

WELSH GOVERNMENT INTEGRATED IMPACT ASSESSMENT

Title of proposal:	The proposed Education Workforce Council (Interim Suspension Orders) (Additional Functions) (Wales) Order 2021
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SECTION 1. WHAT ACTION IS THE WELSH GOVERNMENT CONSIDERING AND WHY?

1. The Welsh Government is considering whether to give the Education Workforce Council (“the Council”) the power to suspend a registrant from the education workforce register (“the Register”) as an interim measure.
2. The decision to suspend would be made only if the Council believed it to be necessary in the public interest, and would take place pending an investigation and a disciplinary hearing.
3. The Welsh Government will consult on these proposals, which will be available on its website once the consultation is launched. Current expectation is this will be in September 2020.
4. Secondary legislation is required to give effect to these proposals. The proposed Education Workforce Council (Interim Suspension Orders) (Additional Functions) (Wales) Order (“the proposed Order”) which would bring these proposals into force will be made available when the consultation on our proposals launches in September 2020, as will the draft explanatory note and regulatory impact assessment for the proposed Order.

Background

5. The Education (Wales) Act 2014 (“the 2014 Act”) continued in existence the General Teaching Council for Wales (“GTCW”) but renamed it to become the Education Workforce Council. That change took effect on 1 April 2015.
6. 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.

Currently, the Council has approximately 80,000 registrants.

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

8. 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 offence.

9. 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, the Council may impose a disciplinary Order on a Registered Person.

10. A disciplinary Order is-

- a reprimand,
- a conditional registration order,
- a suspension order, or
- a prohibition order.

The need for interim suspension powers

11. The Council’s powers under the 2014 Act do not allow it to impose an interim suspension order (“ISO”) to suspend a Registered Person on a temporary basis 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.

12. 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 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.

13. The Council considers this to be a serious failing, as it allows an individual to continue to have the status of a "Registered Person" possibly for many months, no matter how serious and credible the allegations against them. 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.

14. If the Council had ISO powers, it could suspend the name of that individual from the Register pending the outcome of 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.

Overview of proposals

16. An ISO would not be a "disciplinary order", but instead a temporary measure to be taken pending the outcome of an investigation and a disciplinary hearing. The maximum period for which an ISO could be imposed would be 18 months.

17. An ISO would be imposed on a Registered Person's practise only where the Council believes it is necessary in the public interest.

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.

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. An ISO will also cease to have effect when the term for which it is imposed comes to an end. Although the Council may impose subsequent ISOs.

Impact of the proposals

Alleviation of safeguarding risk

22. Where the Council believes it to be in the public interest and imposes an ISO on a Registered Person, that individual will no longer be able to use “Registered Person” status while that ISO is in force. This is because, whenever an ISO is imposed, the former Registered Person is:

- unable to work in any role which requires registration with the Council;
- unable to identify themselves as a “Registered Person”; and
- will not appear on the Register as a “Registered Person”.

23. This will help to protect children and young adults, whenever a significant safeguarding risk is identified.

Impact on former Registered Person

Loss of personal and professional reputation

24. The use of ISOs can have serious consequences. Whilst suspension maybe viewed as an emergency measure which is protective rather than punitive, it may damage the personal and professional reputation of that person even if they are later cleared of all wrong doing. (This is despite an ISO being neutral in terms of any finding. In other words the imposition of an ISO is not a finding of any wrongdoing by the Registered Person. It will have negative consequences for that person but that has to be balanced against the need to safeguard learners.)

25. However, if the police or Crown Prosecution Service decide there is no case to answer or the Registered Person is found not guilty at trial, any remaining damage

to their professional reputation is just as likely to have been caused by the police investigation, trial and media coverage as by the imposition of an ISO.

Employment considerations

26. The effect of removing a person from the Register following a charge - or in exceptional cases on arrest - is that the employer would be obliged to take some action immediately if they had not already done so. The most likely response would be to suspend them from their position. It is possible the person could be dismissed but this seems less likely at this stage. In some cases an employer may consider that the person could be given other duties but remain working in a non-teaching capacity. As the Council would only consider using its ISO powers in the most serious of cases, it is unlikely that the employer would want the person to continue to work and have contact with learners while investigations were ongoing.

27. In the case of a registered teacher employed at a school pursuant to the school teachers pay and conditions such persons would continue to be paid whilst suspended (regulations 16 and 28 of the Staffing of Maintained Schools (Wales) Regulations 2006 [“the 2006 Regulations”]). In all other cases where the school teachers pay and conditions do not apply (supply staff, teaching assistants, youth workers etc.) whether that person continues to be paid during the period of suspension will be determined by the terms and conditions negotiated with their employer.

28. The impact may be harder on supply staff, as they are self-employed and often find work via an agency. Therefore, suspension from the Register means they will not receive an income in the same way as those who are employed to work in a school or other educational settings. This may have an impact on the families of the former Registered Person too.

29. However, an ISO will only be imposed in very serious cases where the ISO is necessary in the public interest.

30. In the most serious cases, employers may even consider dismissal. However, the 2006 Regulations require the governing body to convene a staff disciplinary and appeals committee in order to determine whether a member of the school teaching staff should be dismissed. In such cases the governing body would need to be

satisfied that the evidence justified such a step. The member of staff has the right to appeal the decision.

31. All categories of Registered Persons may pursue a claim for unfair dismissal against their employer in an Employment Tribunal. Whether they also have a right to a disciplinary hearing and appeal carried out by their employer will depend on their terms and conditions of employment.

Health and well-being

32. The impact on the health and well-being of a Registered Person who has serious allegations made against them - but who is later exonerated - cannot be underestimated. It is also possible that the mental health of the families of Registered Persons will suffer.

33. However, an ISO would be just one of several possible measures which may be taken where very serious allegations are made against a Registered Person, such as being barred by the DBS or being charged with a serious criminal offence. It would be the wrongful allegations rather than the imposition of the ISO which was the main cause of the distress.

Longer Term

34. Under the Common Law Police Disclosure (CLPD) scheme¹ the police may refer serious allegations about individuals to other bodies or organisations, but only where they believe that a serious and urgent risk to public safety has been identified, and immediate action is required. As such, notifications are usually only provided to those relevant parties or organisations who are able to take such action, and so mitigate this risk.

35. The Council is concerned that not having ISO powers means the police do not notify them of all serious allegations made against Registered Persons, as it is unable to take immediate action against its registrants. If the Council is given ISO powers, it

¹ Available here: <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>

may result in a greater number of serious allegations regarding Registered Persons being referred to it by the Police. In turn, potentially more Registered Persons who pose a significant safeguarding risk may be suspended from the Register, thus protecting more children.

36. However, the police have not confirmed that giving the Council ISO powers will definitely result in a greater number of referrals to the Council. This is because all referrals by the police under CLPD are dealt with on a case-by-case basis.

Prevention

37. Giving the Council ISO powers will help to prevent those Registered Persons who pose a serious safeguarding risk having access to children and young people in their homes, under the guise of providing a home tutoring service.

38. As explained above, a greater number of serious allegations may be referred to the Council by the police under the CLPD scheme if the Council is able to take immediate action by imposing ISOs where appropriate. This may mean the Council is able to take action against more Registered Persons who pose a serious safeguarding risk, thus preventing a greater number of such Persons having home access to children and young people. However, it may be that referrals do not increase, as the police will consider whether or not to refer serious allegations on a case by case basis.

Integration

39. We believe these proposals support the “*Healthy and Active*” key theme within “*Prosperity for All: the national strategy*”². This is because our proposals help to “plug” a significant loophole relating to private tutors, which will help to safeguard the physical and mental well-being of young individuals and their families.

40. We also believe our proposals support the “*Ambitious and Learning*” key theme because they will enhance the integrity of the education workforce Register. This is because our proposals would enable the Council to temporarily suspend from the

² <https://gov.wales/prosperity-all-national-strategy>

Register a person who is the subject of serious allegations, thus preventing that person from using their registered status as proof of character.

