Proposed changes to the teacher disciplinary and induction regulations following the abolition of the General Teaching Council for England

This consultation document provides details of the proposed changes to the disciplinary and induction regulations for teachers in England.

The General Teaching Council for England (GTCE) was established by the Teaching and Higher Education Act 1998 and started work on 1 September 2000 as the independent professional body for teaching in England. The Education Bill, which was introduced on 26 January 2011, makes provision to abolish the GTCE and give responsibility to the Secretary of State to operate a streamlined regulation system. The day to day administration of these functions will be undertaken by the new Teaching Agency.

The Bill will put new arrangements in place for the regulation of the teaching profession which cover teachers in local authority maintained schools, non-maintained special schools, academies, free schools and independent schools, sixth form colleges, youth custody settings and children's homes.

Under the provisions of the Bill, the Secretary of State is required to make regulations about the procedures for deciding whether to apply a prohibition order and about appeals against prohibition orders. It also requires changes to the General Teaching Council for England (Disciplinary Functions) Regulations 2001, the current Induction Arrangements for School Teachers (England) Regulations 2008 and various other consequential amendments to legislation as a result of the GTCE abolition.
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A Consultation

To
Schools, Governing Bodies, Local Authorities, Parents, key Stakeholders and other interested parties.

Issued
20 July 2011

Enquiries
If your enquiry is related to the policy content of the consultation you can contact the PCU helpline on:

To
Telephone: 0370 000 2288
email: TeacherRegulation CONSULTATION@education.gsi.gov.uk

Contact Details
If your enquiry is related to the DfE e-consultation website or the consultation process in general, you can contact the Consultation Unit by e-mail: consultation.unit@education.gsi.gov.uk or by telephone: 0370 000 2288.

1 Introduction

1.1 The single most important factor in ensuring a good education for every child is that they have a good teacher. Teachers are our greatest asset and we want to help them to do their jobs by encouraging schools to provide them with the support and professional development they need to fulfil their potential and to help their pupils to do the same.

1.2 It is important that, where there are concerns about a teacher's performance, action can be taken quickly. In the White Paper, "The Importance of Teaching", we set out plans to shorten and simplify current regulations and remove the duplication between performance management and capability procedures. A consultation is currently underway on proposals for revised performance management and capability procedures.

1.3 It is vital that we also have an effective regime in place to tackle serious professional misconduct and that teachers whose behaviour is unacceptable are no longer employed to teach. Within the current Education Bill, there are provisions to abolish the General Teaching
Council for England (GTCE) and for the introduction of new regulatory arrangements which will be part of the remit of a new Teaching Agency, acting on behalf of the Secretary of State. Subject to the progress of the Bill, the new regulatory arrangements would commence from 1 April 2012.

2 The new regulatory arrangements proposed in the Education Bill

2.1 The main features of the new system of regulation set out in the Education Bill are:

- Employers will have a duty to consider which cases of serious misconduct to refer to the Secretary of State. This differs from the current arrangements in that it recognises that not all dismissals would merit referral to a national regulator and gives employers discretion to decide which cases to refer. There is no longer any provision for referrals on grounds of incompetence.
- As now, it will also be possible for referrals to be made by the police where a teacher has been convicted of or cautioned for a relevant offence; by the Independent Safeguarding Authority (or successor body); by other regulators and by members of the public.
- The Secretary of State will have powers to investigate cases referred to him and to decide whether or not to make a prohibition (barring) order in respect of the individual concerned. There will no longer be a range of sanctions short of prohibition (currently the GTCE are able to issue a Reprimand, a Conditional Registration Order, a Suspension Order or a Prohibition Order).
- The Secretary of State will keep a list of the names of persons to whom a prohibition order applies. A parallel list will include the names of teachers who have failed induction. The list will include the names of any teachers prohibited from teaching in Wales, Scotland or Northern Ireland. These lists will be available to the public so that employers and others are able to check whether or not an individual can be employed to teach.
- The new regulatory system will apply to all schools (including independent and free schools), sixth form colleges, relevant youth accommodation and children's homes in England.

