



Reporting Misconduct and Incompetence in the Education Service

Reporting Cases of Misconduct or Professional Incompetence in the Education
Service - Revised Reporting Arrangements from 12 October 2009

Guidance

Welsh Assembly Government Circular No: 018/2009

Date of issue: 25 September 2009

Replaces Circular No: 33/2005

Reporting Misconduct and Incompetence in the Education Service

- Audience** Governing Bodies of Schools, Local Authorities in Wales: Directors of Education, HR Directors, Local Safeguarding Children Boards, Head Teachers of Maintained Schools, Voluntary Aided Schools and Foundation Schools, Proprietors of Independent Schools, Non-maintained Special Schools, Sixth Form Colleges, Pupil Referral Units, Principals of FE Institutions, Principals of HE Institutions, Teaching unions, Church Diocesan Authorities, Teacher Supply Agencies, Careers Wales Companies, Governors Wales, the General Teaching Councils for Wales, England, Scotland, Northern Ireland and the Teaching Council of Ireland, the Recruitment and Employment Confederation, and those bodies listed in Schedule 1 of the General Teaching Council for Wales (Constitution) Regulations 1999, as amended.
- Overview** This document sets out the new reporting arrangements for cases of professional misconduct and professional incompetence in the education service which will come into force on **12 October 2009** following the introduction of the Education (Supply of Information) (Wales) Regulations 2009.
- Action required** All employers and agents to have regard to this guidance when they cease to use a teacher or other person services, or might have ceased to have used a teacher or other person's services had the person not ceased to provide those services. This guidance replaces existing guidance circular 33/2005 "Reporting Cases of Misconduct or Professional Incompetence in the Education Sector".
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- Related documents** Child Protection: Preventing Unsuitable People from Working with Children and Young Persons in the Education Service (NAfW circular 34/02); Staff Disciplinary Procedures in Schools (NAfW circular 45/2004); Welsh Assembly Government Circular 005/2008 Safeguarding Children in Education.



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Summary

1.1 This circular provides detailed guidance for employers and agents on the changes that have been made to the arrangements for reporting cases of misconduct in the education service in Wales as a result of the Safeguarding Vulnerable Groups Act 2006 and the Education (Supply of Information) (Wales) Regulations 2009. **All employers should follow this guidance from 12 October 2009.**

1.2 This circular replaces National Assembly for Wales Circular 33/2005 *“Reporting Cases of Misconduct or Professional Incompetence in the Education Sector”*, issued in December 2005 which set out the reporting arrangements under the old Education (Supply of Information) (Wales) Regulations 2003. All employers should continue to follow this guidance until the new reporting arrangements come into force on 12 October 2009.

1.3 This circular does not provide comprehensive guidance on the new Vetting and Barring Scheme, the ISA and the wider implications for employers and agents. This information is available on the ISA website at www.isa.gov.org. Contact information for the ISA is at Annex D.

1.4 This guidance is non-statutory and should not be regarded as authoritative legal advice. If there is any doubt as to the application or interpretation, advice should be sought from a legal advisor.

1.5 Prior to public consultation this document has been considered by the School Workforce Advisory Panel (SWAP) whose members have agreed that there appear to be no significant workload issues.

Background

The Vetting and Barring Scheme

2.1 The Vetting and Barring Scheme is one of the UK Government's key responses to the murders of Holly Wells and Jessica Chapman by Ian Huntley, which focussed public attention on the way that people who work with children are vetted. The resulting Bichard Inquiry recommended a new scheme under which everyone working with children and vulnerable adults should be checked and registered. This led to the creation of the Safeguarding Vulnerable Groups Act 2006, which set up the Vetting and Barring Scheme ("the Scheme"). The Scheme applies to England, Wales and Northern Ireland; Scotland has put in place parallel arrangements.

2.2 The Scheme recognises the need for a single agency to vet and register all individuals who want to work or volunteer with children or vulnerable adults, and to bar unsuitable people. The Independent Safeguarding Authority (ISA) was created to fulfil this role for England, Wales and Northern Ireland. The ISA is a Non-Departmental Public Body sponsored by the Home Office. The ISA will bar people who are a known risk to children or vulnerable adults, and register people for whom there is no known reason why they would pose a risk.

2.3 The main changes under the Scheme are:

- **Introduction of "Regulated Activity"**: "Regulated activity" is the broad term used in the Safeguarding Vulnerable Groups Act 2006 to cover activities where people are working or volunteering closely with children and/or vulnerable adults. Regulated activity includes:
 - undertaking specific activities such as teaching, instructing, supervising, caring for or providing children/vulnerable adults with guidance or treatment, and fostering and childminding;
 - specific positions such as school governor, director of children or adult social services, and any work carried out in a limited range of specified settings such as schools, care homes and day nurseries/playgroups;

