



Consultation on Education Workforce Council (EWC) powers to impose interim suspension orders

Consultation opens: 21 November 2018

Consultation closes: midday on 21 December 2018

Overview

In December 2017, the Children, Young People and Education Committee published its report on the Teachers' Professional Learning and Education inquiry. The report included a recommendation to the Cabinet Secretary for Education for the EWC to be given legislative powers to impose interim suspension orders.

In March 2018, the Cabinet Secretary set out in a plenary debate on the report that, in order to consider the recommendation further, she required the EWC to undertake its own consultation with practitioners and key stakeholders on the need for and use of such a power.

Legislation requires the EWC to investigate and hear cases against registered persons involving professional misconduct, incompetence or criminal offences. This consultation sets out why, without it having interim suspension order powers, the EWC considers there to be a serious safeguarding risk to learners and the public.

The EWC seeks views on proposals to extend its powers to include the ability to impose an interim suspension order on a registrant's practise where their case is significantly serious and is being investigated. Imposing such a short-term measure would address immediate safeguarding concerns.

How to respond

Responses to this consultation can be made using the online form available via the EWC website or by completing the form below and emailing it to **FTPConsultation@ewc.wales**

The deadline for responses is no later than **midday on 21 December 2018**.

What happens next?

We will provide a consultation report to the Cabinet Secretary for Education in January 2019 and publish it on the EWC website.

Contact details

For further information:

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About the EWC

1. The Education Workforce Council (EWC) is the independent regulator in Wales for:
 - school teachers
 - school learning support workers
 - further education teachers (lecturers)
 - further education learning support workers
 - work based learning practitioners
 - qualified youth workers
 - qualified youth support workers
2. The EWC was established by the *Education (Wales) Act 2014*. Under the Act, the General Teaching Council for Wales (GTCW) was reconfigured and renamed to become the Education Workforce Council (EWC). The EWC came into being on 1 April 2015.
3. The primary aims of the EWC are to:
 - contribute to improving standards of teaching and quality of learning in Wales
 - maintain and improve standards of professional conduct amongst registrants in the education workforce in Wales
 - safeguard the interests of learners, parents and the public and maintain public trust and confidence in the education workforce
4. The EWC's responsibilities include:
 - maintaining a Register of persons deemed suitable to practise within the education workforce in Wales
 - investigating and hearing cases against registered persons involving professional misconduct, incompetence or criminal offences
 - providing a Code of Professional Conduct and Practice for registered practitioners
 - accrediting programmes of initial school teacher education in Wales
 - advising the Welsh Government and others on matters related to the education workforce and teaching and learning
 - specific work as requested by the Welsh Government, for example, the EWC administers a funding programme for school teacher Induction. It also administers the award of Qualified Teacher Status and Induction including the issue of certificates and hears Induction Appeals
 - promotion of careers within the education workforce

Interim Suspension Order Powers (ISO)

5. Interim Suspension Orders (ISOs) are common in regulatory work and used by regulators as a means to temporarily suspend a person's registration whilst a serious concern is being investigated or pending the outcome of criminal proceedings relating to serious charges. In both cases, this usually relates to serious safeguarding concerns.
6. In 2013, the Home Office reviewed the nature of information provided by police forces to regulatory bodies. Historically, police forces were obliged to notify the GTCW (now the EWC) when a school teacher had been arrested for, or charged with a criminal offence. The 2013 review changed the requirement for police forces to provide such information and replaced it with a general position where the police will only seek to make a referral to a regulatory body

where there is a 'pressing social need' to do so and where the body is able to take immediate appropriate action.

7. The legal basis for disclosure by the police is under Common Law Power and relevant legislation. A 'pressing social need' involves the safeguarding or protection from harm of an individual, a group of individuals or society at large; in particular vulnerable adults and children. In deciding to make such a disclosure, the police will have seriously considered the need to safeguard against the needs, rights and interests of the person in question.
8. The EWC is one of the only regulators worldwide which does not have interim order powers in legislation and it is, therefore, unable to act on information about a registrant which may be referred from the police where there are serious safeguarding concerns.
9. As required in legislation, the EWC holds a public Register of practitioners for the education workforce. Members of the public, parents, guardians and carers are able to check this 'real-time' Register, and rightly assume any registered practitioner is suitable to be given access to children and/or vulnerable adults, posing no possible risk of harm.
10. If the EWC receives a police disclosure about a registrant which reports serious conduct including involving harm or risk of harm to children and vulnerable adults, it cannot take any action to temporarily suspend the person's registration status and their ability to practise.
11. The person remains registered on the EWC public Register as a person deemed fit and proper to be working with learners and the EWC considers this to be a serious safeguarding risk to learners and the public.

Proposed Procedure

12. Officers reviewed and consulted in detail with a range of regulatory bodies who have interim order powers and the EWC draft procedures are mirrored on best practice from across those bodies.

The bodies consulted included:

- Teaching Councils / Regulatory Authorities in other countries in the UK and worldwide
- Nursing and Midwifery Council (NMC)
- Health and Care Professions Council (HCPC)
- Social Care Wales (SCW)
- Northern Ireland Social Care Council (NISCC)
- Medical Practitioners Tribunal Service (MPTS)
- General Dental Council (GDC)
- General Optical Council (GOC)
- General Osteopathic Council (GOsC)
- General Pharmaceutical Council (GPhC)
- Bar Standards Board

13. If the EWC is granted powers to impose ISOs, as is the same with other regulatory bodies, they would only be used in a very limited number of significantly serious cases as '**an emergency measure.**' Imposing such an order would be a protective step rather than a punitive one.

