reviewed is appropriate and proportionate?

Agree

Disagree

Not sure

Comments:

This is broadly working to the same timescale as in Scotland.

The timescale for GTCS through disciplinary hearings is currently 12 months. However, with the independence of the GTCS from next April, our plan is that our new Rules will state that it will be a *maximum* period of 2 years that will be set by the panel hearing the case.

There are potential proportionality issues in *always* prohibiting for a minimum of 2 years, made worse by the fact that there are no other disposal actions short of prohibition that the Teaching Agency could use.

Q9) Do you have any other comments to make in relation to prohibition orders?

Comments:

The GTCS view is that there is an issue with the idea that someone could potentially *never* be allowed a review of the decision – this seems open to legal challenge. Setting a fairly long period of time is reasonable but to say never seems extreme.

The GTCS would suggest that the narrative in the consultation document in terms of use of interim prohibition orders is naive. Only using such orders rarely is not our experience. We would suggest that it is possible there would be a number per month in England. The idea that these would be made once the “serious of that facts have been established” is entirely at odds with the *raison d’etre* of interim orders. These need to be made quickly for public protection reasons and it will almost always be when investigation is ongoing with the facts not yet established.

Persons prohibited from teaching in Wales, Scotland or Northern Ireland

Currently, any teacher who has been prohibited from teaching in Wales, Scotland or Northern Ireland on any grounds is normally automatically barred from teaching in England. Similarly, any teacher who is currently barred in England on any grounds will also be automatically barred in Wales, Scotland and Northern Ireland. Under the new proposals in the Regulations, this will be amended so that any teacher prohibited from teaching in Wales, Scotland or Northern Ireland on the grounds of unacceptable professional conduct or conviction of a relevant offence will also usually be automatically prohibited from teaching in England, unless there is a good reason not to. Equally, the Teaching Agency will also notify the General Teaching Councils in Wales, Scotland and Northern Ireland of any teacher who has been prohibited in England and they will normally automatically uphold any prohibition orders made in England. Any other sanction, such as reprimand or a suspension, applied by a General Teaching Council in Wales, Scotland or Northern Ireland on or after 1st April 2012 will not be upheld by the Secretary of State.

Q10) Do you agree that a teacher who is barred from teaching on the grounds of misconduct by a General Teaching Council in Wales, Scotland or Northern Ireland should also normally be automatically barred from teaching in England?

Agree

Disagree

Not sure

Comments:

The drafters of the consultation have been operating under a false premise regarding the legislation and rules in Scotland.

It is not automatic that a prohibited person be banned from teaching in Scotland as the current rules mean that the issue has to be considered under GTCS processes.

In the future our new rules (currently in development) will allow greater reliance on information from other GTCs or decisions taken outwith Scotland but this will be on a prima facie basis. GTCS will still always determine for itself whether or not the individual is fit to teach in Scotland against its own professional conduct standards.

The specific wording of para 4.26 is also noted: 'usually be automatically prohibited from teaching in England, unless there is a good reason not to'.

What constitutes a 'good reason'?

Provision of information by employers, contractors or agencies

As set out in the consultation document, where a relevant employer, contractor or agency has dismissed a teacher because the teacher has been guilty of serious misconduct, or might have done so had the teacher not resigned first, they will have a statutory duty to consider whether to refer the case to the Secretary of State for a decision as to whether to make a prohibition order. If the employer, contractor or agency does decide to refer the case to the Secretary of State they will have a statutory duty to provide the following information and documentation to support the referral. This information is essentially the same as the information required for the GTCE:

- the reason for the decision;
- all relevant evidence regarding such decision and the conduct which prompted it;
- all relevant evidence submitted by the teacher regarding such decision or conduct; and
- any other relevant information.

Q11) Do you have any comments to make on the information that we are proposing that all employers, contractors or agencies should send to the Secretary of State to support any referral on the grounds of misconduct ?

Comments:

Having a 'statutory duty to consider' is considerable weaker than having a statutory duty to refer and leaves considerable leeway for Head Teachers simply to sweep matters under the carpet, avoiding bad publicity.

The information required seems appropriate.

Changes to Teacher Induction Regulations

The regulations made under Clause 9 of the Education Bill will be almost identical to the current induction regulations made under Section 19 of the Higher Education Act 1998. Changes in wording will be restricted to those necessary to reflect the transfer of specific functions in respect of NQT induction, currently carried out by the GTCE, to the Secretary of State.

Q12) Do you have any additional comments to make in relation to any of the proposed changes that we are intending to make through the Disciplinary and Induction regulations?

Comments:

The GTCS remains concerned about:

Competence/incompetence;
The lack of definition in what is proposed;
Having only a statutory duty to consider.

The GTCS would therefore respectfully suggest that these matters be reconsidered and thought given to strengthening the provision.

Thank you for taking the time to let us have your views. We do not intend to acknowledge individual responses unless you place an 'X' in the box below.

Please acknowledge this reply

Here at the Department for Education we carry out our research on many different topics and consultations. As your views are valuable to us, would it be alright if we were to contact you again from time to time either for research or to send through consultation documents?

Yes

No

All DfE public consultations are required to conform to the following criteria within the Government Code of Practice on Consultation:

Criterion 1: Formal consultation should take place at a stage when there is scope to influence the policy outcome.

Criterion 2: Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible.

Criterion 3: Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals.

Criterion 4: Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach.

Criterion 5: Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained.

Criterion 6: Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.

Criterion 7: Officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience.

If you have any comments on how DfE consultations are conducted, please contact Carole Edge, DfE Consultation Co-ordinator, tel: 01928 438060 / email: carole.edge@education.gsi.gov.uk

Thank you for taking time to respond to this consultation.

Completed questionnaires and other responses should be sent to the address shown below by 12 October 2011

Send by post to: Lynne Stokes, Teacher Performance & Regulation Project, 6th Floor, 2 St Paul's Place, 125 Norfolk Street, Sheffield, S1 2FJ

Send by e-mail

to: TeacherRegulation.CONULTATION@education.gsi.gov.uk