41. Finally, we believe our proposals will contribute to one of the well-being goals in the Well-Being of Future Generations (Wales) Act 2015, namely a *Healthier Wales: A society in which people's physical and mental well-being is maximised and in which choices and behaviours that benefit future health are understood*. This is because - as explained above - our proposals will help to safeguard the physical and mental well-being of young individuals and their families.

Collaboration and Involvement

42. Our partner in bringing forward these proposals is the Council, which has already carried out its own consultation on ISO powers from 21 November to 21 December 2018.³

43. In addition, the Council tells us it has met with unions, both collectively and individually, to discuss the proposals.

44. The Welsh Government is working closely with the Council on our proposals to give it ISO powers, and we expect to launch a 12 week consultation in the autumn.

45. While this consultation will be web-based, the Welsh Government will directly contact stakeholders, to let them know of consultation launch and invite them to respond. Key stakeholders to be contacted include teaching and other education workforce unions, diocesan authorities, local authorities, and other employers such as further education colleges and teaching supply agencies.

Potential cost of the proposal to give the Council ISO powers

46. The cost of the ISO process is believed to be relatively small, and the Council has advised that it would not need to seek a fee increase. (Current fees as stipulated in the Education Workforce Council (Registration Fees) Regulations 2017 are £46 per annum for all registrants. Welsh Government subsidises this fee so that the amounts

³ Available here: <https://www.ewc.wales/site/index.php/en/fitness-to-practise/interim-suspension-orders-consultation.html>

paid by registrants per annum are £45 for schoolteachers, Further Education teachers, qualified youth workers and work-based learning practitioners; and £15 per annum for school learning support workers, FE learning support workers and youth support workers).

47. The Council expects 80-90% of ISO cases to proceed with little or no engagement from the Registered Person. Of the remaining 10-20%, the Council anticipates the Registered Person may respond or engage with the ISO process, but less than 5% of cases will result in a contested ISO hearing.

48. This means a full hearing before an independent panel would not be needed in the great majority of cases, although the panel would still need to be convened and a short hearing held to confirm the imposition of the ISO. The Council has had difficulty quantifying the exact cost of uncontested ISO hearings, but has assured us that it would equate to a small amount of staff time which would be covered from the existing team (i.e. no additional staff would be required).

49. Even where a registered person contests the ISO and requests a hearing, unlike normal disciplinary hearings that cost an average of £20,000, officials are advised by the Council that contested ISO hearings would probably only cost around £2,500. This is because ISO hearings would not test the evidence of witnesses, and it is the calling of witnesses to “full” disciplinary hearings that often costs the most money and adds to the hearing’s length.

50. As there have been 15 referrals to the Council in 3 years⁴, making an average of 5 a year, if less than 5% of cases are fully contested this would mean at most 1 contested hearing a year if referral numbers stay the same; in some years there may be no contested hearings at all.

51. Referral numbers would need to increase eight-fold to 40 a year for there to be 2 contested cases a year. Even if this happens, the expected cost of contested ISO hearings is expected to be only £5,000 per annum.

52. Once an ISO is made, the former Registered Person will be able to request a review hearing within 6 months of the ISO being made, and thereafter at intervals of

⁴ The Council tells us 10 referrals came from the police, and 5 from employers.

6 months. The Council's best estimate is that there will be 1- 2 review hearings a year, which will cost the same as an ISO hearing. This would make the cost of review hearings no more than £5000 per annum.

53. The costs and benefits of these proposals have been assessed in more detail in the draft Regulatory Impact Assessment that accompanies the proposed Order.

SECTION 2. WHAT WILL BE THE EFFECT ON SOCIAL WELL-BEING?

2.1 People and Communities

How (either positively or negatively), and to what extent (significant/moderate/minimal impact), will the proposal affect people and communities?

We anticipate these proposals may have a positive impact on children, young people and their families. This is because an expected impact is to alleviate the safeguarding risk of individuals using "Registered Person" status as proof of suitability for work, for example to be a home tutor, where those Persons have had very serious allegations made against them.

Due to the importance of this safeguarding benefit, we would describe this impact as "significant" even though (if referral numbers remain constant) we expect an average of 5 ISOs to be made in a year.

For the reasons explained in paragraphs 24 to 33 of Section 1 above, we anticipate these proposals may have a significant detrimental impact on Registered Persons who have an ISO imposed on them. This is because the impact may extend to the personal and professional reputation of Registered Persons, as well as their employment and health and well-being. There may also be a detrimental impact on their families.

2.2 Children's Rights

A Children's Rights Impact Assessment has been prepared, and is available at Annex A.

2.3 Equality

An Equality Impact Assessment has been prepared, and is available at Annex B.

2.4 Rural Proofing

We do not believe our proposals will have a different impact on rural individuals and their communities when compared with individuals who do not live rurally, or their non-rural communities.

These proposals are expected to safeguard children and their families, wherever they may live. The impact of these proposals on the individuals who are protected - and the Registered Persons who have ISOs imposed on them - will be the same wherever they reside throughout Wales.

The only difficulty we can see that may arise for those in rural areas is travel to the ISO and review hearings, which will usually be held in Cardiff. However, if referral numbers remain constant, we expect an average of only 5 ISOs to be made every year and no more than 1 Registered Person a year to attend the hearing at which an ISO is imposed on them. Similarly, we expect there to be only 1 or 2 review hearings a year at which a former Registered Person may attend.

We have no way of knowing in advance how many of these Registered Persons, or former Registered Persons, live rurally and will face difficulties attending their ISO or review hearings. However, even if they all live rurally, this would mean no more than 3 individuals a year having to face travel difficulties due to living rurally. Similarly, any trade union or legal representatives the Person may wish to have at their hearing(s) could also face travel difficulties.

Even if all 3 Registered Persons, or former Registered Persons, live rurally and choose to have 2 representatives each at their hearings who also live in rural locations, this means a maximum of 9 people a year may face travel difficulties. Given this very small number, we have not prepared a Rural Proofing Impact Assessment.

The Welsh Government will work with the Council to monitor the use of ISO powers following the coming into force date of the proposed Education Workforce Council (Interim Suspension Orders) (Additional Functions) (Wales) Order 2021, and whether there are any unexpected impacts on those who live rurally.

2.5 Health

2.5a How (either positively or negatively), and to what extent (significant/moderate/minimal impact), will the proposal impact health determinants?

As these proposals are expected to address a serious safeguarding risk to children and young people, we believe the proposals may have a positive effect on the health and well-being – particularly the mental health – of those children and young people who are protected as a result. (Please see paragraphs 22 to 23 of section 1 above for an explanation of how our proposals are expected to alleviate this safeguarding risk).

We also expect these proposals to have a positive effect on the mental health and well-being of the families of children and young people who are protected by these proposals.

It will not be possible to find out how many children have been protected as a result of the introduction of ISOs. This is because we will not be able to find out how many unsuitable⁵ individuals would have used their status as a Registered Person to gain employment as a home tutor if they had been able to do so.

We are not aware of any previous instances of such individuals relying on their status as a Registered Person to prove their suitability as a home tutor, despite having very serious allegations made against them.

We acknowledge that these proposals may have a detrimental impact on the health and well-being of Registered Persons and their families, for the reasons explained in paragraphs 32 to 33 of section 1 above. This is because that impact may extend to not only the personal and professional reputation of Registered Persons and their employment, but also to their health and well-being. Family members also may suffer due to their close association with the Registered Persons.

The impact may be particularly significant for those Registered Persons, and their families, who are later exonerated when the investigation and disciplinary process is completed. However, an ISO would be just one of several possible measures which may be taken where very serious allegations are made against a Registered Person, such as being barred by the DBS or being charged with a serious criminal offence. It

⁵ By “unsuitable” we mean those individuals who are the subject of very serious allegations, and the Council believes it is in the public interest to temporarily suspend them from the public register.

would be the wrongful allegations rather than the imposition of the ISO which was the main cause of the distress.