14. Serious cases referred from the police would typically include those relating to:

- serious sexual misconduct
- serious physical, emotional, mental harm
- serious criminal investigations of a safeguarding concern

Should the EWC receive information of this nature from any other source, such as an employer, officers would contact the police in the first instance for further information and clarification about whether they deemed there to be a 'pressing social need' for the EWC to take action.

15. The EWC use of this power would not be considered where it receives information involving lesser misconduct not related to significant safeguarding concerns and the EWC is of the view it does not meet the threshold.

16. In assessing the seriousness of a case the following would be considered:

- the nature and severity of the alleged conduct
- the risk of harm the registrant currently presents to learners, colleagues and the wider public
- likelihood of recurrence
- severity of potential harm if the conduct was repeated
- the impact of an ISO on the registrant – financial and professional consequences; could it have a positive effect on the registrant and if so, what?
- the individual circumstances of the registrant and whether they offset any risk of harm
- proportionality – the consequences of an ISO should not be disproportionate to the potential harm
- the public interest, effect on public confidence or the interest of the registrant

Imposing Orders

17. If the duly authorised officer considered an ISO to be appropriate they would make a recommendation to the Deputy Chief Executive (Qualifications, Registration & Fitness to practise) for approval setting out the rationale for the recommendation.

18. If approved, the registrant would be offered an option to voluntarily consent to the order being imposed. If no consent is forthcoming an interim order hearing would be arranged (within a maximum of 28 days from receipt of information causing concern). The committee would be constituted from the EWC's pool of trained fitness to practise panel members.

19. The hearing would be conducted in private, unless the registrant specifically requested a public hearing.

20. The registrant and their representative (if applicable) would be invited to attend the hearing. The EWC's case for imposing an interim suspension order would be put to the committee by their legal representative and the registrant or their representative would have an opportunity to respond. The EWC or the registrant may call witnesses should they consider it relevant to the committee's consideration.

21. Committees would be able to proceed in absence, but must, in making the decision, balance fairness and proportionality with risk of harm.

22. Imposing an Interim Suspension Order would mean registration with the EWC is removed temporarily, up to a period of 18 months (6 months initially). The temporary effect of the Order would be that the registrant:

- is unable to work in any role which requires EWC registration; and
- is unable to call / identify themselves a 'registered person', within the meaning of the definition set out in the EWC's *Disciplinary Procedures and Rules* or the *Education (Wales) Act 2014 (section 21(1) and 41 (1))*
- would **not** appear on the public Register of Education Practitioners as a registered person

23. The registrant would have the right of appeal to the High Court within 28 days of the Order being imposed.

Review Periods

24. Should a Fitness to Practise Committee agree an Order is necessary, it would also be required to determine the schedule for review, that is, the intervals at which the duly authorised officer / fitness to practise committee would re-assess whether or not the reasons for proposing such an Order remain, or are changed. This would usually be every 6 months, *unless* new evidence became available in the interim period which brought the review date forward or the registrant requested a review themselves, such a request may be made at any time.

25. Any extension beyond 18 months could only be imposed upon application to the High Court.

Order revocation

26. An Order would be revoked in the following circumstances:

- automatically, when the circumstances for imposing the Order no longer exist and an interim order is no longer appropriate – for example where a court case has concluded and the registrant has been found not guilty (the EWC may still receive a subsequent referral regarding the registrants conduct in line with an employer's statutory responsibility to refer)
- by the Fitness to Practise Committee responsible for reviewing the Order where the committee no longer has serious safeguarding concerns in respect of the registrant
- where the registrant makes a successful application for its removal to the Fitness to Practise Committee responsible for reviewing the Order and they therefore consider that there are no remaining safeguarding concerns, or where the applicant succeeds in making an application for removal of the order to the High Court

Consultation response

We have included a number of questions about the additional power to impose ISOs for the EWC which we would like you to answer.

Please complete the online form via the EWC website <https://www.ewc.wales/iso> or submit your response by email to FTPconsultation@ewc.wales

The deadline for submission is **12 noon on 21 December 2018**

Your name: Margaret Phelan

Organisation (if applicable): University and College union

Email / telephone number: mphelan@ucu.org.uk

Which category of respondent best describes you? : Trade Union representing registrants
E.g. registrant, stakeholder, member of the public, learner

Questions

1. Would the proposed power to impose interim suspension orders provide an additional safeguard to reassure learners, parents, guardians and the general public about the conduct and practice of a registrant with the Education Workforce Council?

Agree	<input checked="" type="checkbox"/>	Disagree	<input type="checkbox"/>	Neither agree nor disagree	<input type="checkbox"/>
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Supporting comments

UCU agree that these powers must be available to protect young and vulnerable learners. We must ensure that appropriate powers are made available to the EWC to exercise in very particular circumstances.

UCU are confident that these powers will be used in appropriate circumstances and not abused by the council.

2. The outline procedures mirror the best practice of other regulators including those from the education sector. Do you consider these to be appropriate and proportionate?

Agree	<input type="checkbox"/>	Disagree	<input checked="" type="checkbox"/>	Neither agree nor disagree	<input type="checkbox"/>
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Supporting comments

We disagree that the powers, as currently, drafted are fit for purpose. We would like to see the ability, within procedure and before the decision is finally made, for the registrant to present evidence to challenge that which is presented to the EWC. During this process the registrant must be able to be represented.

From a UCU perspective it must be possible for the registrant to challenge statements of third parties about their behaviour. Despite the principle that one is innocent until proven guilty, the stigma of a suspension order will impact on an individuals' reputation.

3. We would like to know your views on the effects the new power would have on the Welsh language, specifically on:
- I. opportunities for people to use the Welsh language; and
 - II. treating the Welsh language no less favourably than the English language

No

4. Do you have any other comments?

No

Please check the box if you wish for your response to remain confidential

Please check the box if you are happy for us to contact you about your submission **yes**

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