- people who manage, on a regular basis, the day to day work of those carrying out specific activities or working in specific settings.
- **Integration of the lists:** From 12th October 2009 the three current barring lists (Protection of Children Act (POCA), Protection of Vulnerable Adults (POVA) and List 99) will be replaced by the creation of two new barred lists (the 'Children's Barred List' and the 'Adults Barred List') that will be administered by the ISA rather than several government departments.
- **Duty to refer information:** Employers, personnel suppliers (employment agencies/ businesses and educational institutions which arrange student placements), local authorities and professional regulators have a duty to refer to the ISA any information about individuals who may pose a risk to children and vulnerable adults, ensuring potential threats to vulnerable groups can be identified and dealt with.
- **Independent and consistent decision making:** Previously, in England and Wales, decisions to bar or restrict employment with children were made by the Secretary of State at the Department for Children, Schools and Families (DCSF). From 20 January 2009 the ISA began taking decisions on the three current barring lists and from 12 October the ISA will take all discretionary decisions on who should be placed on the new ISA barred lists both prior to an individual's employment and, if necessary, following a referral into the Scheme.
- **Pre-employment checks:** the Scheme will help to ensure that those who are known to present a risk of harm to children and/or vulnerable adults are prevented from entering the relevant workforce in the first place. Individuals wishing to undertake "regulated activity" (e.g. teaching) will need to become a member of the Scheme by registering with the ISA. All ISA-registered individuals will be subject to continuous monitoring. When new information such as a caution or conviction, or a referral from an employer, that shows that they pose a risk to children and/or vulnerable adults, becomes known

about an individual registered with the ISA, the ISA will review its original decision to register them. This part of the Scheme will come into force in July 2010 and will be phased in over a number of years until 2015; further guidance on this is available from the ISA.

Summary of changes to reporting arrangements for cases of misconduct in the education sector

2.4 Previously, employers and teacher supply agencies in Wales were required, under the Education (Supply of Information) (Wales) Regulations 2003, to report cases of professional misconduct to the Welsh Assembly Government (who would then forward cases on to the Secretary of State at the Department for Children, Schools and Families to consider under Section 142 of the Education Act 2002), and cases of professional incompetence to the General Teaching Council for Wales. Similar arrangements applied to Careers Wales companies as part of their annual contracts with Welsh Ministers.

2.5 Because of the requirements of the Scheme, described above, the way in which cases of misconduct in the education service are reported will change.

2.6 From **12 October 2009** the Welsh Assembly Government no longer plays a role in the referral of cases of professional misconduct. Employers will need to make direct referrals to the ISA under the Safeguarding Vulnerable Groups Act 2006 where there is a safeguarding issue and otherwise to the General Teaching Council for Wales under the Education (Supply of Information) (Wales) Regulations 2009 depending on the nature of the act and whether it was committed by a registered teacher or other worker. A summary of the referral routes is provided and more detailed information is set out in Sections 3 and 4 of this document.

2.7 The new referral routes from 12 October 2009:

- **Direct referrals to the ISA:** Under Sections 35, 36 and 39 of the Safeguarding Vulnerable Groups Act 2006 employers, agents and local authorities are required to report directly to the ISA people who have harmed, or pose a risk of harm, to children and/or vulnerable adults. An extract from Sections 35, 36 and 39 of the Act is provided at Annex B.
- **Direct referrals to the General Teaching Council for Wales:** Employers of teachers registered with the General Teaching Council for Wales and supply agencies must report cases of misconduct and professional incompetence to the General Teaching Council for Wales where the teachers have **not** harmed, or posed a risk of harm, to children and/or vulnerable adults. The Regulations that cover these reporting arrangements are the Education (Supply of Information) (Wales) Regulations 2009. A copy of the Regulations is at Annex A.

Circumstances in which cases need to be reported directly to the Independent Safeguarding Authority

3.1 Employers and service providers must refer information to the ISA under the Safeguarding Vulnerable Groups Act 2006 when they have removed an individual from regulated activity because the employer thinks (s)he has engaged in relevant conduct or posed a risk of harm to children or vulnerable adults, or an individual leaves their post in circumstances where they would or might otherwise have been removed because they harmed, or posed a risk of harm, to a child or vulnerable adult.

3.2 The following organisations have a legal obligation to refer relevant information to the ISA:

- Adult/child protection teams in local authorities;
- Professional bodies and supervisory authorities named in the Safeguarding Vulnerable Groups Act 2006;
- Employers and service providers of regulated and controlled activity; and
- Personnel suppliers (for example, employment agencies, employment businesses and educational institutions which arrange student placements).

3.3 If an employee leaves their post before they are dismissed, the employer must refer the employee to the ISA if the employee would, or might, have been dismissed because of a safeguarding issue.

3.4 Relevant information should be referred to the ISA as soon as it becomes available. The new scheme will only work effectively if the ISA can reduce the time between an individual becoming a known risk and that individual being barred from working with children and/or vulnerable adults.

3.5 The information to be referred to the ISA should include any disciplinary matters that would highlight a concern relating to the harm or risk of harm to children or vulnerable adults and other information such as:

- minutes of disciplinary hearings;
- witness statements;

- dismissal/suspension letter;
- social services records.

