

2012 No. 560

EDUCATION, ENGLAND

The Teachers' Disciplinary (England) Regulations 2012

Made - - - - *28th February 2012*

Laid before Parliament *5th March 2012*

Coming into force - - *1st April 2012*

The Secretary of State for Education makes the following Regulations in exercise of the powers conferred by sections 141A(2), 141D(3), 141E(3) and 210(7) of, and Schedule 11A to, the Education Act 2002(a).

Citation and commencement

1. These Regulations may be cited as the Teachers' Disciplinary (England) Regulations 2012 and come into force on 1st April 2012.

Interpretation

2. In these Regulations—

“professional conduct panel” means a panel appointed by the Secretary of State in accordance with regulation 6;

“teacher” means a person who is employed or engaged to carry out teaching work at—

- (a) a school in England;
 - (b) a sixth form college in England(b);
 - (c) relevant youth accommodation in England(c);
 - (d) a children's home in England(d); or
 - (e) when section 53 of the Education Act 2011(e) is fully in force, a 16 to 19 Academy(f);
- and

(a) 2002 c.32. Sections 141A, 141D and 141E and Schedule 11A were inserted in the Education Act 2002 (“the Act”) by section 8 of the Education Act 2011 (c.21). See section 212(1) of the Act for the definitions of “prescribed” and “regulations”.

(b) See section 91(3A) of the Further and Higher Education Act 1992 (c.13) for the definition of “sixth form college”. Section 91(3A) was inserted by the Apprenticeships, Skills, Children and Learning Act 2009 (“the 2009 Act”) (c. 22), section 125 and Schedule 8, paragraphs 1 and 13 (1) and (3).

(c) See section 562(1A) of the Education Act 1996 (c.56) for the definition of “relevant youth accommodation”. Section 562(1A) was inserted by the 2009 Act, section 49(1) and (3).

(d) “Children's home” is defined in section 141A(2) of the Act as having the same meaning as in the Care Standards Act 2000 (c.14); see section 1 of that Act.

(e) 2011 c.21.

(f) See section 1B of the Academies Act 2010 (c.32) for the definition of a “16 to 19 Academy”. Section 1B was inserted by section 53(7) of the Education Act 2011.

“the prohibited list” means the list maintained by the Secretary of State under section 141C (1) of the Education Act 2002(a).

Teaching work

3.—(1) Subject to paragraph (3), each of the following activities is teaching work for the purposes of these Regulations—

- (a) planning and preparing lessons and courses for pupils(b);
- (b) delivering lessons to pupils;
- (c) assessing the development, progress and attainment of pupils; and
- (d) reporting on the development, progress and attainment of pupils.

(2) In paragraph (1)(b) “delivering” includes delivering lessons through distance learning or computer aided techniques.

(3) The activities specified in paragraph (1) are not teaching work for the purposes of these Regulations if the person carrying out the activity does so (other than for the purposes of induction) subject to the direction and supervision of a qualified teacher(c) or other person nominated by the head teacher to provide such direction and supervision.

Teachers’ standards

4. Any decision made under these Regulations may take into account any failure by a teacher to comply with the personal and professional conduct standards set out in part two of “Teachers’ Standards” published by the Secretary of State in July 2011(d).

Consideration of cases

5.—(1) This paragraph applies where the Secretary of State considers that a teacher—

- (a) may be guilty of unacceptable professional conduct or conduct that may bring the teaching profession into disrepute; or
- (b) has been convicted (at any time) of a relevant offence(e).

(2) Where paragraph (1) applies the Secretary of State must—

- (a) inform the teacher of the allegation that has been made against the teacher; and
- (b) give the teacher an opportunity to—
 - (i) submit evidence and make representations in writing; and
 - (ii) comment on any other relevant evidence.

(3) The Secretary of State may require any person to produce documents or other material evidence for the purposes of making the decision referred to in paragraph (4).

(4) The Secretary of State must consider all relevant evidence, representations and comments and decide whether the case should be—

- (a) discontinued; or
- (b) considered by a professional conduct panel,

and must inform the teacher of such decision.

