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Consultation Document

The proposed Education Workforce Council (Interim Suspension Orders) (Additional Functions) (Wales) Order 2021

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Mae'r ddogfen yma hefyd ar gael yn Gymraeg.
This document is also available in Welsh.

The proposed Education Workforce Council (Interim Suspension Orders) (Additional Functions) (Wales) Order 2021

Overview This consultation document seeks your views on proposals to give the Education Workforce Council the power to suspend a registrant from the education workforce register as an interim measure.

How to respond Responses to this consultation should be e-mailed/ posted to the address below to arrive by 4 December 2020 at the latest.

Further information and related documents Large print, Braille and alternative language versions of this document are available on request.

The consultation documents can be accessed from the Welsh Government's website at gov.wales/consultations

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General Data Protection Regulation (GDPR)

The Welsh Government will be data controller for any personal data you provide as part of your response to the consultation. Welsh Ministers have statutory powers they will rely on to process this personal data which will enable them to make informed decisions about how they exercise their public functions. Any response you send us will be seen in full by Welsh Government staff dealing with the issues which this consultation is about or planning future consultations. Where the Welsh Government undertakes further analysis of consultation responses then this work may be commissioned to be carried out by an accredited third party (e.g. a research organisation or a consultancy company). Any such work will only be undertaken under contract. Welsh Government's standard terms and conditions for such contracts set out strict requirements for the processing and safekeeping of personal data. In order to show that the consultation was carried out properly, the Welsh Government intends to publish a summary of the responses to this document. We may also publish responses in full. Normally, the name and address (or part of the address) of the person or organisation who sent the response are published with the response. If you do not want your name or address published, please tell us this in writing when you send your response. We will then redact them before publishing.

You should also be aware of our responsibilities under Freedom of Information legislation. If your details are published as part of the consultation response then these published reports will be retained indefinitely. Any of your data held otherwise by Welsh Government will be kept for no more than three years.

Your rights

Under the data protection legislation, you have the right:

- to be informed of the personal data held about you and to access it
- to require us to rectify inaccuracies in that data
- to (in certain circumstances) object to or restrict processing
- for (in certain circumstances) your data to be 'erased'
- to (in certain circumstances) data portability
- to lodge a complaint with the Information Commissioner's Office (ICO) who is our independent regulator for data protection.

For further details about the information the Welsh Government holds and its use, or if you want to exercise your rights under the GDPR, please see contact details below:

Data Protection Officer:
Welsh Government
Cathays Park
Cardiff
CF10 3NQ

e-mail: DataProtectionOfficer@gov.wales

The contact details for the Information Commissioner's Office are:

Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Tel: 01625 545 745 or
0303 123 1113

Website: <https://ico.org.uk/>

Contents

Summary	1
Education Workforce Council - the current position	2
Overview of proposals	3
Why we think the Council should have interim suspension order powers	4
Reason 1 - Safeguarding risk	4
Reason 2 - Police common law powers to share information	5
Reason 3 – Limitations of other methods	6
When would the Council consider making an interim suspension order?	8
The “Public Interest” test	8
Further considerations	9
What would be the procedure for making an interim suspension order?	9
Right to request a review of an interim suspension order	11
Review of an interim suspension order by the Council	12
When would an interim suspension order be revoked?	13
Use of the Council’s rules of procedure	13
A summary of the proposed Education Workforce Council (Interim Suspension Orders) (Additional Functions) Order	14

Summary

This consultation document seeks your views on proposals to give the Education Workforce Council the power to suspend a registrant from the Register of Education Practitioners in Wales as an interim measure.

The proposed Education Workforce Council (Interim Suspension Orders) (Additional Functions) (Wales) Order (“the proposed Order”), which would give the Council this interim suspension power, is attached at Annex A.

Information about the Council and its work may be accessed here:

<https://www.ewc.wales/site/index.php/en/14-english/about.html>

Relevant legislation may be accessed here:

The Education (Wales) Act 2014:

<http://www.legislation.gov.uk/anaw/2014/5/contents>

The Education Act 2002(as amended):

<http://www.legislation.gov.uk/ukpga/2002/32/contents>

The Education Workforce Council (Main Functions) (Wales) Regulations 2015 (as amended):

<http://www.legislation.gov.uk/wsi/2015/140/contents/made>

The Education Workforce Council (Main Functions) (Wales) (Amendment) Regulations 2016:

<http://www.legislation.gov.uk/wsi/2016/6/contents/made>

The Staffing of Maintained Schools (Wales) Regulations 2006 (as amended):

<http://www.legislation.gov.uk/wsi/2006/873/contents/made>

The Staffing of Maintained Schools (Wales) (Amendment) Regulations 2014:

<http://www.legislation.gov.uk/wsi/2014/1609/contents/made>

The Staffing of Maintained Schools (Wales) Regulations 2009:

