

**EXPLANATORY MEMORANDUM TO  
THE GENERAL TEACHING COUNCIL FOR ENGLAND (DISCIPLINARY  
FUNCTIONS) REGULATIONS 2008**

**2008 No. 3256**

1. This explanatory memorandum has been prepared by the Department for Children, Schools and Families and is laid before Parliament by Command of Her Majesty.

**2. Purpose of the Instrument**

2.1 The General Teaching Council for England (Disciplinary Functions) Regulations 2001 have been amended to provide the General Teaching Council for England (GTCE) with additional necessary powers. These powers will enable the GTCE to address cases of teachers that have no child protection element, but who may previously have been placed on List 99 as a consequence of their dismissal (or resignation) from post for misconduct.

2.2 As part of the transition to the new Vetting and Barring Scheme (VBS) which commences in October 2009, since 31 March 2008, the Independent Safeguarding Authority (ISA) has been providing advice to the Secretary of State for the Department for Children Schools and Families (DCSF) in relation to recommendations to place individuals on List 99 and/or the Protection of Children Act (POCA) List; and the Department of Health (DH), on recommendations to place individuals on Protection of Vulnerable Adults (POVA) List in England and Wales.

2.3 Under the next stage of transition, which commences on 20<sup>th</sup> January 2009, employers in England and Wales (under POCA and POVA), and employers in England (under List 99) must send referrals made on or after this date under these schemes to the ISA, which will take barring decisions where there is a risk of harm to children and young adults.

2.4 To ensure the GTCE has the necessary authority and information to consider cases where there are no child protection issues, we need to amend Regulation 29 of the GTCE Disciplinary Functions Regulations to require employers to notify the GTCE of dismissals and resignations (that would have led to dismissal or the circumstances would have led to the employer considering dismissal).

**3. Matters of special interest to the Joint Committee on Statutory Instruments**

None.

**4. Legislative Context**

4.1 The Safeguarding Vulnerable Groups Act 2006 (Transitory Provisions) Order 2008 is the legislation that will be introduced from 20<sup>th</sup> January 2009 and will provide the necessary legislative framework to enable the ISA to take responsibility for assessing child protection cases.

4.2 Once the Transitory Provisions are in place the GTCE will have to have the necessary powers to enable them to receive and consider those cases that will not fall to the ISA to consider. The amendment to Regulation 29 of the GTCE Disciplinary Functions Regulations 2001 will enable this.

## **5. Territorial Extent and Application**

This instrument applies only to England.

## **6. European Convention on Human Rights**

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

## **7. Policy background**

7.1 As part of the transition to the new Vetting and Barring Scheme which commences in October 2009, the Independent Safeguarding Authority (ISA) has been advising the DCSF and the Department of Health on barring (List 99, Protection of Children Act (PoCA), Protection of Vulnerable Adults Scheme (PoVA)) in England and Wales.

7.2 The next stage of transition is planned for 20<sup>th</sup> January 2009 when the Transitory Provisions Order is due to come into force. This will require employers to make new referrals on or after this date under these schemes to the ISA (rather than to the Secretary of State which has hitherto been the case). From that date forward, the ISA will take barring decisions where there is a risk to children and young adults. As part of these transitional arrangements, the amendments provided for under the SVG Act to Sections 15 and 15A of the Teaching and Higher Education Act 1998 will be brought into force. These will redirect misconduct cases that would have previously been referred to the Secretary of State to the GTCE.

## **8. Consultation Outcome**

8.1 Local Authorities, maintained schools, teacher training providers and a wide range of public and professional bodies were invited to contribute to a consultation exercise running from 3 November – 28 November 2008. Consultation attracted 21 responses, from a variety of individuals and organisations including local authority personnel, teacher unions and members of the public.

8.2 Responses to questions about the reasons for, and clarity of, our proposals were very favourable – ranging from 65-86% support. As this was deemed a necessary step in terms of public interest, the consultation was very short (4 weeks). It is worth noting that there wasn't a single negative comment regarding the shortened length of the consultation.

## **9. Guidance**

Guidance on the changes made by these regulations will be provided to decision makers and other interested parties as soon as possible.

## **10. Impact**

10.1 This creates no new burden on employers and as such a Regulatory Impact Assessment is not necessary as any impact would be minimal.

10.2 The impact on the public sector is minimal and is of neutral impact on employees. Employers will continue to be responsible for reporting wider misconduct cases, that do not have a child protection element, but referral will be to the GTCE rather than the Secretary of State.

## **11. Regulating small business**

The legislation does not apply to small business.

## **12. Monitoring & review**

There are no plans to perform further monitoring.

## **13. Contact**

Peter Windram at the Department for Children, Schools and Families Tel: 01325 391149 or e-mail: [peter.windram@dcsf.gsi.gov.uk](mailto:peter.windram@dcsf.gsi.gov.uk) can answer any queries regarding the instrument.