Additionally, employers, local authorities and personnel suppliers must provide certain information to the ISA if requested to do so.

3.6 The ISA has developed a referral form for employers to use to make case referrals. Employers are requested to complete the appropriate form and return it to the ISA with any supporting documentation. Further information on how to make a referral to the ISA, including the referral forms, is available on the ISA website at www.isa-gov.org.

Circumstances in which cases need to be reported directly to the General Teaching Council for Wales

Misconduct

4.1 Relevant employers are required by the Education (Supply of Information) (Wales) Regulations 2009 to make a report to the General Teaching Council for Wales where they cease to use a registered teacher's services on grounds of misconduct, professional incompetence or conviction of a relevant offence, where the conduct does not involve the harm, or risk of harm, to a child. This could include cases where the teacher has, for example, falsified coursework, or stolen money from the school.

4.2 A report is also required where the employer might have ceased to use the registered teacher's services on one of those grounds had he or she not already ceased to provide the services. A relevant employer is therefore required to make a report if the registered teacher resigns in circumstances where he or she might have been dismissed on those grounds.

4.3 Agents are required to make a report to the General Teaching Council for Wales where an agent has terminated arrangements for a registered teacher on a ground of misconduct, professional incompetence, or conviction of a relevant offence where the conduct **does not** involve the harm, or risk of harm, to a child.

4.4 A report is also required when the agent might have terminated arrangements on such a ground if the registered teacher had not terminated them; or might have refrained from making new arrangements for a registered teacher on such a ground if the registered teacher had not ceased to make himself or herself available for work.

4.5 Where a registered teacher resigns while disciplinary proceedings for an allegation of gross misconduct are pending or incomplete, the relevant employer or agent should complete the disciplinary proceedings so far as possible and advise the staff member that they will be doing so. In the case of resignation in such circumstances, governing bodies need to arrive at a view on the basis of all available evidence as to whether dismissal would have been the appropriate outcome if resignation had not taken place.

4.6 The General Teaching Council for Wales may also consider cases of alleged misconduct against a registered teacher that are referred directly to it from a person other than an employer or agent (for example a parent or colleague), provided the alleged misconduct does not involve the harm, or risk of harm, to a child. In this case a duly authorised officer of the Council decides if the case should be investigated.

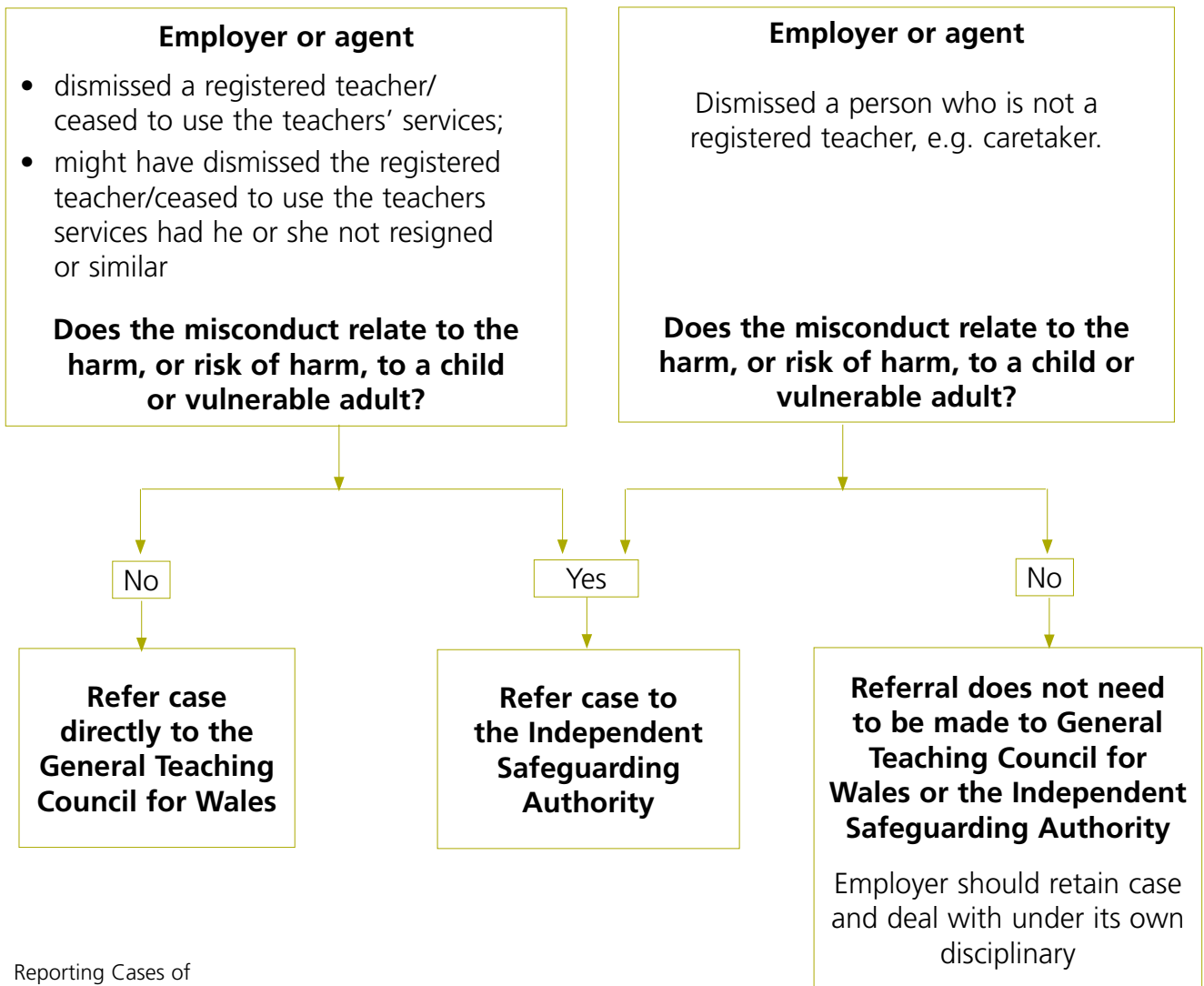
4.7 Those cases where a registered teacher has been dismissed (or would or might have been dismissed had they not resigned) because they have harmed, or pose a risk of harm, to a child or vulnerable adult must be referred directly to the ISA by employers and agents following the guidance set out in Section 3.

