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Llywodraeth Cymru
Welsh Government

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Consultation Document

Draft revised guidance on disciplinary and dismissal procedures for school staff

The new requirement in the Staffing of Maintained Schools (Wales) (Amendment) Regulations 2014 regarding the appointment of an independent investigator to investigate allegations of abuse against teachers and members of staff

Date of issue: **26 June 2015**

Action required: Responses by **31 July 2015**

Draft revised guidance on disciplinary and dismissal procedures for school staff

Overview

This consultation seeks stakeholder views on revised guidance on staff disciplinary and dismissal procedures for school staff.

The revisions reflect new provision in the Staffing of Maintained Schools (Amendment) (Wales) Regulations 2014 relating to the appointment of an independent investigator to investigate allegations of abuse against school staff.

They also reflect the publication of *Safeguarding children in education: handling allegations of abuse against teachers and other staff* (2014) Welsh Government circular 009/2014.

As the changes above have been made to reflect regulations and statutory guidance which have previously been subject to consultation we are not seeking views on these specific revisions.

However, the Welsh Government has taken the opportunity offered by the above revisions to refine and reorder the guidance and remove unnecessary duplication. It is on these changes that we are seeking views.

How to respond

Responses to this consultation should be e-mailed/posted to the address below to arrive by **31 July 2015** at the latest.

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 Staffing of Maintained Schools (Wales) Regulations 2006
www.legislation.gov.uk/wsi/2006/873/regulation/7/made

The Staffing of Maintained Schools (Wales) (Amendment) Regulations 2014
www.legislation.gov.uk/wsi/2014/1609/made

Report of the Examination of the Children's Commissioner for Wales into allegations of child sexual abuse in a school setting
www.childcom.org.uk/uploads/publications/70.pdf

Safeguarding Children: Working Together Under the Children Act 2004
www.gov.wales/topics/health/publications/socialcare/guidance1/safeguardingunder2004act/?lang=en

Safeguarding children in education: handling allegations of abuse against teachers and other staff (2014) Welsh Government circular no: 009/2014
learning.gov.wales/resources/browse-all/allegations-of-abuse-against-teachers/?skip=1&lang=en

All Wales Child Protection Procedures 2008
http://www.ssiacymru.org.uk/home.php?page_id=298

Contact details

For further information:
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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.

Summary

1. This consultation seeks stakeholder's views on revisions made to Welsh Government Circular: 002/2013 "Disciplinary and dismissal procedures for school staff" The revisions in the main reflect new provision in the Staffing of Maintained Schools (Wales) (Amendment) Regulations 2014 in relation to the appointment of an independent investigator to investigate allegations of abuse against teachers and other members of staff.
2. They also reflect the content of new statutory guidance in Welsh Government Circular 009/2014 - *Safeguarding Children in Education: Handling Allegations of Abuse against teachers and other members of staff*. That guidance sets out a clear process for dealing with allegations of abuse against teachers and other school staff and the involvement of key individuals which is reflected in this guidance.
3. As the changes set out above relate to regulations and statutory guidance we are not seeking views on the substance of these changes within the revised Disciplinary and Dismissal Procedures or the Model Policy.
4. However, the Welsh Government has taken the opportunity afforded by the necessary revisions to review, refine and reorder Circular 002/2013 and to remove unnecessary duplication. We have also amended the flowcharts. It is on these changes that views are sought.