2.2 Under the provisions of the Bill, the Secretary of State is required to make regulations about the procedures for deciding whether to apply a prohibition order and about appeals against prohibition orders. It also requires changes to the General Teaching Council for England (Disciplinary Functions) Regulations 2001, the current Induction Arrangements for School Teachers (England) Regulations 2008 and various other consequent amendments to legislation as a result of the
GTCE abolition.

3 The focus of this consultation

3.1 This consultation document provides details of the proposed changes to the disciplinary and induction regulations. There will be a further consultation in the autumn on consequential changes to other legislation that are needed as a result of the abolition of the GTCE.

4 Proposed changes to the disciplinary regulations for teachers

4.1 Subject to the passage of the Education Bill the General Teaching Council for England (Disciplinary Functions) Regulations 2001 would be revoked and replaced with new teachers’ disciplinary regulations that would take effect from 1 April 2012.

4.2 Proposed clarification of who is covered by the new regulatory arrangements by reference to "teaching work"

The current regulatory system applies to all those who are registered with the GTCE. In the new system there will be no requirement to register and the scope of the regulatory arrangements has been widened to include the independent sector and free schools, where Qualified Teacher Status (QTS) may not be required, and to include 6th form colleges, where some teaching staff may have Qualified Teacher Learning and Skills (QTLS) status. As a consequence, it is not possible to rely on either registration or qualifications as the basis for defining who is covered by the new regulatory system. The Education Bill defines who is in scope by reference to the nature of the work that an individual undertakes - “teaching work” - and the setting where they are employed and says that regulations will provide a definition of "teaching work".

4.3 There are already regulations (Specified Work and Registration (England) (Amendment) Regulations 2003) that provide a definition of "specified work" which is work that may be carried out in schools by teachers and certain other persons, as follows:

- planning and preparing lessons and courses for pupils;
- delivering lessons to pupils ("delivering" includes delivery via distance learning or computer aided techniques);
- assessing the development, progress and attainment of pupils; and
- reporting on the development, progress and attainment of pupils.
In regulations we propose to define teaching work by reference to the activities listed above with the proviso that the person doing it, other than for the purposes of induction, is not subject to the direction and supervision of a qualified teacher or other person nominated by the head teacher to provide direction and supervision.

4.4 This will have the effect of excluding other staff, such as Higher Level Teaching Assistants, who may undertake specified work but do so under the direction and supervision of a teacher, but enable us to cover teachers and instructors in all schools.

**Question 1:** Does the definition of "teaching work" achieve the desired effect and help to identify who is covered by the new regulatory system?

4.5 *The investigation of misconduct cases*

Revised regulations will set out the procedures for making a decision as to whether to apply a prohibition order regarding cases referred to the Secretary of State. It is proposed that for the most part the procedures involved will remain the same as now except that it will be the Teaching Agency acting on behalf of the Secretary of State, rather than the GTCE, who will undertake the day to day administration of the regulatory processes.

4.6 Revised regulations will require the Secretary of State through the Teaching Agency to inform the teacher concerned of the allegations made; and give the teacher concerned the opportunity to submit evidence and make written representations.

4.7 The Secretary of State through the Teaching Agency will have the power to require anyone to produce documents or other material evidence that is relevant to the investigation and decision as to whether to make a prohibition order. Employers, contractors and agencies will ordinarily be expected to supply the following information to accompany a referral:

- the reason for the decision to dismiss;
- all relevant evidence regarding the decision and the conduct which prompted it;
- all relevant evidence submitted by the teacher regarding the decision or conduct; and
- any other relevant information.

4.8 The Secretary of State will be able to discontinue the consideration of a case at any time if he believes there is no case to answer, or if he believes there is insufficient evidence or grounds for a formal hearing. If the case is discontinued at any time the teacher will be notified.
4.9 If, on the basis of the evidence, the Secretary of State believes there is a case to answer and there are sufficient grounds and evidence, the case will be considered at a professional conduct panel hearing and the teacher will be notified. Once the decision has been taken to hold a professional conduct panel, details will appear on the Teaching Agency website. These details will list the date of the panel, the name and school of the teacher and a brief outline of the allegation.

