



Department  
for Education

# **Teacher Misconduct**

## **Schools Bill Factsheet**

**May 2022**

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# Schools Bill Factsheet: Teacher misconduct

## What is the government's policy objective?

Teachers are the single most important in-school factor in a child's education and the overwhelming majority are highly competent and never engage in any form of misconduct.

It is of paramount importance that children and young people are protected when they are at school or college, that there are robust and effective arrangements in place to safeguard pupils and students, and that no child or young person is disadvantaged as a result of where they access their education.

The Education Act 2002 (as amended by the Education Act 2011) gives responsibility to the Secretary of State for Education to regulate teachers' conduct and to hold a list of teachers who have been prohibited from teaching. The teacher misconduct regime is operated by the Teaching Regulation Agency on behalf of the Secretary of State. The regime applies to England only.

The key features of the regulatory regime, which is set out in further detail in The Teachers' Disciplinary (England) Regulations 2012, are that:

- the regime applies to anyone undertaking teaching work, as defined in the 2012 regulations, in schools (including academies and free schools, local authority maintained schools, non-maintained special schools, and independent schools); 16-19 academies; sixth form colleges; relevant youth accommodation; and children's homes
- the Teaching Regulation Agency should only investigate the most serious cases of misconduct, in order to make a decision about whether a teacher should be prohibited from teaching work; other matters, including all cases of incompetence, should be dealt with locally by the employer

Serious misconduct is defined in the legislation as being unacceptable professional conduct, conduct that may bring the teaching profession into disrepute, or a conviction (at any time) of a relevant offence.

Where a referral is made, the Teaching Regulation Agency will determine whether the case falls within the parameters outlined above. Those cases will progress to be considered by an independent professional conduct panel, convened by the Teaching Regulation Agency to consider the evidence. Where the panel finds the facts of the allegation proven, it will make a recommendation to the decision-maker (a senior Teaching Regulation Agency official acting on behalf of the Secretary of State) as to whether or not to prohibit the individual from teaching. The decision-maker will then consider the recommendation and decide whether or not the individual should be prohibited from teaching.

The overriding aims of the teacher misconduct arrangements for regulating the teaching profession are to protect children and young people, to help maintain public confidence in the teaching profession and to uphold proper standards of conduct.

Alongside this, there is also the need to operate a fair and equitable process for teachers when considering whether to prohibit any teacher whose conduct is brought into question by operating an efficient regime which places as little burden as possible on those who engage or employ, refer, or provide information or evidence about, those teachers who may commit misconduct.

It is vital therefore to keep the teacher misconduct arrangements under review, and continually look to improve the policies, processes and procedures that make up these arrangements. The government takes seriously any feedback, including judgements made by the High Court, relevant case law etc., that suggests improvements could be made, particularly where these impact on child welfare, safety and safeguarding.

The government is proposing to make changes to the current teacher misconduct regime by taking forward the following measures:

- to broaden the scope of the regime to include persons who commit misconduct when not employed as a teacher, but who have at any time carried out teaching work
- to broaden the scope of the regime to include a wider range of education settings
- to enable the Secretary of State to consider referrals of serious teacher misconduct regardless of how the matter comes to his attention

It was always intended that the teacher misconduct regime should capture those individuals who have committed serious misconduct even when they were not employed or engaged in teaching work (e.g. teacher on a career break, supply teachers or those who teach infrequently) and who are likely to try and return to the classroom. However, interpretation of the teacher misconduct legislation in a High Court judgment only permits the Secretary of State to consider misconduct in more limited circumstances, the effect of which is that only misconduct that occurs (or referrals made) while the person is undertaking teaching work can be considered.

The proposed change would make it clear that the Secretary of State is able to consider a referral in respect of those who have previously taught and who commit serious misconduct whilst not in teaching, ensuring that where appropriate they are prevented from returning to the classroom in the future.

It is important that the teacher misconduct regime keeps in step with current policy and practice in the different ways that young people are being educated. Bringing more settings within scope of the regime would enable the Secretary of State to consider misconduct across the broad range of education settings where young people access their education. It will also ensure that these settings do not employ prohibited teachers.

There are instances where a Department for Education (DfE) official may undertake work which uncovers serious misconduct, for example the the Education and Skills Funding

Agency may uncover fraud during an academy audit, or the the Standards and Testing Agency may uncover serious exam malpractice during an investigation.