<http://www.legislation.gov.uk/wsi/2009/2708/contents/made>

The Staffing of Maintained Schools (Wales) (Amendment No. 2) Regulations 2009:

<http://www.legislation.gov.uk/wsi/2009/3161/contents/made>

The Staffing of Maintained Schools (Miscellaneous Amendments) (Wales) Regulations 2007:

<http://www.legislation.gov.uk/wsi/2007/944/contents/made>

Education Workforce Council - the current position

1. This consultation document seeks your views on proposals to give the Education Workforce Council (“the Council”) the power to suspend a registrant from the education workforce register as an interim measure.
2. The decision to suspend would be made only if the Council believed it to be in the public interest, and would take place pending an investigation and a disciplinary hearing.
3. The proposed Education Workforce Council (Interim Suspension Orders) (Additional Functions) (Wales) Order (“the proposed Order”) which would bring these proposals into force is attached at Annex A, and is discussed in detail at paragraphs 96 - 140 below.
4. The proposed Order addresses recommendation 21 of the Children, Young People and Education Committee in their Report on the Teachers’ Professional Learning and Education Inquiry¹, namely the “ ... remit of the Education Workforce Council should be extended to provide it with power to suspend teachers in appropriate circumstances”. However, the proposed Order would enable the Council to suspend all categories of Registered Persons, not only school teachers.
5. Interim Suspension Orders (ISOs) are commonly used by professional 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.
6. The Council was continued in existence by the Education (Wales) Act 2014 (“the 2014 Act”). It was previously called the General Teaching Council for Wales (“GTCW”). That change took effect on 1 April 2015.
7. The Council 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; and
 - qualified youth support workers.
8. Currently, the Council has approximately 80,000 registrants.
9. The Council is required to maintain a register (“the Register”) under section 9 of the 2014 Act and to allow the public access to that Register under Regulation 14 of the Education Workforce Council (Main Functions) (Wales) Regulations 2015. The Register lists everyone registered with the Council at that point in time in the

¹ Available at: <http://www.assembly.wales/laid%20documents/cr-ld11338/cr-ld11338-e.pdf>

categories listed above (“Registered Persons”), and is available to the public via the Council’s website.²

10. Under section 26 of the 2014 Act, the Council must carry out such investigations as it thinks appropriate where it is alleged that a Registered Person is guilty of unacceptable professional conduct, professional incompetence or it is alleged the Person has been convicted of a relevant offence³.
11. The Council may impose a disciplinary Order following an investigation and a disciplinary hearing conducted by them in accordance with the disciplinary provisions in sections 26 to 32 of the 2014 Act and Part 5 of the Education Workforce Council (Main Functions) (Wales) Regulations 2015.
12. A person will remain on the Register until they are removed pursuant to a disciplinary Order. A disciplinary Order is-
 - a reprimand,
 - a conditional registration order,
 - a suspension order, or
 - a prohibition order.

A person will be removed from the Register if they are subject to a suspension order or a prohibition order.
13. The Council’s powers under the 2014 Act do not allow it to impose an interim suspension order (“ISO”) to suspend a Registered Person pending an investigation and a disciplinary hearing. This is the case even if the nature of the allegations made against the Registered Person are credible, serious, and raise significant safeguarding concerns. Confidence in the regulation of the profession could be undermined by allowing a Registered Person to remain on the Register in these circumstances.

Overview of proposals

14. This consultation seeks your views on giving the Council new powers to enable it to impose, review and revoke ISOs.⁴
15. Our proposals would enable the Council to impose an ISO on a Registered Person’s practice where it believes this is necessary in the public interest.
16. While an ISO is in force, the Registered Person against whom the ISO is imposed would:
 - be unable to work in any role which requires registration with the Council;

² The Register is available here: <https://www.myewc.wales/en/>

³ “Relevant Offence” means a criminal offence, unless that offence has no material relevance to an individual’s fitness to be a Registered Person (Please see section 27(1) of the Education Wales) Act 2014).

⁴ The Council carried out its own consultation on whether it should have ISO powers from 21 November to 21 December 2018. The consultation document and consultation report is available here: <https://www.ewc.wales/site/index.php/en/fitness-to-practise/interim-suspension-orders-consultation.html>

- be unable to identify themselves as a “Registered Person ”; and
 - not appear on the Register as a “Registered Person”.
17. An ISO would not be a “disciplinary order”, but instead a temporary measure to be taken pending an investigation and a disciplinary hearing. An ISO would cease to have effect when the term for which it was imposed comes to an end. The maximum period for which an ISO could be imposed would be 18 months.
 18. There would be a right of review of an ISO at the request of the person to whom it relates (“the former Registered Person”) within the first 6 months of the Order’s imposition, and thereafter at 6 monthly intervals.
 19. In addition, the Council would be required to keep the ISO under review at such intervals as it considers appropriate. This includes, for example, if the Council receives information from the former Registered Person which is relevant to the continuance of the ISO.
 20. The Council would be able to revoke an ISO following a review requested by a former Registered Person, or at any time prior to making a decision on whether or not to impose a disciplinary order, if it no longer considers it in the public interest for the ISO to remain in force.
 21. The decision to impose an ISO would not involve a final determination of facts relating to the allegations in the case. It would be separate from the decision to impose a final disciplinary Order. Therefore, the imposition of an ISO would not necessarily mean a disciplinary order will subsequently be imposed by the Council.