If referral numbers remain constant, we expect an average of only 5 ISOs to be made every year.

2.5b. Could there be a differential health impact on particular groups?

The greatest positive impact of these proposals is likely to be on children and young people, as protecting them from abuse will help to protect their physical and mental health. However, as explained above, the mental health of their families may also be protected. For this reason, we believe the positive impact of these proposals may span across all age groups.

The greatest negative impact of these proposals will be on Registered Persons, who will be adults of working age. It is also possible that the mental health and well-being of the families of Registered Persons may suffer. As with the families of children and young people who are expected to be protected by these proposals, the families of Registered Persons may be made up from people of all age groups.

Summary

These proposals are expected to safeguard children and their families, whatever “group” they belong to. The positive impact of these proposals on the individuals who are protected - and the potential negative impact on Registered Persons who have ISOs imposed on them and their families - will be the same no matter the lifestyle, economic and social background or geographical location of the individuals who may be affected by these proposals.

Also, the expected number of ISOs that will be imposed in a year is 5 (if referral numbers remain the same). This means any possible negative impact will be limited to only 5 individuals and their families per annum.

As explained above, it probably would be the allegations that are made against a Registered Person, rather than the imposition of the ISO, which are the main cause of the distress.

For these reasons, we have not prepared a Health Impact Assessment.

The Welsh Government will work with the Council to monitor the use of ISO powers following the coming into force date of the proposed Education Workforce Council (Interim Suspension Orders) (Additional Functions) (Wales) Order 2021, and whether there are any unexpected impacts on health as a result.

2.6 Privacy

As this proposal may involve processing information that could be used to identify individuals, a Privacy Impact Assessment has been prepared and is available at annex D.

SECTION 3. WHAT WILL BE THE EFFECT ON CULTURAL WELL-BEING AND THE WELSH LANGUAGE?

3.1 Cultural Well-being

We do not expect these proposals to have any impact - either positive or negative - on cultural well-being. This is because the proposals do not have any consequences for the promotion and protection of culture and heritage, or participation in the arts, sport and recreation.

For this reason a Cultural Impact Assessment has not been prepared.

3.2 Welsh Language

A Welsh Language Impact Assessment has been completed and made available at annex E.

SECTION 4. WHAT WILL BE THE EFFECT ON ECONOMIC WELL-BEING?

4.1 Business, the general public and individuals

How (either positively or negatively), and to what extent (significant/moderate/minimal impact), will the proposal impact business and the public?

It is possible that these proposals may have a significant negative impact on the economic well-being of Registered Persons and their families, depending on whether they are a school teacher employed under the School Teachers' Pay and Conditions, or have a contract of employment. (Please see paragraphs 26 to 31 of Section 1 above for further details.)

However, as an ISO will only be imposed where the Council believes it is necessary in the public interest, it is likely that a Registered Person will also be barred from their usual work pending the outcome of a police investigation by the Disclosure and Barring Service. Therefore, the Person – and their family - would be placed in the same predicament regarding their finances whether or not an ISO is made.

No impact on business is expected.

4.2 Public Sector including local government and other public bodies

How (either positively or negatively), and to what extent (significant/moderate/minimal impact), will the proposal impact the public sector?

There is a minimal expected impact on the Council in terms of costs. The Council does not expect that the fees paid by its registrants on an annual basis will have to rise to cover these costs. Please see paragraphs 46 to 53 of section 1 above for further details.

4.3 Third Sector

How (either positively or negatively), and to what extent (significant/moderate/minimal impact), will the proposal impact third sector organisations and what they do?

We do not expect these proposals to have any impact - either positive or negative – on the third sector.

4.4 Justice Impact

Secondary legislation is required to give effect to this proposal. The proposed Education Workforce Council (Interim Suspension Orders) (Additional Functions) (Wales) Order which would bring these proposals into force will be made available, along with the draft explanatory note and regulatory impact assessment for the proposed Order, once consultation commences on these proposals.

An ISO would not be an “offence” or even a “disciplinary order”, but a temporary measure to be taken pending the outcome of an investigation and a disciplinary hearing. There is no appeal to the High Court against a decision to impose an ISO. Instead, the former Registered Person would have the right to request revocation of the ISO at a review within the first 6 months of its imposition, and thereafter at 6-monthly intervals. In addition, the Council would be required to keep the ISO under review at such intervals as it considers appropriate.

If a former Registered Person was still unhappy following the review process, they could consider bringing an action for judicial review against the Council, provided they had the justification to do so.

We do not expect the proposals to result in any other impact on the justice system. For this reason, a Justice Impact Assessment has not been prepared.

SECTION 5. WHAT WILL BE THE EFFECT ON ENVIRONMENTAL WELL-BEING?

5.1 Natural Resources

5.1a How will the proposal deliver one or more of the National Priorities in the Natural Resources Policy (NRP)?

We do not expect these proposals to have any impact - either positive or negative – on the National Priorities in the Natural Resources Policy.

5.1b Does the proposal help tackle the following national challenges and opportunities for the sustainable management of natural resources?

We do not expect these proposals to have any impact - either positive or negative – on the sustainable management of natural resources.

5.2 Biodiversity

A Biodiversity Impact Assessment has been completed and made available at Annex F below.

5.3 Climate Change

5.3a Decarbonisation

How (either positively or negatively), and to what extent (significant/moderate/minimal impact), will the proposal affect emissions in Wales?

We expect these proposals to have only a minor negative impact on emissions in Wales. This is due to the small amount of extra emissions that may be caused by the need to hold ISO hearings and review hearings. The 3 members of each independent hearing or review panel probably will need to make a special effort to commute to these hearings, as will the Registered Person and their representatives (if any) should they wish to attend.

We expect there will be an average of 5 ISOs imposed in a year if referral numbers stay the same. The Council expects around 95% of ISO hearings to be uncontested, and that Registered Persons will usually choose not to attend uncontested ISO hearings, or have a representative(s) attend on their behalf.

The Council expects up to 1 out of 5 ISO hearings a year to be contested, at which the Registered Person is more likely to attend and may also bring their representative(s). In some years there may be no contested hearings that all.

This makes somewhere between 15 and 17 extra journeys a year as a result of holding ISO hearings, assuming that no Registered Person attends an uncontested hearing and no more than one representative attends the possible 1 contested hearing with the Registered Person. (Independent panel members $5 \times 3 = 15$, plus 1 Registered Person and their representative at 1 contested hearing.)

Even if ISO hearing numbers double to 10 a year, it probably would mean only an extra 30 - 32 journeys a year on average. (Independent panel members $10 \times 3 = 30$, plus 1 Registered Person and their representative at 1 contested hearing.) We believe this extra number of journey is justified, given the safeguarding risk which these proposals address.

(The actual number of contested hearings would not rise even if ISO numbers double to 10 a year, if 95% of all hearings are uncontested. The number of ISOs would need to rise 8 times to 40 a year for there to be 2 contested hearings).

In the case of review hearings, the Council does not expect there to be more than 1 or 2 hearings year. As with contested ISO hearings, the 3 review panel members probably will need to make a special effort to commute to these hearings, as well as the former Registered Person and their representatives (if any). Therefore, with an average of 5 people attending no more than 2 review hearings a year, this makes up to 10 extra journeys a year.

We have no way of knowing how many of these journeys to ISO and review hearings will be undertaken by public rather than private transport thus mitigating the impact on emissions, or by methods which do not cause any emissions such as cycling or walking. Nor can we predict the length of journeys. It is possible that a Registered Person or panel member resides in North Wales, and has a long journey to Cardiff to attend the ISO or review hearing. Alternatively, all panel members as well as the Registered Person and their representative may reside in the Cardiff area.

When there are scheduled ISO review meetings (rather than hearings which are held at the request of the former Registered Person), it is probable that the review panel members will not need to make a special effort to commute to these meetings. It is likely that these short meetings will be scheduled to coincide with other panel business.