Background

5. The Children's Commissioner's Inquiry into allegations of child sexual abuse in a school setting found that senior teachers and local authority officials had not taken proper account of allegations of abuse made against a teacher over a number of years. In his 2004 report of the inquiry the 'Clywch' Report the Children's Commissioner recommended strengthening the investigation of allegations of abuse against school staff and introducing independence into the investigation process.
6. In response to the Children's Commissioner's recommendations the Welsh Government made the Staffing of Maintained Schools (Wales) Regulations 2006 which placed a statutory requirement on governing bodies of maintained schools in Wales to appoint an independent investigator to investigate allegations made against a member of the school's staff that involve issues of child protection, prior to the hearing of any proceedings relating to those allegations.
7. Governing bodies are free to decide who to appoint as independent investigator in accordance with the regulations, but to assist them the Welsh Government established the Independent Investigation Service (IIS) to provide independent investigators to carry out these investigations free of charge to governing bodies.
8. The Welsh Government's intention in establishing the IIS was that it would investigate allegations of the nature which were the subject of the Clywch Report. That is, serious allegations of child abuse which if substantiated would constitute gross misconduct, would be subject to formal disciplinary action

and may result in dismissal and referral to the Disclosure and Barring Service (DBS).

9. The Welsh Government undertook a review of the IIS in 2013/14 which included a survey of local authorities to ascertain details of the nature and outcome of referrals to the IIS over the period of a year. Analysis of survey responses indicated that a significant proportion of cases referred to the IIS could have been dealt with through internal procedures without the need for an independent investigation. It also suggested inconsistency amongst local authorities in the handling of allegations of abuse and the role of the local authority designated officer responsible for overseeing such allegations, liaising with the statutory authorities and providing advice to the governing body suggesting the need for guidance.

10. The Welsh Government subsequently issued standalone statutory guidance to schools and local authorities in Circular 009/2014 *Safeguarding Children in Education: Handling Allegations of abuse against teachers and other member of staff*. The guidance sets out a clear process for schools and local authorities to follow when handling allegations of abuse against teachers and other staff and the roles of key individuals including the local authority designated officer referred to above.

11. In addition the Welsh Government reviewed the operation of the Staffing of Maintained Schools (Wales) Regulations 2006 in relation to the appointment of independent investigators and identified a number of areas for revision. These were subject to a three month consultation and led to the introduction of the Staffing of Maintained Schools (Wales) (Amendment) Regulations 2014 which came into force on 16 July 2014. The regulations set out the circumstances where an independent investigation is required and clarify that such investigations relate to allegations that a teacher employed under a contract of employment at the school has abused a pupil registered at the school.

12. In summary the Staffing of Maintained Schools (Wales)(Amendment) Regulations 2014:

- Make more explicit that the requirement for an independent investigation does not apply unless the allegations are made against a member of staff who is employed under a contract of employment with the school;
- The requirement for an independent investigation relates to allegations of child abuse involving a child who is a pupil at the school.
- The governing body must not decide to have an independent investigation until:

(i) The local authority has discussed the allegation with everyone it thinks appropriate in accordance with the relevant guidance i.e. the strategy discussion/meeting under Safeguarding Children: Working Together Under the Children Act 2004;

(ii) The statutory authorities i.e. the police and social services have concluded their consideration of the allegation and any criminal

proceedings have been concluded (if any) so that the matter is referred back to the governing body;

(iii) The governing body has consulted with the Local Authority Designated Officer and the headteacher and maintained a record of their consultation;

- The governing body does not have to appoint an independent investigator if;
 - i) They are satisfied beyond reasonable doubt that the allegation is not true or that there is no evidence to corroborate the allegation;
 - ii) The member of staff has admitted their guilt;
 - iii) The person has been convicted of a criminal offence following criminal proceeding arising from the allegation.

13. Where an independent investigation is carried out the report of the investigation must be given to the chair of the governing body to inform the disciplinary process with a copy provided to the headteacher (unless the allegation is about the headteacher).

14. The list of persons who are not considered independent for the purposes on undertaking an independent investigation is extended to include members of the diocesan authority and trustees of the school where the school is a foundation school.

15. Once the statutory authorities i.e. the police and social services have concluded their consideration of the case and any court proceedings have concluded the allegation is referred back to the governing body to undertake disciplinary action. The revised disciplinary and dismissal procedures reflect this process and set out the procedures the governing body should follow.

16. We have also taken the opportunity to review and refine the guidance and remove any necessary duplication and it is on these changes we are seeking your views.