Why we think the Council should have interim suspension order powers

Reason 1 - Safeguarding risk

22. Under section 26 of the 2014 Act, the Council must carry out such investigations as it thinks appropriate where it is alleged that a Registered Person is guilty of unacceptable professional conduct, professional incompetence or it is alleged the Person has been convicted of a relevant offence⁵. When a referral is received by the Council, it goes through an initial investigating stage, where a decision is made whether there is a case to answer. If it is decided there is a case to answer, then a public hearing is held. At that hearing, a committee considers the evidence provided and determines whether the allegations are proven. If so, the committee considers whether the proven allegations amount to unacceptable professional conduct, professional incompetence or conviction of a relevant offence and whether a disciplinary order should be imposed. As above not all sanctions imposed after hearing lead to removal from the Register.
23. A Registered Person’s name must remain on the Register at all times prior to the completion of the investigative and disciplinary process by the Council. The Register

⁵ “Relevant Offence” means a criminal offence, unless that offence has no material relevance to an individual’s fitness to be a Registered Person (Please see section 27(1) of the Education Wales) Act 2014).

is open to the public, and may be accessed online. This means that while the police are investigating a serious, credible allegation that raises significant safeguarding concerns against a Registered Person, that person remains on the Register.

24. The Council considers this is a serious failing as it allows an individual to continue to rely on their status as a Registered Person for possibly many months, no matter how serious and credible the allegations against them.
25. The Council believes this may pose a significant safeguarding risk. For example, if a parent were seeking the services of a private tutor for their child and were to search the Register, they would likely be assured that an individual was suitable to be a private tutor for their child because they had Registered Person status. Employers and supply agencies may also place reliance on the fact that somebody is registered with the Council as an indication that person is suitable for work.
26. If the Council had ISO powers, it could remove the name of an individual from the Register pending the outcome of any police investigations and its own investigation and disciplinary process. Anyone who searched the Register for the duration of the ISO would learn that the individual did not have Registered Person status.

Reason 2 - Police common law powers to share information

27. Common Law Police Disclosure (CLPD)⁶ is the current scheme that enables the police to share information with certain persons or bodies. It replaced the Notifiable Occupations Scheme (NOS) in 2015.
28. Under NOS, relevant parties were notified when a person in a relevant occupation was convicted of an offence. Those relevant occupations included the education workforce, and notifications were provided to employers and the Council; and previously to the General Teaching Council for Wales (GTCW).
29. Under the CLPD scheme, notifications take place upon charge and in some cases, arrest, rather than on conviction. Notifications are made only where the police believe that a serious and urgent risk to public safety has been identified, and immediate action is required.
30. As such, notifications are usually only provided to those relevant parties or organisations who are able to take action to mitigate the risk. For example, the police may notify a person's employer, or voluntary organisation for which a person carries out voluntary work, as such organisations are able to suspend the person from work pending the outcome of a police investigation.
31. The CLPD also notes that there may be circumstances where it is appropriate to contact a regulatory body or licensing authority. Paragraphs 10 and 11 of the CLPD say:

"NPCC [The National Police Chiefs' Council] maintains a list of regulatory bodies and licensing authorities (together with contact details) that have

⁶ Please see <https://www.app.college.police.uk/wp-content/uploads/2016/08/NPCC-2017-Common-Law-Police-Disclosures-CLPD---Provisions-to-supersede-the-Notifiable-Occupations-Scheme-NOS.pdf>

been able to demonstrate that they possess powers (such as the imposition of an interim prohibition order) to implement immediate mitigation of the potential risk that the subject of the disclosure poses.

Disclosure to an employer or volunteer organisation does not preclude simultaneous disclosure to a regulatory body or licensing authority where appropriate. Reliance cannot be placed on the employer (etc.) subsequently informing the regulator (etc.). The purpose of making a disclosure is to allow the recipient to mitigate risk – the regulator (etc.) may possess wider powers to implement such mitigation (such as the ability to impose an interim prohibition order or suspend a licence etc.).”⁷

32. Giving the Council ISO powers may not mean that all serious allegations relating to Registered Persons are automatically referred to them. However, if the Council had ISO powers and could take swift action by imposing an ISO, the police may be more likely to refer serious allegations concerning Registered Persons to the Council under the CLPD.
33. Decisions on whether to make a referral to the Council would be for the police to make, and would be taken on a case by case basis.

