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Consultation Document

Proposals for registration of the education workforce in Wales

Date of issue: **10 September 2012**

Action required: Responses by **19 October 2012**

Proposals for registration of the education workforce in Wales

Overview

This consultation document sets out more details relating to the functions and operations of a registration body and seeks views on the detail of the operations, roles and functions in preparation for regulations in the forthcoming Education (Wales) Bill.

How to respond

Response forms should be e-mailed/posted to the address below, to arrive by **19 October 2012** at the latest (please enter 'Registration Consultation' in the subject matter box).

Further information and related documents

Large print, Braille and alternate language versions of this document are available on request.

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

The current requirements for registration of the education workforce in Wales were established by the Teaching and Higher Education Act 1998 www.legislation.gov.uk/ukpga/1998/30/contents and by subsequent Regulations.

Further information about the Welsh Government's Programme for Government can be found at www.wales.gov.uk/about/programmeforgov/?lang=en

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Data protection

How the views and information you give us will be used

Any response you send us will be seen in full by Welsh Government staff dealing with the issues which this consultation is about. It may also be seen by other Welsh Government staff to help them plan future consultations.

The Welsh Government intends to publish a summary of the responses to this document. We may also publish responses in full. Normally, the name and address (or part of the address) of the person or organisation who sent the response are published with the response. This helps to show that the consultation was carried out properly. If you do not want your name or address published, please tell us this in writing when you send your response. We will then blank them out.

Names or addresses we blank out might still get published later, though we do not think this would happen very often. The Freedom of Information Act 2000 and the Environmental Information Regulations 2004 allow the public to ask to see information held by many public bodies, including the Welsh Government. This includes information which has not been published. However, the law also allows us to withhold information in some circumstances. If anyone asks to see information we have withheld, we will have to decide whether to release it or not. If someone has asked for their name and address not to be published, that is an important fact we would take into account. However, there might sometimes be important reasons why we would have to reveal someone's name and address, even though they have asked for them not to be published. We would get in touch with the person and ask their views before we finally decided to reveal the information.

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Introduction

Effective teaching and learning is at the heart of education reforms in Wales. The quality of the teaching practitioners is a critical factor in determining the quality of teaching and learning and so the outcomes for learners.

The education workforce has changed rapidly in the last ten years. The options available to learners in Wales through policies such as 14-19 Learning Pathways, collaboration between schools and post 16 providers have led to closer working of practitioners between different sectors. There has also been a rapid increase in the number of people supporting teaching and learning in the Foundation phase with learning support assistants working in partnership with teachers to deliver the curriculum. This means that the structure and composition of the education workforce has changed rapidly in recent years.

It is vital that all these different practitioners work together effectively and are able to access well designed qualifications, support and development. Their professionalism, suitability and standards of conduct, training and development are key to their success. We want to ensure that we recognise the role of all those working to support teaching and learning as part of a single and coherent education workforce in Wales.

A key feature of many professions is that they register with a professional body that sets and maintains professional standards, and so retains public confidence. Regulation brings benefits of accountability, transparency and assurance of standards through a profession's collective responsibility. Currently only teachers in maintained schools in Wales are registered with the General Teaching Council and given the vital role of other education practitioners in delivering education for learners in Wales this looks anomalous and appears to undermine our belief that all play a vital part within a wider education workforce.

The Programme for Government gave a commitment to review the General Teaching Council for Wales (GTCW) and so we consulted on broad principles of registration of the wider workforce between December 2011 and March 2012.

Those broad proposals were that the current requirement for school teachers in maintained schools to register with a professional body would be widened to cover others within the education workforce. It was proposed that to enhance their professional status and fully recognise their vital role in the education workforce school learning support staff, further education lecturers and work based learning staff would be required to register with a professional body. We also sought consultees' views on whether any other staff from the education workforce such as youth workers should also be registered.

Ninety four responses were received to the consultation. An overarching view was that a carefully planned and phased registration would ensure compliance with professional standards, raising the status and profile of all those working in education and this should lead to greater parity between different groups of education staff across Wales.

There was general agreement that the body should operate its regulation and disciplinary function independent of Government. It could act as gatekeeper to entry and barring from the profession. A registration body can ensure that individuals have appropriate qualifications for their role, and support those without the appropriate qualifications to work towards them. However, concerns were raised by some respondents about some practical issues relating to registration of teaching assistants and voluntary youth workers.