4.8 Cases should be reported to the General Teaching Council for Wales promptly, preferably within a month of ceasing to use a registered teacher's services. It is particularly important that reports contain the full facts of the case and are accompanied by copies of any supporting evidence, such as statements relating to the misconduct, notes of any interviews with the teacher, and minutes of any disciplinary hearings. The Schedule to the Education (Supply of Information) (Wales) Regulations 2009 at Annex A sets out in further details the information that should be provided to the General Teaching Council for Wales by employers and agents.

4.9 Employers and agents should also inform the teacher in question that the circumstances of his or her case will be reported to the General Teaching Council for Wales to be considered under their disciplinary procedures. The employer or agent may find it helpful to give the teacher a copy of this guidance circular and a copy of the General Teaching Council for Wales's guidance on its disciplinary procedures, copies of which can be obtained by contacting the General Teaching Council for Wales at the details provided at Annex D, or by accessing it on the General Teaching Council for Wales website at www.gtcw.org.uk.

4.10 Once a report has been received the General Teaching Council for Wales will investigate the case under its disciplinary procedures. The outcome of the disciplinary proceedings will determine whether the teacher is eligible to remain on the Council's Register. The Council will also deal in the same way with cases of professional incompetence or cases where a registered teacher has been convicted at any time of a relevant offence, or it appears that a registered teacher may be so guilty or have been so convicted.

Routes for referring cases of misconduct for teachers and others



Incompetence

4.11 Reporting arrangements for professional incompetence are not changed in this instance. Employers and agents are still required to report cases of professional incompetence relating to a registered teacher directly to the General Teaching Council for Wales. A report must be made where:

- **an employer:**
 - a. has ceased to use the services of a registered teacher on a ground relating to his or her professional incompetence; or
 - b. might have ceased to use the services of a registered teacher on that ground had he or she not ceased to provide these services.
- **an agent:**
 - a. has terminated arrangements for a worker who is a registered teacher to carry out work on a ground relating to his or her professional incompetence;
 - b. might have terminated arrangements on a ground relating to his or her professional incompetence if the registered teacher had not terminated them; or
 - c. might have refrained from making new arrangements for a registered teacher on a ground relating to his or her professional incompetence if the worker had not ceased to make himself or herself available for work.

4.12 The Schedule to the Education (Supply of Information) (Wales) Regulations 2009 at Annex A sets out in further detail the information that should be provided to the General Teaching Council for Wales by employers and agents.

Referral route for cases of professional incompetence

Employer or agent

- dismissed the registered teacher/ ceased to use the teachers' services;
- might have dismissed the teacher/ceased to use the teachers services had he or she not resigned or similar

**Refer case to the
General Teaching
Council for Wales**

Other instances where a report should be made to either the ISA or the General Teaching Council for Wales

Compromise agreements

5.1 If an employer or agent reaches a compromise agreement with a teacher that they may leave employment and the circumstances giving rise to this fall within Sections 3 and 4 of this guidance, the employer or agent still has a duty to report the case to the ISA or to the General Teaching Council for Wales in accordance with the procedures set out in Sections 3 and 4. A Careers Wales company reaching a compromise agreement with a member of staff undertaking a regulated activity will also have a duty to report the case to the ISA.