Given the very small number of journeys – and the minor amount of emissions – that may result from holding ISO and review hearings, we have not conducted a more thorough assessment on the effect of these proposals on emissions.

The Welsh Government will work with the Council to monitor the use of ISO powers following the coming into force date of the proposed Education Workforce Council (Interim Suspension Orders) (Additional Functions) (Wales) Order 2021, and whether there are any unexpected impacts on emissions as a result.

5.3 b Adaptation

How (either positively or negatively), and to what extent (significant/moderate/minimal impact), will the proposal affect ability to adapt to the effects of climate change?

No impacts have been identified.

5.4 Strategic Environmental Assessment (SEA)

No impact has been identified and a Strategic Environment Assessment has not been undertaken.

5.5 Habitats Regulations Assessment (HRA)

No impacts have been identified and a Habitats Regulations Assessment (HRA) has not been undertaken.

5.6 Environmental Impact Assessment (EIA)

No impacts have been identified and an Environmental Impact Assessment has not been undertaken.

SECTION 6. RECORD OF FULL IMPACT ASSESSMENTS REQUIRED

You have now decided which areas need a more detailed impact assessment. Please list them below.

Impact Assessment	Yes/No	If yes, you should
Children's rights	Yes	Completed – see Annex A
Equality	Yes*	Completed – see Annex B
Rural Proofing	No	
Health	No	
Privacy	Yes	Completed – see Annex D
Welsh Language	Yes*	Completed – see Annex E the Welsh Language Impact Assessment below
Economic / RIA	RIA - Yes	A draft has been completed and will form part of the consultation on our proposals.
Justice	No	
Biodiversity	Yes*	Completed – see Annex F
Climate Change	No	
Strategic Environmental Assessment	No	
Habitat Regulations Assessment	No	

Environmental Impact Assessment	No	
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* Mandatory for all proposals in order to meet statutory obligations.

SECTION 7. CONCLUSION

(Please note that this section will be published)

7.1 How have people most likely to be affected by the proposal been involved in developing it?

In December 2017, the Children, Young People and Education Committee published its report on the Teachers' Professional Learning and Education Inquiry⁶. The report included a recommendation for the EWC to be given powers to impose ISOs on teachers.

The Council has already consulted on the need to have ISO powers. The closed consultation, including the consultation report, is available here:

<https://www.ewc.wales/site/index.php/en/fitness-to-practise/interim-suspension-orders-consultation.html>

We propose to give the Council the power to suspend its registrants ("Registered Persons") from the public Register on a temporary basis, pending the completion of the Council's disciplinary process. This would address the significant safeguarding "loophole" described in section 7.2 below and enable the Council to suspend all categories of Registered Persons, not only teachers.

We are consulting publically on our proposals. However, bringing them forward involves making a specialised piece of legislation that is primarily of interest to Registered Persons, their employers and union representatives. All stakeholder organisations will be contacted on the launch of the consultation, to proactively seek their views on our proposals.

7.2 What are the most significant impacts, positive and negative?

⁶ Available here: <http://www.assembly.wales/laid%20documents/cr-ld11338/cr-ld11338-e.pdf>

These proposals to give the Council interim suspension order (“ISO”) powers are being taken forward to address a safeguarding “loophole”; whereby an individual continues to have the status of a “Registered Person” with the Council pending the outcome of the disciplinary process, despite being the subject of very serious allegations.

Continuing to be a “Registered Person” in these circumstances may pose a significant safeguarding risk. If a parent were to search the Register, it is likely they would be assured of an individual’s suitability to be a private tutor by virtue of their “Registered Person” status.

Whereas, if the Council had ISO powers it could suspend the name of that individual from the Register pending the outcome of police investigations and its own investigation and disciplinary process.

The greatest positive effect of these proposals would be on those children who are protected because of the closure of this safeguarding “loophole”. There may also be a positive impact on the well-being of their families.

The greatest negative effect of these proposals would be on those Registered Persons who have an interim suspension order imposed on them. In addition, there may be a related negative impact on the well-being of their families.

All full impact assessments will be published, and where the impact is directly relevant to this proposal, it has been identified within the relevant assessment. Full impact assessments have been undertaken on the following topics, and are summarised below:

Children’s Rights

Giving the Council ISO powers supports the following articles of the United Nations Convention on the Rights of the Child.

Article 3

All organisations concerned with children should work towards what is best for each child.

We believe our proposals support article 3, as giving the Council the power to make ISOs where appropriate will enable the Council to “work towards what is best for each child” by protecting them from a serious safeguarding risk.

Article 34

The Government should protect children from sexual abuse.

We believe these proposals – which are being brought forward by the Welsh Government - will help to protect children from sexual abuse. This is because their expected impact is to stop Registered Persons who pose a significant risk to children from using their “registered” status with the Council to gain access to children and young people under the guise of home tutoring.

Equality

These proposals are being brought forward to help safeguard children, and they are expected to protect all children (and their families). They apply in the same way to all persons within protected characteristic groups.

We anticipate that these proposals will have the same detrimental effect on any Registered Person (and their families) who has an ISO imposed on them, whether or not they belong in a protected group.

Welsh Language

The Council is subject to the Welsh Language Standards. This gives us an assurance that they have the correct measures in place to ensure that those who wish to be dealt with through the medium of Welsh will not be treated less favourably than those who follow these processes through the medium of English.

Privacy

The Welsh Government will not process any of the personal data that will be required to give effect to these proposals; this will be carried out by the Council. However, as the Welsh Ministers need to bring forward secondary legislation in the form of the proposed Order to enable the processing of this personal data by the Council, these proposals fall within scope of the General Data Processing Regulations (“GDPR”).

The Welsh Government are liaising with the Information Commissioner's Office, to ensure that they meet their responsibilities under GDPR.

Biodiversity

We have carefully considered the full biodiversity impact of our proposals on the following areas:

- Procurement
- Management of buildings
- The potential for awareness raising and training
- The potential to support communities and partnerships
- Influencing others we fund e.g. consultants, contractors, grant schemes

We have concluded there is no direct link between our proposals to legislate to give the Council ISO powers and any impacts on biodiversity. However, the Welsh Government will work with the Council to monitor the use of ISO powers following the coming into force date of the proposed Education Workforce Council (Interim Suspension Orders) (Additional Functions) (Wales) Order 2021, and whether there are any unexpected impacts on biodiversity.

7.3 In light of the impacts identified, how will the proposal:

- **maximise contribution to our well-being objectives and the seven well-being goals; and/or,**

The Well-being of Future Generations (Wales) Act 2015 requires public bodies across Wales named in the Act to work towards the seven well-being goals. The Welsh Government is one of those bodies.

We believe these proposals support the “Healthier Wales” well-being goal, and the “Healthy and Active” key theme in *Prosperity for All: the national strategy*⁷. This is because they plug a significant safeguarding loophole relating to private tutors, which will help to maximise the health and well-being of young individuals and their families.

We also believe our proposals support the “Prosperous Wales” well-being goal, and the “Ambitious and Learning” key theme in *Prosperity for All: the national strategy*. This is because we think our proposals will support the integrity of the education workforce Register, thereby contributing to a skilled and well-educated population.

- **avoid, reduce or mitigate any negative impacts?**

Unfortunately, we are unable to mitigate the possible negative impacts of interim suspension on Registered Persons and their families.

This is why interim suspension will only be considered in the most serious of cases where the allegations made against a Registered Person raise significant safeguarding concerns, and the Council believes interim suspension to be in the public interest.

In any event, it may be that the negative impacts we have identified would still be felt by Registered Persons and their families even if interim suspension were not imposed.

If the police or Crown Prosecution Service decide there is no case to answer or the Registered Person is found not guilty at trial, any remaining damage to their professional or personal reputation is just as likely to have been caused by the police investigation, trial and media coverage as by the imposition of an ISO.