Reason 3 – Limitations of other methods

34. While there are various methods by which children and vulnerable adults are protected from individuals who may cause them harm, these methods may not entirely address safeguarding concerns, for example regarding use of Registered Person status on the public Register to gain employment as a home tutor.
35. These methods of protection, and the reasons why we do not believe they address the safeguarding risk regarding use of Registered Person status, are discussed below.

The Disclosure and Barring Service

36. The Disclosure and Barring Service (DBS) was established in 2012 and carries out the functions previously undertaken by the Criminal Records Bureau and the Independent Safeguarding Authority.
37. Their Disclosure Team carries out criminal record checks that result in DBS certificates being issued to individuals. Employers can then ask to see the certificates to ensure that they are recruiting suitable people to their organisation.
38. In order to do this, the DBS works with a number of different organisations and departments, including:
 - Police forces in England, Wales, Scotland, Northern Ireland, the Channel Islands and the Isle of Man – the Police provide information that is held locally, or on the Police National Computer; and

⁷ Please see page 2 of <https://www.app.college.police.uk/wp-content/uploads/2016/08/NPCC-2017-Common-Law-Police-Disclosures-CLPD---Provisions-to-supersede-the-Notifiable-Occupations-Scheme-NOS.pdf>

- ACRO Criminal Records Office – which manages criminal record information and improves the exchange of criminal records and biometric information.

39. Once the DBS is given information from any of these organisations about an individual posing a safeguarding risk to children or vulnerable adults, they will consider placing that individual on either the children’s barred list, the adults’ barred list, or both. Once on the appropriate barred list a Registered Person will be automatically ineligible to work in any of the seven registered professions with the Council.
40. However, the experience of the Council is that an individual is not usually placed on a barred list until there has been a conviction. That means during a criminal investigation, the protection offered by the DBS may not fully address the safeguarding risks.

Employer’s duty to supply information to the Council

41. Section 36 of the 2014 Act and Schedule 5 to the Education Workforce Council (Main Functions) (Wales) Regulations 2015 set out the information that must be provided by an employer to the Council.
42. When an employer chooses to dismiss a Registered Person because of serious allegations, they are required to inform the Council. However, finding out about serious allegations against a Registered Person upon their dismissal does not address the risk of the Registered Person seeking alternative employment, for example as a private tutor, during any period of suspension.

Police bail conditions

43. If an accused person is to be released on bail, there may or may not be conditions attached to help protect children and vulnerable people.
44. Even where there are conditions, these conditions will not always deter an individual seeking work privately in order to gain access to children. In doing so, they could use their Registered Person status to prove to parents that they are suitable to take on a tutoring role.

Statutory duties and related guidance

45. Local authorities, the governing bodies of maintained schools and Further Education institutions have a duty under section 175 of the Education Act 2002 to exercise their functions in a way that takes into account the need to safeguard and promote the welfare of children. When doing so, they must have regard to the statutory guidance “Keeping learners safe - the role of local authorities, governing bodies and proprietors of independent schools under the Education Act 2002”⁸. This means the guidance must be taken into account, and any decision to depart from it must be justified.
46. Amongst other matters, this guidance deals with the organisational and management arrangements that need to be put in place to safeguard children in the education

⁸ <https://gov.wales/keeping-learners-safe>

service. It also sets out the safeguarding duties and responsibilities shared by all staff who work in an education setting when responding to safeguarding concerns in accordance with the All Wales Child Protection Procedures.

47. While this guidance does much to safeguard children, it does not address the issue of an individual seeking work privately in order to gain access to children and using their Registered Person status to prove their suitability.

When would the Council consider making an interim suspension order?

The “Public Interest” test

48. If the Council is given ISO powers, those powers would be used only in very serious cases, where the Council considers it necessary in the public interest.
49. As an ISO could be made prior to the completion of any police investigations and criminal convictions - and before an investigation and a disciplinary hearing - the Council would only consider it to be in the public interest to impose an ISO where:
- the allegations against a Registered Person are of a very serious nature;
 - the allegations raise significant safeguarding concerns; and
 - the credibility of the referral - and the allegations it contains - are sufficiently robust.
50. In assessing the seriousness of the allegations, and whether they raise significant safeguarding concerns, the Council would consider matters such as:
- the nature and severity of the alleged conduct;
 - the risk of harm the Registered Person presents to children, young people, colleagues and the wider public;
 - the likelihood of recurrence;
 - severity of potential harm if the conduct was repeated;
 - the individual circumstances of the Registered Person and whether they offset any risk of harm; and
 - the effect on public confidence in the regulation of the workforce.
51. Allegations of serious sexual misconduct, or serious physical, emotional, and/or mental harm, would always be viewed as raising significant safeguarding concerns. Similarly, if the police informed the Council that they were carrying out a serious criminal investigation which raised a safeguarding concern, this too would be regarded as significant.
52. If the Council were to receive information - from the police, employers or any other source - involving lesser misconduct and which did not raise significant safeguarding concerns, it is likely such allegations would not meet the threshold for imposing an ISO.
53. When assessing the credibility of the referral and whether the allegations it contains were sufficiently robust, the Council would consider who had made that referral. If it was made by the police or the DBS, for example, the referral - and the allegations

made in it - would likely be deemed sufficiently credible and robust to allow imposition of an ISO to be considered.