In terms of the wider functions that might be undertaken by the registration body, there was a cautious welcome by respondents subject to further detailed information being provided. In terms of registration fees, it was felt that differentiated fees would be more appropriate to reflect the differentiated pay and salary scales across the education workforce;

A short summary and a copy of the actual responses can be found at <http://wales.gov.uk/consultations/education/reeducationworkforce/?lang=en&status=closed>

Overview of proposals

Following analysis of responses to the consultation, on 19 June the Minister made a statement which set out his intentions that:

- teachers in maintained schools continue to be required to be registered and for the registration body to continue to have a disciplinary function;
- others in the education workforce also to be registered and for that registration body to have disciplinary functions;
- the registration body will be formed by building on the experience of the GTCW which will be renamed and reconfigured to become the registration body for the education workforce;
- in addition to the core function of registration and discipline, over time the registration body would have a range of advisory functions and be able to undertake work in relation to these functions;
- the registration body will also have a role in promoting career opportunities in education and effective workforce data sharing.

Our intention in this consultation is to set out more detail relating to the functions and operation of a registration body and seek views on the detail of the operations, role and functions in preparation for regulation in the forthcoming Education (Wales) Bill.

The proposals in this consultation develop a robust registration system which will enhance the workforce planning, training and development and bring greater coherence and recognition of the contribution of the whole education workforce to the education of all learners in Wales.

Aims of the registration body

Aim

We are proposing that the core function of the registration body should be to act in the interests of the education system and public in Wales to register and determine the fitness to practice of education practitioners and so to contribute to high standards of practice and the safeguarding of children and students.

Scope of registration – who will be covered

The register will continue to cover teachers working in maintained schools in Wales. In addition we propose to require to register those who work directly with children and young people where a major part of their role is to support and/or deliver teaching and learning and/or provide personal, social and educational development opportunities.

Currently school teachers are only able to register with the GTCW if they have a recognised teaching qualification. However, not all the new groups to be included on the register are currently subject to specific requirements to hold a particular qualification or meet a specific professional standard and so inclusion on the register will be by virtue of the role undertaken.

We wish to extend registration to a wider group of practitioners and propose that those groups to be covered by registration will be defined from time to time by regulation following consultation.

In the first instance, we propose to extend the obligation to register to the following groups:

- i. further education (FE) teachers and learning support staff;
- ii. work based learning (WBL) tutors and learning support staff;
- iii. unqualified teachers and school based teaching and learning assistants;
- iv. youth workers.

We will work with stakeholders and representative bodies to ensure that we have clear and practical definitions of these roles.

We will keep the policy under review to ensure that registration remains effective and supports our policy aims. At this stage we do not propose to require those who undertake supporting roles within education not related to teaching and learning (such as administrative staff) to register with the body. Nor do we intend that those who work as volunteers will be required to register.

We will require registration information to be updated on an annual basis by individuals. In order to reduce costs, we will require the body to have in place an on-line registration process as part of our aim to reduce bureaucracy.

Name of the body

The new registration body will have a wider scope than the current GTCW. To emphasise this new remit and functions we propose to change the name of the registration body to one which reflects the new wider role and scope of registration.

Establishing the new registration body

We have considered a number of options, but believe that in terms of speed of implementation, operational efficiency and value for money it is better to build on what already exists rather than create an entirely new organisation. We therefore intend to work with the GTCW to reconfigure its governance, structure and functions to meet the new, ambitious agenda being proposed.

Some responses to the consultation were concerned that it should not appear that the GTCW “took over” arrangements for support staff and teachers in FE and WBL sectors. We are clear that this is not the case and are proposing radical changes to the structure of the council to ensure full representation of the interests of all those covered by the registration body.

Timing

Once the legislation is in place, the work of registering new groups will be undertaken in phases.

Functions of the body

Functions of the Body – what will it do and how

As we are now intending to widen the requirement for registration, we want to ensure that the registration body that we establish does more than simply keep a register. In particular, we are keen that such a body works in partnership with the Welsh Government and the relevant professional groups and employers to deliver a high quality workforce to engage with our learners in Wales.

Current functions of the GTCW

The principal aims and statutory remit of the GTCW as set out in the 1998 Act are:

- to contribute to improving the standards of teaching and the quality of learning, and
- to maintain and improve standards of professional conduct amongst teachers in the interests of the public.