Students

5.2 Unless acting as personnel suppliers, teacher training institutions, and further education institutions that provide courses of training for nursery nurses and other child care workers, are not required by law to report convictions or other misconduct by students on those training courses to the General Teaching Council for Wales. They are, however, required to report a case under the Safeguarding Vulnerable Groups Act 2006 to the Independent Safeguarding Authority if the circumstances indicate that the person is unsuitable to work with children and/or vulnerable adults and should be barred to prevent him or her seeking work with children and/or vulnerable adults in another area. Such circumstances might arise where an institution withdraws a person from a training course as a result of a conviction or misconduct involving children.

5.3 Where a teacher training institution or further education institution is acting as a personnel supplier there is a duty on them to report information to the ISA under the Safeguarding Vulnerable Groups Act 2006, if a person has harmed, or posed a risk of harm, to a child or vulnerable adult.

General Issues

Other cases

6.1 Where a person working in a regulated activity has been dismissed on the grounds of unsuitability (where an act of misconduct has not occurred); lack of health or physical capacity to carry out a relevant activity; or cases that involve non-teachers (e.g. caretakers, office staff) that do not involve the harm, or risk of harm, to a child, the case will need to be dealt with solely under the employer's own disciplinary procedures and not referred to the ISA or the General Teaching Council for Wales.

Confidentiality of reports

6.2 Reports are dealt with in strict confidence by the ISA and the General Teaching Council for Wales. All available evidence, case papers and records are stored confidentially and securely. The ISA and the General Teaching Council for Wales do not comment about individual cases in response to enquiries from the media or the public. When reports are submitted they need to be marked 'private and confidential'.

Sharing of information

6.3 Generally the General Teaching Council for Wales and the ISA will only share information with the teacher or worker whose case has been reported but in some instances the General Teaching Council for Wales or the ISA may share information with the employer or referring party if it is determined it is necessary for them to make comment. It is for the employer (in conjunction with the Area Child Protection Committee if there are child protection concerns) to consider the need to share any information relating to the case with other employers/potential employers.

6.4 In some circumstances, for example if a case may lead to barring or restriction, the ISA may disclose factual information to a prospective employer. They may also disclose information to the police.

Annex A

W E L S H
S T A T U T O R Y I N S T R U M E N T S

2009 No. 1350 (W.126)

EDUCATION, WALES

The Education (Supply of Information) (Wales) Regulations 2009

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations require the employers of teachers registered with the General Teaching Council for Wales (“the Council”) and supply agencies to report cases of misconduct and incompetence to the Council other than those cases they are required to provide information about to the Independent Barring Board under the Safeguarding Vulnerable Groups Act 2006. They revoke the Education (Supply of Information) (Wales) Regulations 2003 which required misconduct cases to be reported to the Welsh Ministers and incompetence cases to be reported to the Council. Under these new Regulations all cases are to be reported to the Council.

Employers must make a report to the Council if they cease to use a registered teacher’s services on a specified ground or if they might have done so had that teacher not already ceased to provide his or her services. Agents must make a report to the Council if they have arranged for a registered teacher to carry out work on behalf of a local education authority, a governing body or a proprietor of an independent school and terminate those arrangements on a specified ground, or might have done so had the teacher not already terminated the arrangements or ceased to be available for work. The specified grounds are misconduct, professional incompetence and conviction of a relevant offence. A relevant offence is an offence other than one having no material relevance to a person’s fitness to be a registered teacher.

The Schedule sets out the information to be provided in the reports.

2009 No. 1350 (W.126)

EDUCATION, WALES

The Education (Supply of
Information) (Wales) Regulations
2009

Made 2 June 2009

Laid before the National Assembly for Wales
4 June 2009

Coming into force 12 October 2009

The Welsh Ministers make the following Regulations in exercise of the powers conferred on the Secretary of State by sections 6, 15, 15A and 42(6) and (7) of, and Schedule 2 to, the Teaching and Higher Education Act 1998⁽¹⁾ and now vested in the Welsh Ministers⁽²⁾, and after consulting the General Teaching Council for Wales in accordance with section 42(9) of the Act.

Title, commencement and application

1.—(1) The title of these Regulations is the Education (Supply of Information) (Wales) Regulations 2009 and they come into force on 12 October 2009.

(2) These Regulations apply in relation to Wales.

(3) These Regulations do not apply where a relevant employer or an agent is required to provide information to the Independent Barring Board under section 35, 36 or 39 of the Safeguarding Vulnerable

(1) 1998 c.30. Schedule 2 applies in relation to the Council by virtue of section 9 of the 1998 Act. Section 15 was substituted and section 15A was inserted by paragraph 83 of Schedule 21 to the Education Act 2002 (c.32) and both sections were subsequently amended by paragraphs 5 and 6 of Schedule 9 to Safeguarding Vulnerable Groups Act 2006 (c.47). For the meaning of “prescribed” see section 43(1) of the 1998 Act.

(2) The Secretary of State’s functions were transferred to the National Assembly for Wales by virtue of section 211 of the Education Act 2002 and the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672) and then to the Welsh Ministers by virtue of paragraph 30 of Schedule 11 to the Government of Wales Act 2006 (c.32).