54. If a referral came from another source, such as an employer or member of the public, the Council would make further enquiries as part of their consideration of the credibility of that referral. For example, the Council would contact the police for advice as to whether they consider there to be a “pressing social need” for the Council to take action.
55. If the allegations contained in a referral were obviously untrue, that referral would not be sufficiently robust for the Council to consider making an ISO. For example, if a teacher was accused of abusing a pupil on school premises during a specific school day, but the teacher can show that they were not in school on that particular day, then the allegation would likely not be sufficiently robust for the imposition of an ISO to be considered.

Further considerations

56. The primary purpose of the imposition of an ISO is to ensure the protection and safeguarding of children and young people. However, when considering whether or not to make an ISO, the Council would carefully consider the potential impact on the Registered Person. This would include taking into account the personal, financial and professional consequences for the Registered Person.
57. There would need to be consideration of proportionality – the consequences of an ISO should not be disproportionate to the potential harm to the Registered Person. In considering the proportionality of making an ISO, the Council would need to weigh the impact on the Registered Person against the public interest in imposing an ISO and the seriousness of the allegations.

What would be the procedure for making an interim suspension order?

(To provide a complete picture of the proposed process relating to the making, review and revocation of ISOs, we have described at paragraphs 58 to 89 below not only those parts of the process that are provided for in the proposed Education Workforce Council (Interim Suspension Orders) (Additional Functions) Order (“the proposed Order”), but also those parts of the process that the Council expects to ‘set’ by way of the Council’s rules of procedure.

Those parts of the process that would be provided for in the proposed Order are shown in blue.

An overview of the Council’s expected use of rules of procedure under article 16 of the proposed Order is at paragraphs 90 to 94.

A summary of the provisions of the proposed Order is at paragraphs 96 to 140).

58. Whenever the Council received a referral about a Registered Person that was of a very serious nature and raised significant safeguarding concerns, a duly authorised officer would consider whether to recommend that an ISO be imposed. The referral could come from the police, employers, the DBS or any other source.

59. When considering whether to recommend the imposition of an ISO, the officer would apply the “public interest” test and the “further considerations” explained in paragraphs 55 to 65 above. Where the referral did not come from the police or the DBS, this would include contacting the police for further information before assessing the credibility of that referral.
60. If the officer thinks an ISO is appropriate, they would make a recommendation to the Director of Qualifications, Registration and Fitness to Practice at the Council for approval, setting out their reasons for making the recommendation.
61. If the Director approved the officer’s recommendation, [a notice of intention to make the ISO would be sent to the Registered Person giving them at least 10 working days’ notice of the ISO hearing before an independent panel](#). This is to give the Registered Person time to take legal and trade union advice, and to prepare any representations they wish to make.
62. The independent panel would be drawn from the Council’s pool of trained fitness to practise panel members.
63. [The ISO hearing would be held in private, unless the Registered Person requested a public hearing](#). The hearing may take place in Welsh or English, at the request of the Registered Person.
64. [The Registered Person would have the right to appear and make oral representations at the hearing at which their case was being considered, and written representations prior to and at that hearing. They would also have the right to be represented at the hearing by one or more persons.](#)
65. [If a Registered Person did not appear at the ISO hearing at which their case was being considered, they may make written representations to the panel before the hearing](#). This may be the case where, for example, the Registered Person consents to the ISO being imposed.
66. The notice of intention to make the ISO would tell the Registered Person that they may consent to the making of the ISO, in which case:
- the independent panel would convene and hold a short hearing to confirm the imposition of the ISO;
 - the panel would consider any written representations the Registered Person has made; and
 - the hearing could be held “in person”, or by video or telephone conference.
67. The notice would also tell the Registered Person that if they did not consent to the imposition of the ISO, they would have the right:
- to make oral representations to the independent panel at the hearing, and written representations both prior to and at the hearing;
 - to be represented at the hearing by another person or persons (for example, a union representative or solicitor);
 - to make written representations for the panel to consider if they do not attend the hearing; and