Also, given that ISOs will only be imposed in response to the most serious of allegations, any impact on employment status (for example, suspension by the

⁷ Available here: <https://gov.wales/sites/default/files/publications/2017-10/prosperity-for-all-the-national-strategy.pdf>

Registered Person's employer) would likely have happened anyway once the employer heard of the allegations. It is also likely that the Person would be placed on the barred list by the Disclosure and Barring Service, and so could no longer continue in their usual employment until the outcome of any investigation and criminal and/or disciplinary process was known.

7.4 How will the impact of the proposal be monitored and evaluated as it progresses and when it concludes?

If the consultation responses support these proposals and they are taken forward, the Welsh Government will work with the Council to monitor the use of ISO powers following the coming into force date of the proposed Education Workforce Council (Interim Suspension Orders) (Additional Functions) (Wales) Order 2021.

This will include evaluating the use of ISO powers, and considering whether there are any unexpected impacts.

SECTION 8. DECLARATION

Declaration

I am satisfied that the impact of the proposed action has been adequately assessed and recorded.

Name of Senior Responsible Officer / Deputy Director:

Department:

Date:

FULL IMPACT ASSESSMENTS

A. CHILDREN'S RIGHTS IMPACT ASSESSMENT

Background

These proposals to give the Council ISO powers address recommendation 21 of the Children, Young People and Education Committee in their Report on the Teachers' Professional Learning and Education Inquiry⁸, namely the "*... remit of the Education Workforce Council should be extended to provide it with power to suspend teachers in appropriate circumstances*". However, these proposals would enable the Council to suspend all categories of Registered Persons, not only teachers.

The Council carried out its own consultation on proposals for ISO powers towards the close of 2018. The Children's Commissioner for Wales was highly supportive of the Council's proposals, saying:⁹ "*This current situation also undermines the very existence of the Register..... If public trust in the regulator is to be maintained, its powers should be brought in line with other regulators so the public have the assurance that no registrant is under current investigation by the police involving harm or risk of harm to children or vulnerable adults.*"

Expected impacts on children

The main reason for bringing forward these proposals is to alleviate the safeguarding risk posed by individuals using their "Registered Person" status as proof of suitability to be a home tutor, where those Persons have had very serious allegations made against them. Therefore, we anticipate these proposals will have a positive impact for those children who would not otherwise have been protected.

⁸ Available at: <http://www.assembly.wales/laid%20documents/cr-ld11338/cr-ld11338-e.pdf>

⁹ The Council's consultation and consultation report are available here: <https://www.ewc.wales/site/index.php/en/fitness-to-practise/interim-suspension-orders-consultation.html>

Due to the importance of this safeguarding benefit, we would describe this impact as “significant” even though, if referral numbers remain constant, we expect an average of 5 interim suspension orders (“ISOs”) to be made every year.

We anticipate these proposals may have an indirect detrimental impact on the children, and other young family members, of Registered Persons who have an ISO imposed on them. This is because, as family members, they may feel some effect of any impact on the personal and professional reputation of the Registered Person, as well as on that Person’s employment status and health and well-being. This is particularly important for the children of those individuals who are later exonerated.

However, if the police or Crown Prosecution Service decide there is no case to answer or the Registered Person is found not guilty at trial, any remaining damage to their professional or personal reputation is just as likely to have been caused by the police investigation, trial and media coverage as by the imposition of an ISO.

Also, given that ISOs will only be imposed in response to the most serious of allegations, any impact on employment status (for example, suspension or dismissal by the Registered Person’s employer) would likely have happened anyway once the employer heard of the allegations. It is also likely that the Person would be placed on the barred list by the Disclosure and Barring Service, and so could no longer continue in their usual employment until the outcome of any investigation and criminal and/or disciplinary process was known.

We have not been able to identify any difference in the impact of these proposals on specific groups of children; for example, children living in poverty or children with a disability.

Consultation with children

We have not consulted directly with children and young people as part of these proposals. If the Council are given the power to impose ISOs on Registered Persons, it is those Persons (i.e. adults of working age) who will be directly affected.

Also, in order to give effect to our proposals, the Welsh Government will need to bring forward a piece of specialised legislation which is primarily of interest to Registered Persons, their employers and union representatives.

Therefore, we do not think it is appropriate to directly consult with children and young people as part of the consultation process.

However, we will be consulting the Children's Commissioner for Wales on our proposals when our consultation launches.

How these proposals are likely to impact on children's rights.

Giving the Council the power to make ISOs supports the Articles of the UNCRC set out below.

Article 3

All organisations concerned with children should work towards what is best for each child.

These proposals are expected to alleviate the safeguarding risk where a Registered Person - who has had very serious allegations made against them - uses their "registered" status with the Council to prove their suitability as a home tutor, thereby gaining access to children and young people in their homes.

We believe this supports article 3, as giving the Council the power to make it will enable the Council to "*work towards what is best for each child*" by protecting them from this serious safeguarding risk.

Article 34

The Government should protect children from sexual abuse.

We believe these proposals will have the outcome of protecting children from sexual abuse. This is because their expected impact is to stop Registered Persons who pose a significant risk to children from using their "registered" status with the Council to gain access to children and young people under the guise of home tutoring.

As it is the Welsh Government that is proposing to bring forward the secondary legislation necessary to give effect to these proposals, we believe that the Government's actions support article 34 by protecting children from sexual abuse.

B. EQUALITY IMPACT ASSESSMENT

The Proposals

The Education Workforce Council ("the Council") is the independent regulator in Wales for schoolteachers and school learning support staff, further education teachers, qualified youth workers, work-based learning practitioners, further education learning support workers and youth support workers. Due to section 9 of the Education (Wales) Act 2014, the Council has the function of maintaining a register that contains details of all registrants in the aforementioned categories (who we refer to as "Registered Persons"). This register is available to the public via the Council's website.

We are proposing to give the Council the power to suspend a Registered Person from the public register on an interim basis, pending the outcome of an investigation and the completion of the Council's disciplinary process. This will be effected by the Council imposing an Interim Suspension Order ("ISO") on the Registered Person. As the Council must be of the view that interim suspension is in the public interest, the imposition of an ISO would only be considered in the most serious of cases.

These proposals address recommendation 21 of the Children, Young People and Education Committee in their Report on the Teachers' Professional Learning and Education Inquiry¹⁰, namely the "*... remit of the Education Workforce Council should be extended to provide it with power to suspend teachers in appropriate circumstances*". However, our proposals go further than the Committee's recommendation as they would enable the Council to suspend all categories of Registered Persons, not only teachers.

- ◆ *How will the proposals promote equality?*

¹⁰ Available at: <http://www.assembly.wales/laid%20documents/cr-ld11338/cr-ld11338-e.pdf>

Our proposals do not directly promote equality. However, the main reason for bringing forward these proposals is to alleviate the safeguarding risk posed by individuals using their “Registered Person” status as proof of suitability to be a home tutor, where those individuals have had very serious allegations made against them. Therefore, we anticipate these proposals will have a positive impact on those children who would not otherwise have been protected. Their families may also benefit, as they may not have to deal with the trauma of one of their children being harmed.

- ◆ *What are the possible negative impacts on people in protected groups and those living in low income households and how will you mitigate for these?*

Negative Impact on Registered Persons

We anticipate that these proposals will have the same detrimental effect on any Registered Person who has an ISO imposed on them, whether or not they belong in a protected group.

Whilst suspension maybe viewed as an emergency measure which is protective rather than punitive, it may damage the personal and professional reputation of that person even if they are later cleared of all wrong doing. The Person’s health and well-being may also suffer.

Another consequence of having an ISO imposed is that the Registered Person probably would be suspended from their job. Suspended teachers who are employed at a school pursuant to the School Teachers’ Pay and Conditions will continue to be paid whilst suspended. This is due to regulations 16 and 28 of the Staffing of Maintained Schools (Wales) Regulations 2006¹¹. In the case of all other categories of Registered Person (i.e. school learning support staff, further education teachers, qualified youth workers, work-based learning practitioners, further education learning support workers and youth support workers) whether that Person continues to be paid during the period of suspension is determined by the terms and conditions of employment negotiated with their employer.