The GTCW is responsible for:

- establishing and maintaining a Register of Qualified Teachers in Wales;
- providing a Professional Code for registered teachers;
- carrying out disciplinary functions relating to teachers accused of serious professional misconduct and incompetence;
- advising the Welsh Government and other designated bodies on:
 - standards of teaching
 - standards of conduct for teachers
 - the role of the teaching profession
 - the training, career development and performance management of teachers
 - recruitment to the teaching profession
 - the supply of teachers
 - the retention of teachers within the profession
 - the standing of the teaching profession
 - medical fitness to teach

and, if requested by the Welsh Government, on any other matters relating to teaching.

At the request of the Welsh Government, the GTCW may also undertake activities designed to promote recruitment to the teaching profession and the continuing professional development (CPD) of teachers.

We are therefore proposing to establish the registration body with the same core functions but with some changes to the way they are currently operated building on experience of operation of these functions by the GTCW and to ensure they are better suited to the new wider scope of registration. In addition we are also proposing some additional functions for the body.

This will include:

- maintain a register of practitioners in Wales;
- issue a Code of Practice laying down the standards of professional conduct and practice expected of registered practitioners;
- to investigate, hear and determine fitness to practice cases relating registered practitioners;
- make disciplinary and conditional registration orders;
- make suspension and prohibition orders.

Offering advice on a range of issues and to undertake work related to these functions. We propose that the advice and work related to these area should relate to:

- standards of teaching;
- standards of conduct;
- the status and standing of the education workforce;
- professional standards;
- initial training and continuing professional development, including setting requirements and accreditation of professionally relevant courses.

We propose to make changes to the operation of some of these functions by the registration body which are outlined in the following sections.

Registration and use of the information collected

The registration body will need to collect a range of data about the individual practitioners their job role and workplace to enable it to operate its registration process. We are proposing that the registration body will broaden the data collected from individuals to enable it to be used to support workforce planning and development.

Current data collection relating to practitioners across educational settings is fragmented, duplicated and inconsistent. The Welsh Government data are collected at an aggregate institution level and as such their potential for analysis is limited. Data on staff in the non-school post-16 sector at a detailed, individual level is no

longer collected centrally. Data on WBL staff have not historically been collected. There has been some data collection for youth workers.

We are proposing that the register will be expanded to collect a range of wider workforce information such as the professional and other qualifications held by the individuals, and skills such as their ability to speak and work through the medium of Welsh.

This will provide a valuable source of workforce data to enable us to start to analyse and assess the training and development needs of the whole education workforce. This will also enable us to develop evidence based professional development frameworks to build a more coherent workforce, and to consider over time whether there is a need to develop minimum standards and qualifications for different professional groups.

Subject to the statutory provision governing data protection, it is the intention that the data and analyses can be shared with government and employers to assist with workforce planning and development. It could also be used effectively to keep individuals informed on training and development opportunities and current research on key practice areas.

There is also a potential to rationalise the data collected from other sources which could reduce bureaucracy and be more cost effective and efficient. We are committed to ensuring that the individuals who are providing the information will be clear about how this data will be shared before it is collected.

Disciplinary requirements

In the previous consultation there was general support for the disciplinary function to be part of the role of the registration body and that it should be undertaken independently of the Welsh Government. The disciplinary process is an important aspect of the registration requirement and enhances public confidence in the education profession and ensures that individuals maintain a minimum standard of professional conduct.

Currently the registration body for teachers, the GTCW operates its disciplinary functions as set out in the Teaching and Higher Education Act 1998. They are required to investigate cases which are linked to professional conduct, serious professional incompetence and/or where a teacher has been convicted of a relevant offence. Experience has shown that it is common for cases not to fit neatly into one of the three groups with the allegations in some cases spanning definitions.

It is our intention, however, that the new body will be required to investigate and hold hearings which are linked to the individuals ability regarding their “fitness to practice”. We are proposing this approach as it is less punitive tone and better explains the registration body’s legal responsibility to maintain and improve standards of conduct and practice in the interests of the public. Most other professional regulators now use the term “fitness to practise” or something similar.

As currently applies to maintained schools, the fitness to practice processes would include a requirement that employers would be under a duty to report to the registration body any conduct of an individual who had potentially broken the code of conduct which calls into question their fitness to practice. This requirement would not supersede any other employment policies within the organisation or set out in legislation.

In the response to the consultation, a number of respondents argued that the disciplinary committee function should be carried out by members of their profession and not by independent lay members. However, in order to ensure a level of consistency and to retain public confidence, a lay member should be selected to Chair each fitness to practice hearing. Other panel members would consist of one person for the profession and one other. As a result of a recent High Court judgement we would also ensure that no member of the council or its advisory committee would form part of the fitness to practice panel to ensure there is no conflict of interest in the role.