- to request a public hearing, otherwise the hearing would be held in private.
68. If an ISO were imposed, registration with the Council would be removed temporarily, up to a maximum period of 18 months.
69. An ISO would apply to all categories held on the Registered Person's record, as the effect of an ISO would be to render the Registered Person ineligible for registration with the Council in any education workforce category. (Please see paragraph 6 for a list of all education workforce registration categories).
70. The ISO would contain the following information:
- the decision of the Council;
 - the date on which the ISO was made; and
 - the date on which the ISO takes effect. (Usually the ISO would take effect on the date on which notice is served on the Registered Person, except where the Council decides otherwise).
71. Notice of the making of the ISO would be served within 3 working days of the date of the decision on:
- the person against whom it was made ("the former Registered Person"),
 - the former Registered Person's present or last employer; and
 - any teaching agency with which the former Registered Person was registered.
72. The notice of the making of the ISO would contain the following information:
- the text of the ISO;
 - a description of the effect of the ISO;
 - the Council's reasons for making the ISO; and
 - an explanation of the former Registered Person's right to request the Council revokes the ISO.

Right to request a review of an interim suspension order

73. As explained in paragraphs 71 and 72 above, the Council would tell the former Registered Person of their right to request the Council revokes the ISO, within 3 working days of the decision to impose the ISO.
74. The former Registered Person would be able to request a revocation within 6 months of the ISO being made, and thereafter at intervals of 6 months.
75. An application for review of an ISO - at which revocation of the ISO is considered by an independent review panel – would need to be made in writing and explain the reasons why the former Registered Person was seeking to have the ISO revoked. The application would have to be accompanied by every document the former Registered Person was relying on to support their application.
76. Whenever a request for a revocation was received, the Council would set a date for a review hearing within 10 working days of receipt of that request, and send the former Registered Person notice of the hearing.

77. The review hearing would be held in private, unless the former Registered Person requested a public hearing. The hearing may be held in Welsh or English, at the request of the former Registered Person.
78. The former Registered Person would have the right to appear and make oral representations at the hearing at which their case was being considered, and written representations prior to and at that hearing. They would also have the right to be represented at the hearing by one or more persons.
79. If a former Registered Person did not appear at the review hearing at which their case was being considered, they may make written representations to the panel before the hearing.
80. The notice of the review hearing would tell the former Registered Person of their right:
- to make oral representations to the independent review panel at the hearing, and written representations both prior to and at the hearing;
 - to be represented at the hearing by another person or persons (for example, a union representative or solicitor);
 - to make written representations for the panel to consider if they do not attend the hearing; and
 - to request a public hearing, otherwise the hearing would be held in private.
81. The notice would also tell the former Registered Person that they may consent to the review panel making a determination on whether or not to revoke the ISO, in which case:
- the review panel will convene and hold a short hearing to confirm the determination of the review;
 - the review panel will consider any written representations the Registered Person has made; and
 - the hearing may be held “in person”, or by video or telephone conference.
82. None of the members of the review hearing panel would be the same individuals as the members of the independent panel that imposed the ISO.
83. The Council would be required to notify the former Registered Person in writing of the outcome of the review within 3 working days of the panel’s determination, and give their reasons for that determination.

Review of an interim suspension order by the Council

84. The Council would be required to keep an ISO under review at such intervals as it considered appropriate, and in accordance with its rules of procedure. This “internal” review would take place whether or not a former Registered Person exercised their right to a review by requesting the Council revoke the ISO it had imposed on them.
85. The schedule for this review would be set by the independent panel when it initially imposed the ISO. This would usually be at intervals of 6 months, unless the panel

was notified of a change in circumstances, in which case it may convene earlier than originally planned.

86. At this internal review there would not be a review “hearing”, but instead a review “meeting” of the independent panel. The former Registered Person would usually not be asked to make representations to the panel at the review meeting.
87. The independent panel, which would carry out the review, would usually be made up from the same individuals who initially imposed the ISO.

When would an interim suspension order be revoked?

88. The Council would revoke an ISO if:

- the Council determines there is no case to answer prior to the start of the Council’s own investigations, which are part of its disciplinary functions under section 26 of the 2014 Act; or
- the Council discontinues an investigation into the alleged conduct that resulted in the imposition of an ISO; or
- the Council makes a decision as to whether or not to impose a disciplinary order; or
- there is a review to consider a request by a former Registered Person for the revocation of the ISO, and that review determines the ISO should be revoked.

89. An ISO would cease automatically when the term for which it was imposed comes to an end. (The maximum term for which an ISO may be imposed is 18 months).