¹¹ Staffing of Maintained Schools (Wales) Regulations 2006 (SI 2006/873)

The impact may be hardest on supply staff, as they are often self-employed rather than employed under a contract of employment and find work via an agency. Therefore, suspension from the Register means they will not receive an income in the same way as those who are employed under the School Teachers' Pay and Conditions, or whose terms and conditions of employment provide for payment of salary during periods of suspension.

Negative impact on the children and other family members of Registered Persons

We also think these proposals may have a negative impact on the children, and other family members, of Registered Persons who have an ISO imposed on them. This is because, as family members, they also may feel the impact on the personal and professional reputation of the Registered Person, as well as on that Person's employment status and health and well-being.

We think these negative impacts may be particularly hard on children, who could have greater difficulty understanding and dealing with consequences of their parent having an ISO imposed on them than if they were an adult. Otherwise, the negative impact is expected to be the same no matter if the family members belong to any other protected group.

Mitigation of negative impacts

Unfortunately, we are unable to mitigate the possible negative impacts of interim suspension on Registered Persons and their families.

This is why interim suspension will only be considered in the most serious of cases where the allegations made against a Registered Person raise significant safeguarding concerns, and the Council believes interim suspension to be in the public interest.

In any event, it may be that the negative impacts we have identified would still be felt by Registered Persons and their families even if interim suspension were not imposed.

If the police or Crown Prosecution Service decide there is no case to answer or the Registered Person is found not guilty at trial, any remaining damage to their

professional or personal reputation is just as likely to have been caused by the police investigation, trial and media coverage as by the imposition of an ISO.

Also, given that ISOs will only be imposed in response to the most serious of allegations, any impact on employment status (for example, suspension by the Registered Person's employer) would likely have happened anyway once the employer heard of the allegations. It is also likely that the Person would be placed on the barred list by the Disclosure and Barring Service, and so could no longer continue in their usual employment until the outcome of any investigation and criminal and/or disciplinary process was known.

We have not been able to identify any difference in the impact of these proposals on any protected group other than children; for example, those living in low income households or with a disability.

- ◆ *What if any, barriers do people who share protected characteristics face? Can these barriers be reduced, removed, mitigated?*

We do not think that people who share protected characteristics will face any barrier to benefitting from our proposals. These proposals are being put forward to help safeguard children, and we believe they will help to protect all children. They apply in the same way to all persons within protected characteristic groups.

- ◆ *How will you know if your piece of work is a success?*

It will not be possible to measure how successful the introduction of ISOs has been; we will have no way of knowing how many children have been protected from harm as a result. This is because we will not be able to find out whether unsuitable¹² individuals would have used their status as a Registered Person to gain employment as a home tutor if they had been able to do so.

¹² By "unsuitable" we mean those individuals who are the subject of very serious allegations, and the Council believes it is in the public interest to temporarily suspend them from the public register.

We are not aware of any previous instances of individuals relying on their status as a Registered Person to prove their suitability as a home tutor, despite having very serious allegations made against them. However, the possibility of this “loophole” being used by unscrupulous individuals to gain access to children in their own homes must be closed.

◆ *Have you developed an outcomes framework to measure impact?*

As explained above, it is not possible to measure the impact of ISOs and so an outcomes framework has not been developed.

The Welsh Government will work with the Council to monitor the use of ISO powers following the coming into force date of the proposed Education Workforce Council (Interim Suspension Orders) (Additional Functions) (Wales) Order 2021, which will give the Council the power to make ISOs.

◆ *Links with “Programme for Government”*

We believe these proposals support the “Healthy and Active” key theme within “Prosperity for All: the national strategy”. This is because our proposals help to “plug” a significant loophole relating to private tutors, which will help to safeguard the well-being of young individuals and their families.

We also believe our proposals support the “Ambitious and Learning” key theme because they will enhance the integrity of the education workforce Register. This is because our proposals would enable the Council to temporarily suspend from the Register a person who is the subject of serious allegations, thus preventing that person from using their registered status as proof of character.

Record of Impacts by protected characteristic:

Protected characteristic or group	What are the positive or negative impacts of the proposal?	Reasons for your decision (including evidence)	How will you mitigate Impacts?
Age (think about different age groups)	<p>We believe these proposals may have a positive impact on the families of those children who will be protected by giving the Council interim suspension powers. Without these proposals being brought forward the families of these children– which may include siblings, parents and grandparents and so have all ages within scope - would have to deal with the trauma of one of their children being harmed.</p> <p>We also think these proposals may have various negative impacts on Registered Persons and their families.</p> <p>This includes a possible negative impact on the personal and professional reputation of the Registered Person, as well as to their</p>	<p>This is because these proposals will help to close a safeguarding “loophole” whereby unsuitable individuals may gain access to children in their own homes under the guise of a personal tutor, by relying on their status as a Registered Person.</p> <p>These proposals would give effect to a recommendation of the Children, Young People and Education Committee.</p> <p>The possible negative impacts on Registered Persons that we have identified will be explored as part of the consultation on giving the Council interim suspension order powers.</p>	<p>N/A – positive impact.</p> <p>While it is not possible to mitigate these negative impacts, it may be that they would still have been felt by Registered Persons and their families even if interim suspension were not imposed. (Please see the paragraphs above on <i>“Mitigation of Negative Impacts”</i> for an</p>

	<p>employment status and general well-being.</p> <p>Families may feel these negative impacts too. (Please see the paragraphs above on <i>“Negative impact on Registered Persons”</i> and <i>“Negative impact on the children and other family members of Registered Persons”</i> for an explanation of these potential impacts.)</p> <p>“Families” may include siblings, parents and grandparents and so have all ages within scope.</p>		<p>explanation of why this may be the case).</p>
<p>Disability (think about different types of disability)</p>	<p>We do not think that any disabled person will face a barrier to benefitting from our proposals, no matter what form their disability takes.</p>	<p>These proposals are being brought forward to help safeguard children, and they are expected to protect all children (and their families) They apply in the same way to all persons within protected characteristic groups.</p>	<p>N/A</p>
<p>Gender Reassignment</p>	<p>We do not think that any person who is</p>	<p>These proposals are being brought forward</p>	<p>N/A</p>

(the act of transitioning and Transgender people)	undergoing, or has undergone, gender reassignment will face a barrier to benefitting from our proposals.	to help safeguard children, and they are expected to protect all children (and their families). They apply in the same way to all persons within protected characteristic groups.	
Pregnancy and maternity	We do not think that any person who is within scope of the protected characteristic of <i>“pregnancy and maternity”</i> will face a barrier to benefitting from our proposals.	These proposals are being brought forward to help safeguard children, and they are expected to protect all children (and their families). They apply in the same way to all persons within protected characteristic groups.	N/A
Race (include different ethnic minorities, Gypsies and Travellers and Migrants, Asylum	We do not think that any person will face a barrier to benefitting from our proposals because of their race.	These proposals are being brought forward to help safeguard children, and they are expected to protect children (and their families).	N/A.