Groups Act 2006⁽¹⁾ in relation to a registered teacher's case, the facts of which they would otherwise be required to report under regulation 4(1) or 5(1) of these Regulations.

Revocation

2. The Education (Supply of Information) (Wales) Regulations 2003⁽²⁾ are revoked.

Interpretation

3. Except where the context otherwise requires, in these Regulations—

“the 1998 Act” (“*Deddf 1998*”) means the Teaching and Higher Education Act 1998;

“agent” (“*asiant*”) has the meaning given by section 15A(1) of the 1998 Act;

“arrangements” (“*trefniadau*”) means arrangements of the kind referred to in section 15A(1) of the 1998 Act for a worker who is a registered teacher to carry out work in Wales;

“Committee” (“*Pwyllgor*”) means an Investigating Committee, a Professional Competence Committee or a Professional Conduct Committee established under the General Teaching Council for Wales (Disciplinary Functions) Regulations 2001⁽³⁾;

“the Council” (“*y Cyngor*”) means the General Teaching Council for Wales;

“Investigating Committee” (“*Pwyllgor Ymchwilio*”) means a committee established under regulation 3(1) of the General Teaching Council for Wales (Disciplinary Functions) Regulations 2001;

“registered teacher” (“*athro cofrestredig neu athrawes gofrestrdig*”) means –

- (a) a person for the time being registered under section 3 of the 1998 Act;
- (b) a person who was registered under section 3 of the 1998 Act at the time of any alleged conduct or offence on his or her part; or
- (c) a person who has made an application to be registered under section 3 of the 1998 Act;

“relevant employer” (“*cyflogwr perthnasol*”) has the meaning given by section 15(5) of the 1998 Act; and

“services” (“*gwasanaethau*”) means services provided to a relevant employer in Wales and includes professional and voluntary services.

⁽¹⁾ 2006 c.47.

⁽²⁾ S.I. 2003/542 (W.76).

⁽³⁾ S.I. 2001/1424 (W.99).

Employer's reports

4.—(1) Where a relevant employer—

- (a) has ceased to use the services of a registered teacher on the ground of —
 - (i) misconduct;
 - (ii) professional incompetence; or
 - (iii) conviction of a relevant offence within the meaning of paragraph 8 of Schedule 2 to the 1998 Act, or
- (b) might have ceased to use a registered teacher's services on such a ground had the teacher not ceased to provide those services,

the employer must report the facts of the case and provide all the information listed in Part 1 of the Schedule that is available to the employer in relation to the teacher to the Council.

(2) The Council must make all information provided to them under this regulation available to an Investigating Committee.

Agent's reports

5.—(1) Where an agent—

- (a) has terminated arrangements on the ground of—
 - (i) misconduct;
 - (ii) professional incompetence; or
 - (iii) conviction of a relevant offence within the meaning of paragraph 8 of Schedule 2 to the 1998 Act;
- (b) might have terminated arrangements on such a ground if the registered teacher had not terminated them; or
- (c) might have refrained from making new arrangements for a registered teacher on such a ground if the teacher had not ceased to make himself or herself available for work,

the agent must report the facts of the case and provide all the information listed in Part 2 of the Schedule that is available to the agent in relation to the teacher to the Council.

(2) The Council must make all information provided to them under this regulation available to an Investigating Committee.

Jane Hutt

Minister for Children, Education, Lifelong Learning
and Skills, one of the Welsh Ministers

2 June 2009

SCHEDULE

Regulations 4 and 5

PART 1

Information to be supplied by a relevant employer

1. A statement of reasons for ceasing to use the person's services.

2. Employer's records relating to the cessation of the use of the person's services or any contemplated cessation, including notes and minutes of meetings, interview notes, and evidence supplied to or obtained by the employer.

3. Employer's records relating to the conduct which eventually led to the cessation of the use of the person's services or might, but for the person having ceased to provide those services, have led the employer to cease to use his or her services, including notes and minutes of meetings, interview notes, and evidence supplied to or obtained by the employer.

4. Employer's letters, warnings or notices issued to a person in relation to the cessation of the use of his or her services or contemplated cessation, or the conduct which eventually led to the cessation of the use of the person's services or might, but for the person having ceased to provide those services, have led the employer to cease to use his or her services, and the person's replies or representations in relation thereto.

5. Any other statements, representations and evidence submitted by a person to the employer in relation to the cessation of the use of his or her services or contemplated cessation, or the conduct which eventually led to the cessation of the use of the person's services or might, but for the person having ceased to provide those services, have led the employer to cease to use his or her services.

6. Letter advising a person's intention to cease to provide services.

7. Any other document or information which the employer considers is relevant to any investigation which may be carried out by an Investigating Committee or any proceedings which may be taken by a Committee against a registered teacher.

PART 2

Information to be supplied by an agent

1. A statement of reasons for terminating the arrangements.

2. Any records relating to the termination of the arrangements or any contemplated termination, including notes and minutes of meetings, interview notes, and evidence supplied to or obtained by the agent.