Use of the Council’s rules of procedure

90. The Council would have the power to set their own rules of procedure relating to decisions to impose ISOs, the right for a Registered Person to request revocation of an ISO by way of a review hearing, and the internal review process. Many of the procedures relating to the making of ISOs, as well as the review and revocation of ISOs, will be dealt with by way of these rules.
91. For example, article 3 of the proposed Order gives the Council the power to make ISOs if it considers it “necessary in the public interest to do so”. However, it is rules of procedure that will explain what is meant by the “public interest” test, and how it will be applied in practice when the Council is considering whether to make an ISO.
92. As another example, while article 4 of the proposed Order requires the Council to give a Registered Person not less than 10 working days’ notice of the intention to make an ISO, it will be the Council’s own rules of procedure that set out what this notice must contain. (Please see paragraphs 66 and 67 for an explanation of what the notice is expected to contain).
93. However, rules of procedure may only deal with matters that are not provided for in the proposed Order. For example, as article 4 of the proposed Order requires a Registered Person to be given not less than 10 working days’ notice of the Council’s intention to impose an ISO on them, rules of procedure could not change this requirement.

94. The Council would consult on these rules of procedure before they were made or amended, and would be obliged to publish them on its website and provide copies on request to any Registered Person or former Registered Person.

A summary of the proposed Education Workforce Council (Interim Suspension Orders) (Additional Functions) Order

95. The proposed Order that will give the Council the power to impose, review and revoke ISOs is attached at Annex A. This power would apply to all categories of Registered Person.

Article 1 – Title and Commencement

96. This article determines the name of the proposed Order, and when it will come into force.
97. The coming into force date has not been completed. This consultation will determine whether the proposed Order proceeds in its current form, or at all.

Article 2 - Interpretation

98. This article explains that the Education (Wales) Act 2014 will be referred to as “the 2014 Act” throughout the Order.
99. This article explains that the Education Workforce Council will be known as “the Council” throughout the Order.
100. This article explains that a “disciplinary order” in the Order has the same meaning as it does in the 2014 Act, namely a reprimand, a conditional registration order, a suspension order, or a prohibition order.
101. This article defines “working day” as not including a Saturday, a Sunday, or a bank holiday.
102. This definition of “working day” is important, as our proposals require the Council and Registered Persons to carry out certain tasks within a set number of working days. For example, the Council must give a Registered Person 10 working days’ notice of their intention to make an ISO. This is to give the Registered Person sufficient time to take legal and trade union advice, and to prepare any representations they wish to make.

Article 3 – Interim suspension orders

103. This article enables the Council to impose an ISO on a Registered Person pending the making of a disciplinary order against them. [Article 3(1)]
104. To impose an ISO the Council must first convene an appropriate panel to consider the case in a hearing. [Article 3(2) and 3(3)]
105. This article confirms that an ISO can only be made prior to a final decision on a disciplinary order, and only provided the Council considers it necessary in the public interest to do so. [Article 3(4)]

106. Once the ISO is made, the Registered Person's name must be removed from the Register. [Article 3(5)]. (Where the Registered Person is registered in more than one education workforce category, their name will be removed from all categories of registration).
107. The time period for which an ISO may be imposed is restricted to 18 months. [Article 3(6)].
108. This article requires the Council to determine whether or not to impose an ISO in accordance with the proposed Order, and any rules of procedure it makes under article 16. [Article 3(7)].

Article 4 – Notice of intention to make an interim suspension order

109. This article requires the Council to give a Registered Person at least 10 working days' notice of their intention to impose an ISO. [Article 4(1)]
110. The notice must contain the nature of the charges against the Registered Person and must notify them of their rights under article 5. [Article 4(2)]

Article 5 – Entitlement to appear and make representations

111. This article gives a Registered Person the right to appear and make oral and written representations at the hearing at which their case is being considered. [Article 5(b), (c), and (d)]
112. In addition, there is a right for the Registered Person to be represented at that hearing. While representatives will usually be legal or trade union advisers, the Registered Person may choose anybody to represent them. There may also be more than one representative. [Article 5(e)]
113. Whether or not a Registered Person appears at the ISO hearing at which their case is being considered, they may make representations prior to the hearing. [Article 5(a)]

Article 6 – Content of interim suspension order

114. This article requires an interim suspension order to record:
 - the decision of the Council;
 - the date on which the ISO is made; and
 - the date on which the ISO will take effect.

Article 7 – Date of effect of interim suspension order

115. This article requires an ISO to take effect on the date that the notice of the making of the ISO is served on the person against whom it was made, unless the Council decides otherwise in which case it will take effect on the date set out in the order.