**Question 2: Do you have any comments on the proposals for investigating misconduct referrals?**

4.10 **Teachers’ Standards**

Under the current arrangements the GTCE may take into account any failure by a registered teacher to comply with the Code of Conduct and the Professional Standards for Teachers in any disciplinary proceedings. An independent review of the standards is currently considering what changes might be needed to the standards. The review also provides the opportunity to bring teachers’ standards together in one place, and to consider what elements of the current GTCE Code of Conduct are suitable to incorporate within the new standards in a simplified framework. Once these revised standards are in place (probably September 2012), it will no longer be appropriate to refer to the GTCE’s Code of Conduct so revised regulations will reflect this by stating instead that any decision as to whether to prohibit may take into account any failure by a teacher to comply with the Personal and Professional Conduct Standards in Part Two of the teachers’ standards issued by the Secretary of State. Until the revised standards are in place, the Teaching Agency and the Secretary of State will continue to take account of the current Professional Standards for Teachers and the GTCE’s Code of Conduct in any disciplinary proceedings.

**Question 3: Do you have any comments about the use of professional standards within the disciplinary process?**

4.11 **Membership and procedure of professional conduct panels**

In a similar way to the current GTCE arrangements, it is proposed that regulations should provide for professional conduct panel hearings that will consider whether a teacher is guilty of unacceptable professional conduct, conduct that may bring the teaching profession into disrepute or whether they have been convicted (at any time) of a relevant offence.

4.12 The GTCE’s hearings panels have a range of membership including representatives of the profession and other non-professionals. Revised regulations will continue to provide for the involvement of members of the profession in considering professional conduct but also ensure that panels are not solely composed of teacher professionals, to provide an element of independence and balance. It is proposed that a professional
conduct panel must include at least three people, one or more of whom must be a serving teacher or people who have been teachers in the past five years and one or more people who have never been employed as teachers.

**Question 4:** Do you have comments on our proposals for the make-up of professional conduct panels? Do you agree with our definitions of who should be considered as a teacher for the purposes of the panels?

4.13 The GTCE produces guidance about its disciplinary procedures and revised regulations will enable the Secretary of State to produce guidance also. In the interests of transparency regulations will require that any provision made by the Secretary of State as to the procedure of a professional conduct panel must be published.

**Question 5:** Do you agree that any provision the Secretary of State may make for the procedure of a professional conduct panel should be published?

4.14 As under the current arrangements, revised regulations will give teachers who are the subject of an allegation the right to appear at a panel and make oral representations and be represented by any person of their choice. The Secretary of State will be able to require anyone to attend, give evidence or to produce documents or other evidence at any panel. As now, witnesses may be required to give evidence under oath or affirmation.

4.15 Also as now, panels will normally be expected to take place in public but will deliberate in private when reaching their verdict at the end of the hearing process. Panels will have the discretion to exclude the public from any hearing or part of a hearing:

- where it appears in the interests of justice to do so;
- where the teacher who is the subject of the allegation requests that they do so and the hearing does not consider it to be contrary to the public interest; or
- where it appears in the public interest to do so.

4.16 As now, where a panel finds the facts of the allegations proven against a teacher, or that they have been convicted of a relevant offence, it must then consider whether this amounts to unacceptable professional conduct or conduct that brings the teaching profession into disrepute. Guidance will be available to panel members and teachers which will set out the criteria for making decisions about whether a teacher is guilty or not. We will be consulting separately on draft guidance shortly.
4.17 If the panel decide that a teacher is guilty of unacceptable professional conduct or conduct that brings the profession into disrepute, the panel will then make a recommendation to the Secretary of State as to whether a prohibition order would be appropriate. Such an order would have the effect of barring a teacher from teaching (prohibition orders are covered in more detail later in this document).

4.18 Once a panel has been concluded or discontinued, details of the outcome, including the circumstances of any prohibition order that has been made, must be made public.