(5) Where the Secretary of State decides that the case should be discontinued, the Secretary of State must at the request of the teacher publish a statement to that effect.

(a) Section 141(C) was inserted in the Act by section 8 of the Education Act 2011. It imposes a duty on the Secretary of State to keep a list containing the names of persons in relation to whom a prohibition order has effect.

(b) See section 3 of the Education Act 1996 (c.56) for the definition of “pupil”.

(c) See section 132 of the Education Act 2002 for the definition of “qualified teacher”.

(d) The Teachers’ Standards can be found at <http://www.education.gov.uk/>.

(e) See section 141B(4) Education Act 2002 for the definition of “relevant offence”

Appointment and membership of a professional conduct panel

6.—(1) Where the Secretary of State decides under regulation 5(4) that a case should be considered by a professional conduct panel, the Secretary of State must appoint such a panel in accordance with paragraph (2) to consider the case.

(2) A professional conduct panel must include at least three persons, comprising—

- (a) one or more teachers or persons who have been teachers in the past five years; and
- (b) one or more other persons.

Proceedings of a professional conduct panel

7.—(1) A professional conduct panel must consider cases referred to it by the Secretary of State in accordance with paragraphs (2) to (5) and regulations 9 to 11.

(2) Subject to paragraph (3), a professional conduct panel must determine all cases following a hearing.

(3) A professional conduct panel may determine a case without a hearing at the written request of the teacher who is the subject of the case.

(4) Where the professional conduct panel does not find the case proved, the Secretary of State must at the request of the teacher publish a statement to that effect.

(5) Where a professional conduct panel finds the teacher —

- (a) to have been guilty of unacceptable professional conduct or conduct that may bring the teaching profession into disrepute; or
- (b) to have been convicted (at any time) of a relevant offence,

the panel must make a recommendation to the Secretary of State as to whether a prohibition order should be made.

Decision of the Secretary of State

8.—(1) The Secretary of State must consider any recommendation made by a professional conduct panel before deciding whether to make a prohibition order.

(2) Where the Secretary of State decides to make a prohibition order, the Secretary of State must decide—

- (a) whether an application may be made for a review of the order under regulation 16; and
- (b) if the Secretary of State decides such an application may be made, the minimum period before the end of which no such application may be made.

(3) The minimum period under paragraph (2) must not be less than two years from the date on which the prohibition order takes effect.

(4) Where the Secretary of State decides not to make a prohibition order, the Secretary of State must notify the teacher in writing of the decision, giving reasons for the decision.

(5) The decision of the Secretary of State following the determination of a professional conduct panel must be published.

Entitlement to appear and be represented at hearings

9. A teacher who is the subject of a case may appear and make oral representations, and be represented by any person, at any hearing at which the case is considered.

Attendance of witnesses

10. The Secretary of State may require, or authorise the professional conduct panel to require, any person to attend and give evidence or to produce documents or other material evidence at any hearing.

Requirement for hearings to be held in public

11.—(1) Subject to paragraphs (2) and (3), a hearing of a professional conduct panel must take place in public.

(2) A professional conduct panel may deliberate at any time and for any purpose in private, during or after a hearing.

(3) A professional conduct panel may exclude the public from a hearing or any part of a hearing—

- (a) where it appears to the panel to be in the interests of justice or the public interest to do so; or
- (b) where the teacher who is the subject of the case requests that the hearing or part of the hearing should be in private and the panel does not consider it to be contrary to the public interest to do so.

Administration of oaths and affirmations

12. A professional conduct panel may require any witness at a hearing to give evidence on oath or affirmation.

Prohibition orders

13.—(1) A prohibition order must record the decision of the Secretary of State, the date on which the order is made, and the date on which the order takes effect.

(2) A prohibition order must in addition record—

- (a) whether an application for a review of the order by the Secretary of State may be made under regulation 16, and
- (b) if such an application may be made, the minimum period before the end of which no such application may be made and the procedure for making such an application.