The current legislation provides for the Secretary of State to investigate a referral of serious misconduct only where the referral is made from outside of the DfE. Our proposed change would enable DfE officials to refer a case to the Secretary of State, but in order to maintain the independence of the Teaching Regulation Agency in the operation of the teacher misconduct regime, this would only be permitted where the serious misconduct is identified during the course of their normal duties.

Enabling the Secretary of State to consider referrals of serious misconduct without the need for an external referral, will bring about more immediate consideration of these cases without the need to make contact with employers. It will also remove the need to remind employers and others of the option to refer cases, which does not always guarantee a referral will be made (particularly in cases where potential referrers assume that either someone else will refer or that the matter is so high profile that the Secretary of State will already be aware).

## **Why is legislation needed?**

Since the current teacher misconduct regime was introduced in 2012, we have taken all possible steps, short of legislation, to ensure that the regime remains robust and efficient. To ensure and maintain transparency amendments have been made to the detailed guidance that is used by the Teaching Regulation Agency and the independent panels it convenes, when considering referrals of misconduct, as well as including in funding agreements (of some of those settings that are not currently within the regime) a requirement not to employ prohibited teachers. This does not, however, enable the Secretary of State to consider the conduct of teachers employed by these settings.

It is important that legislation is effective in delivering the government's policy aims and objectives, and we have a set of proposed improvements, which collectively will make a significant impact on the regime and justify our proposals for making these legislative changes.

The teacher misconduct regime operates under the powers set out in the Education Act 2002, and therefore the changes to the regime identified above, are only possible by amending the overriding legislation.

## **What is the effect of the legislation?**

The existing legislation governing the teacher misconduct regime limits the ability of the Secretary of State to investigate cases of serious misconduct, and does not allow cases to be investigated where the misconduct occurred whilst the individual was not teaching (even where there is likelihood that the individual may return to teaching). It allows misconduct to be investigated in relation to misconduct committed by individuals

undertaking teaching work at some settings that educate pupils and students under the age of 19, but not all such settings, and does not permit misconduct to be investigated where it is uncovered by DfE officials in the course of their normal duties.

The changes proposed will broaden the scope of the regime, and will ensure that serious misconduct can be considered by the Secretary of State regardless of when the misconduct occurred or whether the individual was teaching when the misconduct was committed.

The changes will also ensure that regardless of where a pupil or student under the age of 19 receives their education, they are protected and safeguarded by the teacher misconduct regime. This will mean that the settings where these students study are not able to employ prohibited teachers, and that serious misconduct committed by teachers employed by these settings can be considered by the Secretary of State.

The changes will also mean that serious misconduct identified by DfE officials can be referred to and investigated by the Secretary of State.

These changes will take effect when the Bill is enacted.

## **How will this work in practice?**

The processes for the teacher misconduct regime will continue to operate in the same way as it currently operates, with the same transparent, published, underpinning guidance used by the Teaching Regulation Agency and the independent panels it convenes to consider cases of serious misconduct.

Teachers are the single most important in-school factor in a child's education and are an important part of the wider safeguarding system for children. The overwhelming majority are highly competent and effective, and never engage in any form of misconduct. Headteachers, governors, and those responsible for the running of the setting are responsible for appointing teachers and ensuring that they are aware of the standards of behaviour expected of them. They are also responsible for managing teachers in relation to their competence and conduct and for taking action to address underperformance and misconduct in their settings – which includes considering making referrals to the Secretary of State to consider serious misconduct where appropriate.

The government will communicate with the settings that will be brought within the teacher misconduct regime, to ensure that they are aware of the regime and understand the duties it places on them (to not employ a prohibited teacher and to consider making a referral to the Teaching Regulation Agency where they dismiss a teacher for serious misconduct, or would have done had the teacher not resigned), and so that they are able in turn to communicate this to their teachers.

## **Key questions and answers**

### **Why are you proposing these changes now?**

The teacher misconduct arrangements have not been revised since 2012 when they first came into force. The settings and ways in which children are educated have changed considerably since that time. Following a public consultation on proposals which would effect changes to the arrangements and bring the 'Teacher Misconduct: the prohibition of teachers' (the Advice) up to date, we published the response to that consultation in February 2022. The related update to the Advice addressed some of the issues that have arisen since 2012, taking account of High Court judgements and feedback from the Teaching Regulation Agency, the professional conduct panels, and others involved in the teacher misconduct process. However, there are still a number of issues that can only be addressed by making the proposed changes to legislation, and this will ensure that we have robust and effective safeguarding measures in place for children and young people, wherever they receive their education.