**Question 6: Do you have comments on these proposals for the proceedings of professional conduct hearings?**

4.19 **Prohibition Orders**

A prohibition order has the effect of preventing a teacher from being employed as a teacher as set out in paragraphs 4.2, 4.3 and 4.4. Once a prohibition order is made it must record the decision of the Secretary of State, the date on which the order is made, and the date on which the order takes effect. In addition, it must specify the period, which must not be less than two years from the date on which the order takes effect, before which no application may be made for a review of the order by the Secretary of State. When a prohibition order is made, the teacher's name, Teacher Reference Number, the school at which they were last employed and a brief description of why they have been prohibited (ie, "misconduct"), will be placed on the Prohibited List which will be available online to employers and to the public on written request.

4.20 The Secretary of State is required to notify the teacher and the teacher's present or last employer and, where relevant, agent, of a prohibition order. In doing so, the Secretary of State must also provide:

- a description of the effect of the order;
- the reasons for making the order;
- notification of the right to appeal to the High Court against the order within 28 days of service of notice of the order; and
- an explanation of the right to apply for a review of the order by the Secretary of State and the method for making such an application.

This process mirrors the current GTCE procedure.

4.21 **Interim prohibition orders**

The Education Bill provides the Secretary of State with the facility to make an interim prohibition order, at any time prior to his final decision as to whether a prohibition order should be made, in the most serious cases where it appears to the Secretary of State in the public interest to do so. This is a new power that wasn't available to the GTCE but which many
other regulators have. The use of interim prohibition orders is likely to be very rare and will be used only where there is a clear public interest in doing so. The kinds of things that might be in the public interest are where the allegations and evidence against a teacher suggests that children's welfare and education or parents or other school staff may be seriously at risk if the person were allowed to continue to teach before a panel hearing can be scheduled and their case concluded.

4.22 Revised regulations will set out the procedures involved in making interim prohibition orders. An interim prohibition order could be applied at any stage in the process outlined above but is most likely to happen at a relatively early stage once the seriousness of the facts of the allegations have been established. Where it is considered that the seriousness of the allegation warrants an interim prohibition order it can be made by the Secretary of State without the need for a formal conduct hearing. A teacher will be informed that consideration is being given to the application of an interim prohibition order and they will be given 7 days notice to provide any additional evidence that they would want to be considered in relation to the decision.

4.23 If the Secretary of State decides that an interim prohibition order is appropriate the effect of the order is exactly the same as a prohibition order described in paragraph 25 (although there will be a suitable reference on the Prohibited List that makes it clear that the teacher has an "interim" prohibition order) and it applies until the teacher's case has been concluded or until the interim order is reviewed by the Secretary of State. Where the teacher is currently employed, the teacher's employer will also be informed in writing that an interim order has been put in place, and would be required to take action to ensure the teacher was prevented from teaching (until the case has been concluded or until the person successfully appealed against the interim order). Where an interim prohibition order has been applied, the Secretary of State will be required to review whether it is still appropriate every six months from the date on which the order takes effect, at the request of the teacher. Beyond this process there is no route of appeal to the High Court against an interim prohibition order.

**Question 7: Do you have any comments on the procedures for making prohibition orders?**

4.24 **Review of prohibition orders**

As with the current GTCE procedure, where a prohibition order has been made following the recommendation of a professional conduct panel, the order will have the effect of barring the teacher from teaching for life. However, in some circumstances, the Secretary of State may decide to allow a teacher to apply to have the prohibition order reviewed after a minimum period of time. This time would be recommended by the professional conduct panel and will not be less than 2 years. The
circumstances in which it is likely that the Secretary of State would not allow a prohibition order to be considered for review are where a teacher has been convicted and jailed for a serious criminal offence. Applications for a review must be made in writing and must specify the grounds upon which they are made. The Secretary of State may require any person to produce documents or other material evidence for the purposes of such an application and must decide whether the application should be allowed or referred to a professional conduct panel for a recommendation as to whether it should be allowed.

4.25 If the Secretary of State decides that a review has not been successful he must specify the period, which must not be less than one year from the date on which the application was refused, before the end of which no further application may be made for a review of the order.

**Question 8:** Do you agree that a minimum of period of 2 years before which a teacher can apply to have their prohibition order reviewed is appropriate and proportionate?