<p>seekers and Refugees)</p>		<p>They apply in the same way to all persons within protected characteristic groups.</p>	
<p>Religion, belief and non-belief</p>	<p>We do not think that any person will face a barrier to benefitting from our proposals because of their religion, belief or non-belief.</p>	<p>These proposals are being brought forward to help safeguard children, and they are expected to protect children (and their families). They apply in the same way to all persons within protected characteristic groups.</p>	<p>N/A</p>
<p>Sex / Gender</p>	<p>We do not think that any person will face a barrier to benefitting from our proposals because of their sex or gender.</p>	<p>These proposals are being brought forward to help safeguard children, and they are expected to protect children (and their families). They apply in the same way to all persons within protected characteristic groups.</p>	<p>N/A.</p>

Sexual orientation (Lesbian, Gay and Bisexual)	We do not think that any person will face a barrier to benefitting from our proposals because of their sexual orientation.	These proposals are being brought forward to help safeguard children, and they are expected to protect children (and their families). They apply in the same way to all persons within protected characteristic groups.	N/A.
Marriage and civil partnership	We do not think that any person will face a barrier to benefitting from our proposals because of their marital or civil partnership status.	These proposals are being brought forward to help safeguard children, and they are expected to protect children (and their families). They apply in the same way to all persons within protected characteristic groups.	N/A.
Children and young people up to the age of 18	We believe these proposals may have a positive impact on those children who would not	This is because these proposals will help to close a safeguarding “loophole” whereby unsuitable individuals may gain access to	N/A – positive impact.

	<p>otherwise have been protected.</p> <p>We think the potential negative impacts on the personal and professional reputation of the Registered Person, as well as to their employment status and general well-being, may be felt by their children too.</p> <p>Younger children may be particularly badly affected; they may have greater difficulty understanding and dealing with the consequences of their parent having an interim suspension order imposed on them than if they were an adult.</p> <p>(Please see the paragraphs above on <i>“Negative impact on Registered Persons”</i> and <i>“Negative impact on the children and other family members of Registered</i></p>	<p>children in their own homes under the guise of a personal tutor, by relying on their status as a Registered Person.</p> <p>The possible negative impacts of our proposals on Registered Persons will be explored as part of the consultation on giving the Council interim suspension order powers.</p>	<p>While it is not possible to mitigate these negative impacts, it may be that they would still have been felt by the children of Registered Persons even if interim suspension was not imposed against their parent. (Please see the paragraphs above on <i>“Mitigation of Negative Impacts”</i> for an explanation of why this may be the case).</p>
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	<i>Persons</i> ” for an explanation of these potential impacts.)		
Low-income households	We do not think that any person will face a barrier to benefitting from our proposals because of belonging to a low-income household.	These proposals are being brought forward to help safeguard children, and they are expected to protect all children (and their families). They apply in the same way to all persons within protected characteristic groups.	N/A

Human Rights and UN Conventions

Do you think that this policy will have a positive or negative impact on people’s human rights? (Please refer to point 1.4 of the EIA Guidance for further information about Human Rights and the UN Conventions).

Human Rights	What are the positive or negative impacts of the proposal?	Reasons for your decision (including evidence)	How will you mitigate negative Impacts?
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<p>Article 6 and Article 8 of the European Convention on Human Rights are engaged by the proposed Order.</p>	<p>The proposed Order is compatible with Article 6 and Article 8.</p> <p>The proposed Order sets out a scheme which is comparable to other regulatory regimes in England and Wales.</p>	<p>An interim suspension order will only be considered in exceptional cases and those that engage the public interest test.</p> <p>The decision will be made by an independent panel following a hearing.</p> <p>The Registered Person will have an opportunity to make representations and will have the right to be represented at the hearing.</p> <p>There are provisions for review and revocation of the ISO at regular intervals.</p>	
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C. RURAL PROOFING IMPACT ASSESSMENT

Not Applicable.

D. PRIVACY IMPACT ASSESSMENT

Please send your assessment to the Information Rights Unit (DataProtectionQueries@gov.wales) copied to your Information Asset Owner.

Name of Information Asset Owner: Huw Owen
PIA reference number: Ishare ID :A26736849 (Integrated Impact Assessment)
<p>Please describe your proposal</p> <ol style="list-style-type: none"> 1. The Welsh Government is considering giving 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 believe it to be in the public interest, and would take place pending an investigation and a disciplinary hearing. 3. Secondary legislation is required to give effect to these proposals. Powers in sections 5(1) and 47(1) of the Education (Wales) Act 2014 (“the 2014 Act”) would be used to add to the functions of the Council. <p>Background</p> <ol style="list-style-type: none"> 4. The 2014 Act continued in existence the General Teaching Council for Wales (“GTCW”) but renamed it to become the Education Workforce Council. It came into being on 1 April 2015. 5. The Council is the independent regulator in Wales for: <ul style="list-style-type: none"> • 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.

Currently, the Council has approximately 80,000 registrants.

6. The Council is required to maintain a register (“the Register”) and to allow the public access to that Register under section 9 of the 2014 Act. The Register lists everyone registered with the Council at that point in time in the categories listed above (“Registered Persons”), and is available to the public via the Council’s website.

7. 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 offence.

8. The Council may impose a disciplinary Order on a Registered Person 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.

9. 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.

The need for interim suspension powers

10. 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.

11. At all times prior to the completion of the investigative and disciplinary process by the Council, the name of the Registered Person must remain on the Register. The Register 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.

12. The Council considers this to be a serious failing, as it allows an individual to continue to have the status of a “Registered Person” for possibly many months, no matter how serious and credible the allegations against them.

13. 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.

14. Whereas, if the Council had ISO powers it could suspend the name of that individual from the Register pending the outcome of 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.

The ISO Process

15. Whenever the Council received a referral about a Registered Person we are informed that if it was of a very serious nature and raised significant safeguarding concerns, a duly authorised officer will consider whether to recommend that an ISO is imposed. The referral could come from the police, employers, the DBS or any other source.

16. When considering whether to recommend the imposition of an ISO, the officer would consider whether it would be in the public interest for an ISO to be made. 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.

17. If the officer thinks an ISO is appropriate, they would make a recommendation to the Director of Qualifications, Registration and Fitness to Practice for approval, setting out their reasons for making the recommendation.

18. 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. However, the Council will take the ultimate decision itself as to whether or not to impose an ISO.

19. The independent panel would be drawn from the Council’s pool of trained fitness to practise panel members.

20. 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. For clarity, this decision would not be made by the Director. The function

of making an ISO will, be conferred on the EWC as opposed to any member or officer of the EWC. Pursuant to paragraph 13 of Schedule 1 to the 2014 Act: “The Council may authorise the chairing member or any committee established under paragraph 12 to exercise such of its functions as it may determine.” ;

- 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.

21. The notice will 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.

22. If an ISO was imposed, registration with the Council would be removed temporarily, up to a maximum period of 18 months.

23. 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.

24. 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 decide otherwise).

25. 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 person was registered.

26. 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 revoke the ISO.

Right to request a review of an interim suspension order

27. As explained above, the Council would tell the former Registered Person of their right to request the Council revoke the ISO within 3 working days of the decision to impose the ISO.

28. 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.

29. An application for review of an ISO - at which revocation of the ISO would be 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.

30. 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.

31. The notice 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.

32. 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.

33. 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.

34. The Council would 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

35. 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.

36. The schedule for this "internal" 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.

37. 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 not be asked to make representations to the panel at the review meeting.

38. 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?

39. 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, because there is no case to answer or on some other basis;
- the Council makes a decision as to whether or not to impose a disciplinary order (“disciplinary order” is explained in paragraph 8 above); 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.

40. An ISO would cease automatically when the term for which it was imposed comes to an end.

Use of the Council’s rules of procedure

41. 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.

42. 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 day’s notice of the Council’s intention to impose an ISO on them, rules of procedure could not change this requirement.

43. 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.