3. Any records relating to the conduct which eventually led to the termination of arrangements or might, but for the worker having terminated arrangements, have led the agent to terminate them, or might, but for the worker having ceased to make himself or herself available for work, have led the agent to refrain from making new arrangements, including notes and minutes of meetings, interview notes, and evidence supplied to or obtained by the agent.

4. Agent's letters, warnings or notices issued to a person in relation to the termination of arrangements, or the conduct which eventually led to the termination of arrangements or might, but for the worker having terminated arrangements, have led the agent to terminate them, or might, but for the worker having ceased to make himself or herself available for work, have led the agent to refrain from making new arrangements, and the worker's replies or representations in relation thereto.

5. Any other statements, representations and evidence submitted by a person to the agent in relation to the termination of arrangements, or the conduct which eventually led to the termination of arrangements or might, but for the worker having terminated arrangements, have led the agent to terminate them, or might, but for the worker having ceased to make himself or herself available for work, have led the agent to refrain from making new arrangements.

6. Worker's letter terminating arrangements or ceasing to make himself or herself available for work.

7. Any other document or information which the agent considers is relevant to any investigation which may be carried out by an Investigating Committee or any proceedings which may be taken by a Committee against a registered teacher.

Reporting Cases of
Misconduct
September 2009
Guidance Circular
No: 018/2009

Annex B

Circumstances under which an Employer or Agent will be under a duty to refer information to the Independent Safeguarding Authority

(Extract from Sections 35, 36 and 39 of the Safeguarding Vulnerable Groups Act 2006)

35. Regulated activity providers: duty to refer

(1) Subsection (2) applies to -

- a. a regulated activity provider who holds any prescribed information in relation to a person (P) engaged in regulated activity provided by him;
- b. a responsible person (within the meaning of section 23) who holds any prescribed information in relation to a person (P) whom he permits to engage in controlled activity.

(2) A person to whom this subsection applies must provide IBB* with the information if -

- a. he withdraws permission for P to engage in the activity for a reason mentioned in subsection (3), or
- b. he does not withdraw permission for such a reason but would or might have done so if P had not otherwise ceased to engage in the activity.

(3) The reasons are that the person to whom subsection (2) applies thinks -

- a. that paragraph 1, 2, 7 or 8 of Schedule 3 applies to P,
- b. that P has engaged in relevant conduct (within the meaning of paragraph 4 or 10 of Schedule 3), or
- c. that the harm test is satisfied.

*Read IBB as the ISA. ISA is the corporate name given to the Independent Barring Board set up under the SVG Act.

**Extract from
Sections 35, 36
and 39 of the
Safeguarding
Vulnerable
Groups Act 2006**

- (4) The harm test is that P may -
- a. harm a child or vulnerable adult,
 - b. cause a child or vulnerable adult to be harmed,
 - c. put a child or vulnerable adult at risk of harm,
 - d. attempt to harm a child or vulnerable adult, or
 - e. incite another to harm a child or vulnerable adult.
- (5) For the purposes of subsection (3)(b), conduct is inappropriate if it appears to the person to whom subsection (2) applies to be inappropriate having regard to the guidance issued by the Secretary of State under paragraph 4(6) or 10(6) of Schedule 3.
- (6) If regulated activity engaged in by P -
- a. is regulated activity relating to vulnerable adults, and
 - b. falls within section 16,
- subsection (2) must be read as if for "must" there were substituted "may".
- (7) This section does not apply if the conditions specified in subsection (2) are fulfilled before the section is commenced

36. Personnel suppliers: duty to refer

- (1) A personnel supplier must provide IBB with any prescribed information it holds in relation to a person (P) who has been supplied by it to another person if the supplier knows that P has ceased to be engaged in regulated activity or controlled activity in the circumstances mentioned in subsection (2)(a) or (b) of section 35.
- (2) A personnel supplier which is an employment agency or employment business must provide IBB with any prescribed information it holds in relation to a person (P) for whom it acts if -
- a. the agency or business determines to cease to act for P for a reason mentioned in subsection (4), or

- b. it does not determine to cease to act for P for such a reason but would or might have done so if its arrangement with, or employment of, him had not otherwise come to an end.
- (3) A personnel supplier which is an educational institution must provide IBB with any prescribed information it holds in relation to a student (P) following a course at the institution if -
- a. the institution determines to cease to supply P to another person for him to engage in regulated or controlled activity for a reason mentioned in subsection (4),
 - b. the institution determines that P should cease to follow a course at the institution for a reason mentioned in subsection (4), or
 - c. it does not determine as mentioned in paragraph (a) or (b) for such a reason but would or might have done so if P had not otherwise ceased to engage in the activity or ceased to follow the course.
- (4) The reasons are that the personnel supplier thinks -
- a. that paragraph 1, 2, 7 or 8 of Schedule 3 applies to P,
 - b. that P has engaged in relevant conduct (within the meaning of paragraph 4 or 10 of Schedule 3), or
 - c. that the harm test is satisfied.
- (5) The harm test is that P may -
- a. harm a child or vulnerable adult,
 - b. cause a child or vulnerable adult to be harmed,
 - c. put a child or vulnerable adult at risk of harm,
 - d. attempt to harm a child or vulnerable adult, or
 - e. incite another to harm a child or vulnerable adult.