**Question 9:** Do you have any other comments to make in relation to prohibition orders?

4.26 *Persons prohibited from teaching in Wales, Scotland or Northern Ireland*

Currently, any teacher who has been prohibited from teaching in Wales, Scotland or Northern Ireland on any grounds is normally automatically barred from teaching in England. Similarly, any teacher who is currently barred in England on any grounds will also be automatically barred in Wales, Scotland and Northern Ireland. Under the new proposals in the Regulations, this will be amended so that any teacher prohibited from teaching in Wales, Scotland or Northern Ireland on the grounds of unacceptable professional conduct or conviction of a relevant offence will also usually be automatically prohibited from teaching in England, unless there is a good reason not to. Equally, the Teaching Agency will also notify the General Teaching Councils in Wales, Scotland and Northern Ireland of any teacher who has been prohibited in England and they will normally automatically uphold any prohibition orders made in England. Any other sanction, such as reprimand or a suspension, applied by a General Teaching Council in Wales, Scotland or Northern Ireland on or after 1st April 2012 will not be upheld by the Secretary of State.

4.27 As with the current GTCE arrangements, any teacher who receives any form of sanction, including a prohibition order, from a General Teaching Council in Wales, Scotland or Northern Ireland cannot appeal against that decision in England, even if they are or have been employed in an English school. In the same way, a teacher who receives a prohibition order in England cannot appeal against that order in any other country.
Question 10: Do you agree that a teacher who is barred from teaching on the grounds of misconduct by a General Teaching Council in Wales, Scotland or Northern Ireland should also normally be automatically barred from teaching in England?

4.28 Service of notices and orders

We are not proposing to make any changes to the current GTCE arrangements whereby any information or documentation that is required to be served on a teacher for the purposes of deciding whether to make a prohibition order as set out above may be:

- delivered to the teacher personally;
- sent to or left at the teacher’s last known address; or
- sent by fax or email or similar means where the teacher requests it in writing.

4.29 Provision of information by employers, contractors or agencies

As set out above in paragraph 4.2, where a relevant employer, contractor or agency has dismissed a teacher because the teacher has been guilty of serious misconduct, or might have done so had the teacher not resigned first, they will have a statutory duty to consider whether to refer the case to the Secretary of State for a decision as to whether to make a prohibition order. If the employer, contractor or agency does decide to refer the case to the Secretary of State they will have a statutory duty to provide the following information and documentation to support the referral. This information is essentially the same as the information required for the GTCE:

- the reason for the decision;
- all relevant evidence regarding such decision and the conduct which prompted it;
- all relevant evidence submitted by the teacher regarding such decision or conduct; and
- any other relevant information.

Question 11: Do you have any comments to make on the information that we are proposing that all employers, contractors or agencies should send to the Secretary of State to support any referral on the grounds of misconduct?
5 Changes to Teacher Induction Regulations

5.1 The regulations made under Clause 9 of the Education Bill will be almost identical to the current induction regulations made under Section 19 of the Higher Education Act 1998. Changes in wording will be restricted to those necessary to reflect the transfer of specific functions in respect of NQT induction, currently carried out by the GTCE, to the Secretary of State.

**Question 12:** Do you have any additional comments to make in relation to any of the proposed changes that we are intending to make through the Disciplinary and Induction regulations?

6 How To Respond

6.1 Consultation responses can be completed online at [www.education.gov.uk/consultations](http://www.education.gov.uk/consultations)

by emailing TeacherRegulation.CONSULTATION@education.gsi.gov.uk

or by downloading a response form which should be completed and sent to:
Lynne Stokes, Teacher Performance & Regulation Project, 6th Floor, 2 St Paul's Place, 125 Norfolk Street, Sheffield, S1 2FJ

7 Additional Copies

7.1 Additional copies are available electronically and can be downloaded from the Department for Education e-consultation website at: [http://www.education.gov.uk/consultations](http://www.education.gov.uk/consultations)

8 Plans for making results public

8.1 The results of the consultation and the Department's response will be published on the DfE e-consultation website at the end of November.