(3) A prohibition order takes effect on the date on which notice of the order is served on the teacher to whom the order relates.

(4) The Secretary of State must—

- (a) serve notice of the prohibition order on the teacher to whom the order relates;
- (b) serve notice of the order on the teacher's employer and, where arrangements have been made by a person for the teacher to carry out work at the request of or with the consent of a relevant employer, that person.

(5) The notice referred to in paragraph (4)(a) must contain the following information:

- (a) the text of the order;
- (b) a description of the effect of the order;
- (c) the reasons for making the order; and
- (d) notification of the right to appeal to the High Court against the order within 28 days of service of notice of the order.

Interim prohibition orders

14.—(1) Subject to paragraph (2), the Secretary of State may make an interim prohibition order at any time pending a decision as to whether to make a prohibition order, if the Secretary of State considers that it is necessary in the public interest to do so.

(2) The Secretary of State must give the teacher to whom the interim prohibition order relates seven days' notice of the intention to make such an order.

(3) The Secretary of State must review an interim prohibition order—

- (a) within six months of the order being made; and

(b) thereafter at intervals of six months,
if the teacher to whom the order relates makes an application to the Secretary of State for such a review.

(4) An application under paragraph (3) must be made in writing and must specify the grounds upon which it is made.

(5) An interim prohibition order ceases to have effect if the case is discontinued or found not to be proved, or a decision has been made in relation to the teacher by the Secretary of State under regulation 8.

(6) No application for a review under regulation 16 or an appeal under regulation 17 may be made in relation to an interim prohibition order.

Publication of prohibition orders

15.—(1) The Secretary of State must publish the information set out in paragraph (2) in relation to a teacher to whom a prohibition order relates—

- (a) on a website which the Secretary of State maintains on the internet; or
- (b) in such other manner as the Secretary of State sees fit.

(2) The information to be published is—

- (a) the teacher's name, date of birth and Teacher Reference Number^(a);
- (b) the name of the institution at which the teacher was last employed or engaged to carry out teaching work or if the teacher was employed by a local authority, the name of the local authority;
- (c) the dates on which the prohibition order was made and takes effect; and
- (d) the reasons for making the order.

Review of prohibition orders

16.—(1) Subject to regulation 8(2), a teacher in relation to whom a prohibition order has been made may apply to the Secretary of State for the order to be set aside.

(2) An application under paragraph (1) must be made in writing and must specify the grounds upon which it is made.

(3) The Secretary of State may require any person to produce documents or other material evidence for the purposes of an application under paragraph (1).

(4) The Secretary of State must decide whether the application should be —

- (a) allowed; or
- (b) referred to a professional conduct panel for a recommendation as to whether it should be allowed.

(5) If the Secretary of State refuses an application under paragraph (1), the Secretary of State must specify the period before the end of which no further application may be made for a review of the order.

(6) The period in paragraph (5) must not be less than one year from the date on which the application was refused.

(7) Where the Secretary of State decides that the application should be referred to a professional conduct panel, the Secretary of State must—

- (a) appoint such a panel in accordance with regulation 6(2); and
- (b) consider any recommendation made by the panel before deciding whether to set aside the prohibition order.

(a) The Teacher Reference Number is a unique identifying number issued to each teacher by the Department for Education when they enter initial teacher training.

(8) Paragraphs (2) and (3) of regulation 7, and regulations 9 to 12, apply to any reference made by the Secretary of State under paragraph (7) as they apply in relation to a reference to a professional conduct panel under regulation 5(4).

Appeals

17. A person in relation to whom a prohibition order is made may appeal to the High Court within 28 days of the date on which notice of the order is served on that person.

Persons prohibited from teaching in Wales, Scotland or Northern Ireland

18. Regulations 16 and 17 do not apply in relation to persons who are included on the prohibited list under section 141C(2) of the Education Act 2002(a).