(6) For the purposes of subsection (4)(b), conduct is inappropriate if it appears to the personnel supplier to be inappropriate having regard to the guidance issued by the Secretary of State under paragraph 4(6) or 10(6) of Schedule 3.

(7) An employment agency acts for a person if it makes arrangements with him with a view to -

- a. finding him employment with an employer, or
- b. supplying him to employers for employment by them.

(8) An employment business acts for a person if it employs him to act for and under the control of other persons in any capacity.

(9) In this section "employment" has the same meaning as in the Employment Agencies Act 1973 (c. 35).

(10) This section does not apply if the conditions specified in subsection (1), (2) or (3) are fulfilled before the section is commenced.

39. Local authorities: duty to refer

(1) A local authority must provide IBB with any prescribed information they hold relating to a person if the first and second conditions are satisfied.

(2) The first condition is that the local authority thinks -

- a. that paragraph 1, 2, 7 or 8 of Schedule 3 applies to the person,
- b. that the person has engaged in relevant conduct (within the meaning of paragraph 4 or 10 of Schedule 3) occurring after the commencement of this section, or
- c. that the harm test is satisfied.

- (3) The harm test is that the person may -
 - f. harm a child or vulnerable adult,
 - g. cause a child or vulnerable adult to be harmed,
 - h. put a child or vulnerable adult at risk of harm,
 - i. attempt to harm a child or vulnerable adult, or
 - j. incite another to harm a child or vulnerable adult.
- (4) The second condition is that the local authority thinks -
 - a. that the person is engaged or may engage in regulated activity or controlled activity, and
 - b. (except in a case where paragraph 1, 2, 7 or 8 of Schedule 3 applies) that IBB may consider it appropriate for the person to be included in a barred list.
- (5) A local authority may provide IBB with any prescribed information it holds relating to a person if -
 - a. (a) the local authority think that a person has engaged in relevant conduct (within the meaning of paragraph 4 or 10 of Schedule 3) occurring before the commencement of this section, and
 - b. (b) the condition in subsection (4) is satisfied.
- (6) For the purposes of subsection (2)(b) or (5)(a), conduct is inappropriate if it appears to the local authority to be inappropriate having regard to the guidance issued by the Secretary of State under paragraph 4(6) or 10(6) of Schedule 3.
- (7) "Local authority" has the same meaning as in section 1 of the Local Authorities (Goods and Services) Act 1970 (c. 39).

Annex C

Definitions

Definition of a 'registered teacher'

'Registered Teacher' means -

- a person who is registered with the General Teaching Council for Wales;
- a person who was registered with the General Teaching Council for Wales at the time of any alleged conduct or offence on his or her part; or
- a person who has made an application to be registered with the General Teaching Council for Wales.

Definition of a 'relevant employer'

The Regulations refer to a 'relevant employer' or an 'agent', as being the body who is required to make a report.

'Relevant employer' has the meaning set out in Section 15(5) of the Teaching and Higher Education Act 1998, i.e.

- a local education authority;
- a person exercising a function relating to the provision of education on behalf of a local education authority;
- the proprietor of a school; or
- the governing body of a further education institution

In the case of a maintained school, the employer would usually be the relevant Local Education Authority (LEA). While maintained schools can submit reports themselves, they are advised to discuss the matter with their LEA. Where a referral is made by a school, it should usually be made by the headteacher on behalf of the governing body.

Definition of an 'agent'

An agent is a person who makes arrangements for another person to carry out work at the request of or with the consent of a relevant employer (whether or not under a contract). Agents can include employment agencies such as teacher supply agencies, contractors who provide services (e.g. catering) in schools or further education institutions, voluntary organisations which provide people to work with children, Initial Teacher Training institutions, other institutions which provide courses of study for nursery nurses and other childcare workers .

Definition of a 'relevant offence'

A relevant offence, in relation to a registered teacher, has the meaning set out in Schedule 2 (paragraph 8) of the Teaching and Higher Education Act 1998, i.e. in the case of a conviction in the United Kingdom, a criminal offence other than one having no material relevance to fitness to be a registered teacher; and in the case of a conviction elsewhere, an offence which, if committed in England and Wales, would constitute such an offence as mentioned above.

Annex D

Key Contacts

General Teaching Council for Wales

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E-mail: professionalstandards@gtcw.org.uk

Website: www.gtcw.org.uk/conduct.html

Contact: Independent Safeguarding Authority

Address: PO Box 181
Darlington
DL1 9FA

Telephone: 01325 953795 or 01325 953796

E-mail: ISADispatchTeam@homeoffice.gsi.gov.uk

Website: www.isa.gov.org