Article 8 - notice of making of interim suspension order

116. This article requires the Council to serve notice of the making of the ISO on the person against whom it is made. This must be done within 3 working days of the date on which the ISO was made. [Article 8(1)]
117. The notice of making the ISO must contain:
- the text of the ISO;
 - a description of the effect of the ISO;
 - the Council's reasons for making the ISO; and
 - an explanation of the person's right to request the Council to revoke the ISO that has been imposed on them. [Article 8(2)]
118. The Council must serve notice of the ISO on the Registered Person's present or last employer, and any teaching agency with which the Person is registered. [Article 8(3)]

Article 9 – Right to request public hearing

119. This article gives the Council the right to deliberate in private at any time, and for any reason, during or after a hearing. Therefore, all ISO and review hearings will take place in private unless the Registered Person or former Registered Person requests a public hearing. [Article 9(1) & (2)]
120. Whenever a public ISO hearing or review hearing is requested, the Council may exclude the public from that hearing – or any part of that hearing – if the Council think it is necessary in the interests of justice, or to protect the interests of children. [Article 9(3)]

Article 10 – revocation of interim suspension order

121. This article sets out the circumstances in which the Council may revoke an ISO, namely:
- the Council determines there is no case to answer in respect of the ISO prior to the start of its' investigations under section 26(1) of the 2014 Act [Article 10(a)];
 - the Council discontinues its investigation into the alleged conduct that resulted in the imposition of an ISO, as provided by section 26(3)(a) or (c) of the 2014 Act [Article 10(b)];
 - the Council makes a decision as to whether or not to impose a disciplinary order [Article 10(c)]; or
 - there is a review to consider a request by a former Registered Person to revoke an ISO, and that review determines the ISO should be revoked [Article 10(d)].

(An ISO will end automatically on the expiry of the time period for which it is imposed. The maximum time period for which an ISO may be imposed is 18 months, as provided by article 3.)

Article 11 – Application for review of an interim suspension order

122. This article gives a former Registered Person the right to request the Council revokes the ISO that has been imposed on them. This request may be made within 6 months of the date of the ISO, and thereafter at 6-monthly intervals from the date of the last review. [Article 11(1)]

123. Whenever a request to revoke an ISO is made, the Council must convene a hearing to consider the case within 10 working days of the receipt of that request. [Article 11(2)]
124. The Council may only revoke an ISO in accordance with this proposed Order and the rules of procedure made by the Council under article 16. [Article 11(3)]
125. No person who was a member of the panel at the hearing in which an ISO was originally imposed may take part in a review of that ISO. [Article 11(4)]

Article 12 – Information to accompany application for review

126. This article specifies that an application for review of an ISO made under article 11 must:
 - be in writing;
 - specify the grounds on which the former Registered Person is seeking to have the ISO revoked; and
 - be accompanied by every document the former Registered Person is relying on to support their application.

Article 13 - Review by the Council

127. In addition to reviews under article 11 (where a former Registered Person may request the Council revokes the ISO which has been imposed on them), the Council is required to keep ISOs under review, at such intervals as it considers appropriate. [Article 13(1)].
128. The Council is required to carry out their reviews under article 13 in accordance with the rules of procedure made by the Council under article 16. [Article 13(2)].

Article 14 – Entitlement to appear and make representations

129. This article gives a Registered Person the right to appear and make oral and written representations at the hearing at which their case is being considered. [Article 14(b), (c), (d)]
130. In addition, there is a right for the Registered Person to be represented at that review hearing. While representatives will usually be legal or trade union advisers, the Registered Person may choose anybody to represent them. There may also be more than one representative. [Article 14(e)]
131. Whether or not a Registered Person appears at the ISO hearing at which their case is being considered, they may make representations prior to the hearing. [Article 14(a)]

Article 15 - Notice of decision following review of interim suspension order

132. Following a review of an ISO at the request of a former Registered Person under article 11, the Council is required to notify that Person of its decision and the reasons for it within 3 working days of the decision being made.

Article 16 – Other provision about procedure to be made by the Council

133. This article gives the Council the power to set its own procedures relating to the imposition, review and revocation of ISOs, where such provision has not been made already in the proposed Order. [Article 16(1)]

134. It also enables the Council to revise any rules of procedures it makes. [Article 16(2)]

Article 17 – Publication and provision of copies of documents

135. This article requires the Council to publish any rules of procedure it makes under article 16. Publication must be on the Council's website and in such other manner as the Council sees fit. [Article 17(1)]

136. The Council is required to provide a copy of the rules of procedure it has made under article 16 on request. [Article 17(2)]

Article 18 – Service of notices

137. This article provides for the methods by which a notice required by the proposed Order ("a required notice") must be served.

138. The prescribed methods of service are:

- by personal delivery (i.e. by hand) to the person to be served the notice;
- by post to the address which the person to be served the notice notified to the Council or if no notification has been received, to their last known address; or
- by electronic mail, provided this method of service has been requested by the person to be served the notice. [Article 18(1)].

139. This article also sets out when a required notice is deemed to have been served. [Article 18(2)].

140. The deemed service times are:

- when a notice is served by means of personal delivery, the day it was delivered;
- when a notice is served by post to an address, the next working day; and
- when a notice is served by electronic mail, the day on which it was sent. [Article 18(2)].