### **You are potentially introducing new burdens on some types of educational settings. How are you planning to manage this?**

Further Education colleges, Special Post-16 Institutions and Independent Teaching Providers, are already prevented from employing a prohibited teacher by virtue of their funding agreements. Online education providers that are accredited under the Department's Online Education Accreditation Scheme will also be prevented from employing a prohibited teacher by virtue of the conditions of the Scheme.

The new burden placed on these settings will be a requirement to understand the regime, and the duty to consider making a referral to the Teaching Regulation Agency where they dismiss a teacher for serious misconduct (or would have dismissed if the teacher hadn't resigned first).

For independent educational institutions that will be brought within the regime we know that these will be all new burdens.

However, for all of these settings the government anticipate that these new burdens will not be particularly onerous as government expect employers of teachers to conduct a range of suitability checks on those they wish to employ. The government also would expect that these settings will also have in place policies for managing the competence and conduct of their teachers.

The government believes that pupils and young people in these settings should be afforded the same protection and safeguarding as pupils who study in other settings already covered by the teacher misconduct regime.

## **Is it unfair to broaden the scope of the teacher misconduct regime to include any individual who has at any time been employed or engaged to carry out teaching work?**

To safeguard children and young people, it is only right to extend the legislation to all individuals who have undertaken teaching work. There is always the risk that an individual who commits serious misconduct whilst not teaching may return to the teaching profession in the future.

In deciding whether it is necessary and proportionate to take a case forward, the Teaching Regulation Agency will consider, alongside the public interest test, the seriousness of the behaviour, any mitigation presented by the teacher, the length of time away from the teaching profession, any child protection matters and the likelihood of returning to the profession.



## **Part 2: Additional detail on Delegated Powers**

### **What does this delegated power do?**

We are adding “an online education provider” into the list, in the Education Act 2002, of education settings which are subject to the teacher misconduct provisions that are also set out in that Act.

We are also inserting a definition of “an online education provider”, and giving the Secretary of State the delegated power to amend this definition in the future by regulation, rather than by primary legislation.

### **How does the government intend to use this power?**

Online education provision has grown over the last few years and is continually evolving. The way in which this type of education is offered by providers and accessed by children and young people varies significantly.

In order to identify the types of provision that will be in scope of the teacher misconduct regime, the definition of ‘online education provider’ has been closely aligned with the criteria for the Online Education Accreditation Scheme, which will be launched later this year. This means that the online education providers that will become subject to the teacher misconduct regime will be limited only to those that:

- are registered with either Companies House or the Charity Commission in England; and
- provide education to at least one student of compulsory school age but under the age of 19 (or over 19 if they have an EHC plan) and live in England; and
- provide all or the majority of the education for these students; and
- are set up to deliver all or the majority of the education they provide online

Whilst this may be a relevant definition to describe online education providers at the present time, the pace of change means that what online provision may look like in the future is unknown, and the definition of online education providers may quickly become outdated and need revision because it is no longer fit for purpose.

Therefore, the power to amend the definition by regulation enables the Secretary of State to update the definition if and when necessary.

### **Will there be any further consultation on this issue?**

There is no further planned consultation on the delegated power described above.

However, if it becomes necessary to make changes to the definition of an online education provider, we will involve the providers that will be affected, and their representative organisations, in any discussions about a revised definition.

## **Key questions and answers**

### **How can you justify taking the power to make amendments to the definition by regulation?**

We believe that the definition of an online education provider that we are proposing is the right definition to bring online education providers within the teacher misconduct regime at the present time. However, as this sector of education is evolving quickly, we need to ensure that the Secretary of State is able to adapt or amend this definition if necessary in the future, more swiftly than could be done through primary legislation. This in turn will ensure that the children and young people who receive their education from an online education provider continue to be given the same protection and safeguarding as those who study at other types of education providers.

### **How will you make sure that any changes to the definition are appropriate and are catching the right online education providers?**

Once it has launched, we will monitor how the Online Education Accreditation Scheme operates and evolves, and consider how any changes in the sector which might need to be reflected in the definition of an online education provider. We will also work closely with the sector to help identify any changes that might be necessary to ensure that the definition remains appropriate.



Department  
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