There have been some concerns that the current arrangements apply a single disciplinary process leading to a full public hearing regardless of the scale of the allegations about the individual and their response to the allegations. We are considering introducing a more flexible approach to the fitness to practice hearings whilst ensuring they retain public confidence and fairness to the individual.

With the increase in number of professions we need to ensure that any system is fair, equitable and meets legal consideration and can carry out this work within a timely manner (taking account of any legal issues such as employment tribunals that may take place). Although specific guidance will need to be developed, we are considering if a process which is outlined below may be more appropriate.

Stage 1

Case officers will consider the complaint made (one case officer will be a lay person independent of the registration body.) They will have the opportunity to consider all the fact of the case and take forward one of the following actions:

- conclude the case with no further action
- allow the individual to accept a warning
- refer the case to a full disciplinary hearing
- agree undertakings¹ with the Professional concerned.

¹ Where the body and the Professional agree that the Professional has breached the standards but with some development such as retraining, supervision or some other form of professional development, there is likely to be improvement in meeting that standards.

Stage 2

Full disciplinary hearing

Where the case officers have decided there is a case to answer then a formal disciplinary hearing will be held which mirrors much of the process currently undertaken by GTCW.

Establishing a code of conduct

Currently there is a professional code of conduct in place in some of the professional groups. We propose that a single code of conduct should be developed by the registration body which would apply to all those registered. This could be focused around areas such as professional conduct, responsibilities to children and young people, responsibilities to colleagues and employers and professional development. A common code of conduct will allow decisions regarding fitness to practice to be considered consistently across registered groups, although the setting and role in which the individual works would provide a context in which the code applies.

In order to ensure that the code of conduct remains current and relevant, it is our intention to require the registration body to consult with all registered members every five years to identify if changes are required to the code.

Carrying out relevant administrative functions

Currently the GTCW carry out a number of administrative functions on behalf of Welsh Government where the use of the information held on the registration database or experience of the GTCW makes the process streamlined and administratively effective. These activities include the issue of QTS certificates and hearing induction appeals. These activities are grant funded by Welsh Government.

We propose to enable the new registration body to undertake such administrative functions through grant funding from the Welsh Government where this offers best value for public sector money.

Advisory functions and related work

The GTCW are also able to use the experience of their council and those they register to offer advice on a range of issues relevant to teaching. An effective and credible professional registration body would be well placed to advise government and other stakeholders on issues facing their sector and to operate a number of functions on their behalf.

We propose to extend this advisory function on specific issues to the new registration body and in addition to enable the registration body to undertake work related to these functions. We propose that the advice and work related to these areas should relate to:

- standards of teaching;
- standards of conduct;

- the status and standing of the education workforce;
- professional standards;
- initial training and continuing professional development, including setting requirements and accreditation of professionally relevant courses;
- career paths and professional development frameworks;
- recruitment and retention;
- promotion of a career in education;
- workforce planning;
- on any other general matters relating to those registered.

However, we are clear that the core functions of registration and maintaining standards against the code of conduct must be the primary role of the registration body. We therefore intend to place enabling powers in the primary legislation but to bring these into effect over time as the register is established.

Accreditation and professional endorsement of qualifications

We are proposing that the registration body have an advisory role and undertakes work relating to these matters working alongside other bodies that have responsibility for ensuring the quality of professional development.

The existing GTCW does not currently undertake this function but it is important that we ensure that the initial training and development of our workforce is of the highest quality. We recognise the benefits that professional endorsement/accreditation can bring in terms of ensuring that courses are relevant to employers and that the workforce is equipped with the necessary skills and knowledge to support them in their new roles and ongoing development.

There are a range of arrangements for ensuring the quality of training provisions relating to the education workforce. Legislation is already in place in relation to the accreditation for initial teacher training leading to qualified teacher status (QTS), by the Higher Education Funding Council for Wales (HEFCW).

Within the current White Paper consultation on the Further and Higher Education (Wales) Bill, there are proposals to strengthen quality assurance and enhancement of Higher Education provision. The Welsh Government intends to place a duty on the HEFCW to enhance the quality of education provided by institutions. HEFCW will be expected to develop the operational detail of the quality assurance and enhancement processes in conjunction with the sector and appropriate stakeholders.

In terms of professional endorsement, the Education Training Standards (Wales) committee has responsibility for taking decisions on the endorsement and professional recognition of programmes in the area of youth work.