Service of notices and orders

19.—(1) Anything required to be served on a teacher for the purposes of these Regulations may be—

- (a) delivered to the teacher personally;
- (b) sent to or left at the teacher's last known address; or
- (c) where the teacher requests in writing that documents be served by such a method, sent by facsimile or electronic mail or similar means which are capable of producing a document containing the text of the communication.

(2) For the purposes of regulation 13(3) notice of a prohibition order shall be taken to have been served—

- (a) where it was delivered to the teacher personally, on the day of delivery;
- (b) where it was sent to the teacher by post or left at the teacher's last known address, on the fourth day after the day on which it was sent or left;
- (c) where the teacher requests in writing that documents be served by such a method, where it was sent by facsimile or electronic mail or similar means which are capable of producing a document containing the text of the communication, on the second day after the day on which it was transmitted.

Provision of information by employer

20.—(1) The information prescribed for the purposes of sections 141D(3) and 141E(3)(b) of the Education Act 2002 is the information set out in paragraph (2).

(2) The information referred to in paragraph (1) is—

- (a) information (including copies of relevant documents) relating to the teacher and the teacher's conduct; and
- (b) details (including copies of relevant documents) of any investigation into the teacher's conduct, including details of any disciplinary proceedings and the outcome of such proceedings.

28th February 2012

Nick Gibb
Minister of State
Department for Education

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- (a) Section 141C(2) allows the Secretary of State to include on the list of names of persons in relation to whom a prohibition order has effect, the name of any person who has been prohibited from teaching in Wales, Scotland or Northern Ireland.
 - (b) Sections 141D and 141E impose a duty on a relevant employer or an agent to consider whether it would be appropriate to provide prescribed information about the teacher to the Secretary of State when they have ceased to use the services of a teacher because the teacher has been guilty of serious misconduct, or might have done so had the teacher not ceased to provide those services or to be available for work.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations provide for the procedure to be followed by the Secretary of State in reaching a decision as to whether to make a prohibition order in respect of a teacher under section 141B(2) of the Education Act 2002 (“the Act”). A prohibition order prohibits the person to whom it relates from carrying out teaching work. Under section 141C(1) of the Act, the Secretary of State must keep a list containing the names of persons in relation to whom a prohibition order has effect.

Where the Secretary of State considers that a teacher may be guilty of unacceptable professional conduct or conduct that may bring the teaching profession into disrepute, or may have been convicted of a relevant offence, the Secretary of State must decide whether the case should be discontinued or referred to a professional conduct panel, at which the teacher may appear and be represented (regulations 5 to 12).

The Secretary of State may make a prohibition order where a professional conduct panel finds the case against the teacher to have been proved. The panel must make a recommendation to the Secretary of State as to whether a prohibition order should be made (regulation 7(5)). The information to be included in a prohibition order is set out in regulation 13 and the order takes effect on the date on which notice of the order is served on the teacher to whom it relates. There is a right of appeal to the High Court within 28 days of the date on which notice is served (regulation 17).

The Secretary of State may also make an interim prohibition order pending a final decision if it appears necessary in the public interest to do so. Other than in relation to reviews and appeals (regulations 16 and 17), the same provisions apply to interim prohibition orders as to other prohibition orders. Under section 141C(3) of the Act, where the name of a person is included on the list under section 141C(1) because an interim prohibition order has effect there must be an indication on the list to that effect.

The Secretary of State may allow an application to be made for a prohibition order to be set aside after a specified minimum period.

Any decision made under these Regulations may take into account any failure by a teacher to comply with the personal and professional conduct standards set out in the Teachers’ Standards (regulation 4), which may be found at <http://www.education.gov.uk/>.

The Regulations also specify the information which employers and contractors must provide to the Secretary of State where they dismiss a teacher on the grounds of serious misconduct or might have done so had the teacher not already resigned.

An impact assessment has not been prepared for this instrument as no impact on businesses or civil society organisations is foreseen (other than in so far as the Regulations apply to independent schools). The impact on the public sector is minimal.

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STATUTORY INSTRUMENTS

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