<p>Has privacy impact screening or assessment already been carried out?</p> <ul style="list-style-type: none"> A full Data Privacy Impact Assessment (DPIA) has been drafted in conjunction with legal services. We met with representatives from the Information Commissioner’s Office (“ICO”) in September 2019. 	
<p>Please tick the personal data items that will be processed:</p> <p>The Welsh Government will not process any of the personal data that will be required to give effect to these proposals; this will be carried out by the Council. However, as the Welsh Ministers need to bring forward secondary legislation in the form of the proposed Order to enable the processing of this personal data by the Council, these proposals fall within scope of the General Data Processing Regulations.</p> <p>The practical consequence of this is we must check with the ICO that they are content with our proposals before we may go out to consultation. Officials are in the process of doing this, and working with legal services to produce a detailed Data Privacy Impact Assessment.</p> <p><u>As the Welsh Government will not be processing the data, we have not completed the remainder of this form.</u></p>	
<p>Name</p> <p>Name address</p> <p>Business address</p> <p>Postcode</p> <p>Email address</p>	<p>Telephone numbers</p> <p>Date of birth</p> <p>Driving licence number</p> <p>Passport / ID card number</p> <p>Photographs / images (which could be used to identify an individual)</p> <p>Other (please specify)</p>
Sensitive	

<p>Racial / ethnic origin</p> <p>Political opinions</p> <p>Religious beliefs</p> <p>Trade union membership</p> <p>Physical / mental health conditions</p> <p>Sexual life</p> <p>Criminal & court records (inc. alleged offences)</p> <p>Educational records</p>	<p>Biometric data e.g. DNA, finger-prints</p> <p>Personal financial information (e.g. bank or credit card details)</p> <p>Mother's maiden name</p> <p>NI number (or equivalent)</p> <p>Tax, benefits or pensions records</p> <p>Health or social service records e.g. Housing or Child Protection</p> <p>Employment records (inc. self-employment and voluntary work)</p> <p>Other (please specify)</p>
<p>If sensitive personal data is being processed, is this data being collected mandatorily (i.e. without the data subjects having an option to not provide it)?</p> <ul style="list-style-type: none"> • Yes • No 	
<p>For the personal data being processed, please indicate</p>	
<p>Who the data controller is?</p>	<p>Details:</p>
<p>Any data processors</p>	<p>Details:</p>
<p>Will the data be shared</p>	<p>Details:</p>
<p>What is the legal basis for processing the data?</p>	
<p>Have legal Services confirmed that the basis outlined above provides the necessary gateway for processing (including any proposed sharing)?</p> <ul style="list-style-type: none"> • Yes • No 	

<p>Will the proposal involve new or significantly changed processing of personal data about each individual?</p> <ul style="list-style-type: none">• Yes (please provide details)• No
<p>Data Handling</p> <p>Will the personal data be consolidated, linked or matched with data from other sources?</p> <ul style="list-style-type: none">• Yes (please provide details)• No
<p>Does the proposal involve new or changed data collection, retention or sharing policies/practices for personal data?</p> <ul style="list-style-type: none">• Yes (please provide details)• No
<p>Technology</p> <p>Will the proposal involve the introduction of privacy-intrusive technologies such as</p> <ul style="list-style-type: none">• Smart cards• RFID tags• Biometrics• Visual surveillance (e.g. CCTV)• Digital image and video recording• Profiling, data mining or logging electronic traffic• Locator technologies (e.g. GPS, mobile phone tracking)• Other
<p>Identity</p> <p>Will the proposal involve new or changed identity management or authentication processes?</p> <ul style="list-style-type: none">• Yes (please provide details)• No

Will the proposal have the effect of enabling identification of individuals who were previously anonymous?

- Yes (please provide details)
- No

E. WELSH LANGUAGE IMPACT ASSESSMENT

1. Welsh Language Impact Assessment reference number (completed by the Welsh Language Standards Team, email: Safonau.Standards@gov.wales):

03/07/2019

2. Does the proposal demonstrate a clear link with the Welsh Government's strategy for the Welsh language? – Cymraeg 2050 A million Welsh speakers and the related Work Programme for 2017-2021?

The Proposals

The Education Workforce Council ("the Council") is the independent regulator in Wales for school teachers and school learning support staff, further education teachers, qualified youth workers, work-based learning practitioners, further education learning support workers and youth support workers. Due to section 9 of the Education (Wales) Act 2014, the Council has the function of maintaining a register which contains details of all registrants in the aforementioned categories. This register is available to the public via the Council's website.

We are proposing to give the Council the power to suspend a registrant from the public register on an interim basis, pending the outcome of an investigation and the outcome of the Council's disciplinary process. As the Council must be of the view that interim suspension is in the public interest, it would only be considered in the most serious of cases.

Welsh Language strategy

If the consultation response to these proposals is positive and the proposals are brought into effect, it will be the Council which has the responsibility of imposing interim suspension on its registrants.

The Council has had a Welsh language strategy in place since its inception in 2015, and is included in category 4 of the Welsh Language Standards. Following a period of consultation, and a compliance notice from the Welsh Language Commissioner, the Council introduced the Welsh Language standards for this category on 1 April 2017.

In practice, this means the Council complies with 148 Welsh language standards covering service delivery, operational, policy making, record keeping and promotion.¹³

3. Describe and explain the impact of the proposal on the Welsh language, and explain how you will address these impacts in order to improve outcomes for the Welsh language. How will the proposal affect Welsh speakers of all ages (both positive and/or adverse effects)? You should note your responses to the following in your answer to this question, along with any other relevant information:

We do not believe these proposals will affect the Council’s compliance with the Welsh Language Standards, or that there will be any other negative effects on the Welsh language that arise as a result. Nor do we think there is a way in which our proposals could have a positive effect on the Welsh language.

We will check whether we are correct to believe there will be no positive or negative effects on the Welsh language as part of our consultation on the proposals.

We also do not think there will be any impact – either positive or negative - on the sustainability of Welsh speaking communities, Welsh Medium education or access to services in Welsh.

These proposals are expected to safeguard children and their families. The impact on those persons who are protected - and on the individuals who are suspended temporarily from the public register – is expected to be the same whether or not those individuals reside in Welsh speaking communities, use or teach in Welsh medium education, or need to access services in Welsh.

Summary

The fact that the Council is subject to the Welsh Language Standards gives us an assurance that they have the correct measures in place to ensure that those who wish to be dealt with through the medium of Welsh will not be treated less favourably than those who follow these processes through the medium of English.

¹³ This figure was obtained from the Council’s Welsh Language Standards monitoring report for 2017-18, which is available here: <https://www.ewc.wales/site/index.php/en/about/ewc-news/item/71-welsh-language-standards-monitoring-report.html>

F. BIODIVERSITY IMPACT ASSESSMENT

Biodiversity underpins our lives and livelihoods and supports the functioning and resilience of ecosystems in oceans, wetlands, lakes, rivers, mountains, forests and agricultural landscapes.

Our economy, health and well-being depends on healthy, resilient ecosystems, which provide us with our food, clean water and the air we breathe, the raw materials and energy for our industries and protect us against hazards, such as flooding and climate change.

Changes in the distribution and abundance of plants, animals, and microbes affect ecosystem functions and the capacity of those functions to deliver ecosystem services. Loss of species from ecosystems affect their ability to resist invasion by other species, affect production and nutrient cycling, and affect the reliability and stability of ecosystems.

Therefore, biodiversity is essential to sustaining ecosystems that provide the vital services our lives depend on. Where biodiversity is lost and perhaps never fully recovered, it affects the capacity of ecosystems to adapt to changes and disturbances.

Section 6 in Part 1 of the Environment (Wales) Act 2016 (“the 2016 Act”) introduced an enhanced Biodiversity and Resilience of Ecosystems Duty (the s6 duty) for public authorities (as listed in s6(9) of the Act), including the Welsh Ministers, in the exercise of functions in relation to Wales .

The s6 duty requires that the Welsh Ministers must seek to maintain and enhance biodiversity so far as consistent with the proper exercise of their functions and in so doing promote the resilience of ecosystems.

We have carefully considered the full biodiversity impact of our proposals on the following areas:

- Procurement
- Management of buildings
- The potential for awareness raising and training
- The potential to support communities and partnerships
- Influencing others we fund e.g. consultants, contractors, grant schemes

We have concluded there is no direct link between our proposals to legislate to give the Council ISO powers and any impacts on biodiversity. However, the Welsh Government will work with the Council to monitor the use of ISO powers following the coming into force date of the proposed Education Workforce Council (Interim Suspension Orders) (Additional Functions) (Wales) Order 2021, and whether there are any unexpected impacts on biodiversity.