There are also examples in other policy areas relating to workforce development where the Welsh Government has set out a process for ensuring standards are met.

Section 63 of the Care Standards 2000 Act enables the Care Council for Wales to approve courses for persons wishing to become social workers.

All of this is in addition to the important role that Estyn undertake with its range of powers in these areas.

There remain, however, some areas of activity, including training provided for teaching and learning assistants, which do not have similar processes in place for accreditation or endorsement and we propose to enable the registration body to take on these accreditation functions in these cases.

Status and governance structure

Degree of independence of the registration body

The GTCW was established in 2000 as an independent corporate body and the 2002 Act took steps to reinforce its independence by removing the requirement for Ministerial permission in respect of contractual and financial matters including remuneration.

General Teaching Council for Scotland is wholly independent of government and the Northern Ireland Assembly has indicated that it plans to introduce a Bill proposing that General Teaching Council for Northern Ireland also becomes wholly independent of government.

In Wales we have decided to widen the scope of registration to the wider education workforce and to enable the registration body to undertake a range of advisory and executive functions relating to this education workforce. We are therefore not proposing to reduce the current powers of government over some aspects of the operation of the registration body. These include the way the body is constituted through regulation and retaining a veto on increases in the fee level set by the body.

We will reconsider the level of independence of the registration body in consultation with stakeholders once it has become fully operational.

Governance structure

We are proposing to retain the powers for Welsh Ministers to set out the way that the registration body is constituted in regulations. We are proposing to change the governance structure of the registration body to ensure that it fully represents the views of all the registered groups in its decision making.

It is important that the registration body has an appropriate governance structure to ensure that it is being managed responsibly and effectively in particular with regards to its both operational and financial accountability. We propose that the governance arrangements should comprise a small council, with members able to act as individuals and bring experience of a variety of sectors, experiences and contexts to bear on the responsibilities of the council. We are therefore proposing to appoint the council using the principles and processes of the Welsh Government's public appointments process to ensure that the council comprises a balance of strategic abilities, skills and experience to match its functions. We are proposing that the council would be required to have a Standing Audit & Scrutiny Committee to offer appropriate assurance about governance and financial management of the registration body.

The council would be advised by a range of advisory panels reflecting a range of interests and experience of the different registered groups. It is proposed that members of the council from the relevant sector chair the advisory group to ensure that the views of the different sectors are considered in the decisions of the council.

We are proposing that the members of advisory panels are nominated by a range of specified organisations and stakeholders and are large enough to represent the views of the registered groups but without becoming unwieldy. We propose that these groups comprise some 15 – 20 members.

Fee

Our last consultation proposed that, in line with other professions, a fee should be paid by those required to register with the registration body. This fee should cover the costs of the registration and disciplinary function. Responses to the consultation suggested that the registration and disciplinary function should be conducted independently from government and that there should be a differential fee levels to recognise the different remuneration of different members of the education workforce.

The actual fee level will need to be determined on the basis of the costs of operating the new registration body, and so until the precise functions are set it is not possible to be precise about the fee level. However, many respondents asked for an indication of the fee level to inform their views about the registration body.

An early indication of the fee level has been made, based on the assumption that the registration body would carry out functions similar to those operated by the current GTCW, and that the total number of individuals registered would be in the region of 65,000.

This would lead to fees in the order of:

	<u>Fee level</u>
<u>Teachers</u>	<u>£30</u>
<u>FE lecturers</u>	<u>£30</u>
<u>Instructors and HLTA</u>	<u>£25</u>
<u>School support staff</u>	<u>£15</u>
<u>Work based learning staff</u>	<u>£20</u>
<u>Youth workers</u>	<u>£30</u>

The current assumption is that the individual who is required to register would be expected to pay the fee and that this would be collected from their salary by their employer. Under current rules professional fees are subject to tax relief.

It is proposed that functions carried out on behalf of the profession to enhance its status and credibility such as policy advice on behalf of the profession, standard setting and accreditation of courses would be funded through the fee income. So decisions resulting from this consultation about the function to be carried out by the registration body may have an impact on the fee levels.

Although further work needs to be undertaken on the level of fees to be levied, the view from consultation was that the body should set a differentiated fee in response to the salary levels of those being required to register. The Welsh Government will want to ensure through legislation that such a model of charging is fair and equitable to the workforce.

An alternative approach to the fee structure would be to levy the fee based on income bands, for example those earning less than £10,000, less than £15,000 etc. This approach would be more sensitive to the fact that some people work part time hours and that in some sectors there are different pay levels for similar job roles.