

**EXPLANATORY MEMORANDUM TO**  
**THE TEACHERS' DISCIPLINARY (ENGLAND) REGULATIONS 2012**

**2012 No. 560**

1. This explanatory memorandum has been prepared by the Department for Education and is laid before Parliament by Command of Her Majesty.
2. **Purpose of the instrument**
  - 2.1 These Regulations set out the processes which the Secretary of State will follow in deciding whether to make a prohibition order in respect of a teacher.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
  - 3.1 None.
4. **Legislative Context**
  - 4.1 These Regulations support the implementation of the new system of teacher regulation under sections 141A to 141E of the Education Act 2002, inserted by the Education Act 2011, which set out the Secretary of State's powers in relation to the regulation of the teaching profession. These Regulations provide for the procedures to be followed by the Secretary of State when deciding whether a prohibition order should be made in relation to a teacher. A prohibition order will ban the person from carrying out teaching work for life. The teacher may appeal against the prohibition order to the Queen's Bench of the High Court within 28 days from the date the notice of the order was served on them. In most cases, the person can apply to the Secretary of State for the prohibition order to be reviewed and set aside after a specified period. The Regulations also provide for the Secretary of State to make interim prohibition orders to prevent a person from teaching whilst their case is considered if it is in the public interest to do so.
5. **Territorial Extent and Application**
  - 5.1 This instrument applies to England.
6. **European Convention on Human Rights**
  - 6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

## **7. Policy background**

- 7.1 The General Teaching Council for England (GTCE) will be abolished with effect from 1 April 2012 and responsibility for the regulation of the teaching profession will be passed to the Secretary of State. The GTCE's abolition and the transfer of some of its functions to the Secretary of State is consistent with the Government's plans to reform Arm's Length Bodies to achieve greater efficiency and provide appropriate accountability for ongoing activities. The new regulatory arrangements allow headteachers, governing bodies and employers to manage low level issues of misconduct at school level and to make decisions about which cases of misconduct are so serious that they should be referred to the Secretary of State.
- 7.2 The Education Act 2011 gives the Secretary of State the power to investigate cases of serious professional misconduct, conduct that may bring the teaching profession into disrepute or cases where teachers have been convicted of a relevant offence. The Regulations set out the procedures to follow when investigating cases and when reaching a decision about whether a prohibition order should be imposed.

## **8. Consultation outcome**

- 8.1 A public consultation on the content of the proposed Regulations ran for a period of 12 weeks from 20 July 2011 to 12 October 2011. There were 39 respondents; ten Local Authorities, nine Unions/Professional Associations, four headteachers, three teachers, one school governor and ten 'other'. The majority of respondents were content with most of the processes set out in the Regulations.
- 8.2 The main issues were:
- concerns that, because the professional conduct panels which hear cases will make a recommendation to the Secretary of State about whether a teacher should be prohibited, rather than make the decision themselves, the decision-making process will not be fair or transparent. The process will be fair and transparent because the advice will set out factors to be considered by professional conduct panels in making recommendations to the Secretary of State. The decision will be made by the Secretary of State and we revised the Regulations in order to provide that the full decision be made public, including the rationale for why that decision was reached.
  - concerns that there may be a delay in the announcement of the decision. The intention is that, in most cases, the teacher will know the decision of the Secretary of State within two working days, which is broadly consistent with the practice of a number of other regulators.
  - concerns about the process by which interim prohibition orders are to be made, and particularly that the seven days' notice period of the intention to make an

order is too short to submit additional written evidence. The position on this remains that interim prohibition orders are only to be used in extreme circumstances and the need to be able to put one into effect swiftly is very important. Such orders must also be reviewed every six months at the request of the teacher concerned.

- The consultation also raised concern about the lack of a range of sanctions and about the duty for employers to consider referring cases of misconduct which replaces the duty to refer all cases. These are both matters that relate to the provisions of the Act which was debated at length by Parliament.

## **9. Guidance**

- 9.1 Prohibition advice will be available to the public. As mentioned above, this sets out the factors to be considered by professional conduct panels who will hear the teacher's case.
- 9.2 Disciplinary procedures advice will be produced for witnesses and teachers which will set out the procedures to be followed during the course of an investigation and hearing in more detail.

## **10. Impact**

- 10.1 No impact on business, charities or voluntary bodies is foreseen (other than in so far as the Regulations apply to independent schools).
- 10.2 The impact on the public sector is that the Regulations change the duty for employers to refer all cases to the General Teaching Council for England when a teacher has been dismissed on the grounds of professional incompetence or misconduct to a duty for employers to consider whether to refer cases of serious misconduct to the Secretary of State.
- 10.3 An Impact Assessment has not been prepared for this instrument as no impact on the private or voluntary sectors is foreseen.

## **11. Regulating small business**

- 11.1 The legislation does not apply to small business (other than to independent schools).

## **12. Monitoring & review**

- 12.1 The Teaching Agency will carry out the regulatory functions on behalf of the Secretary of State. To ensure the Teaching Agency is delivering an effective regulatory system on behalf of the Secretary of State the Director General of Education Standards Directorate, who has responsibility for oversight of the Teaching Agency, will regularly report on the Agency's work at both the

Department's Board and the Executive Management Board. The Agency will also report to the Department's Delivery Assurance, Risk and Audit Committee.

### **13. Contact**

Dominic Mahon at the Department for Education Tel: 0207 340 8227 or email: [dominic.mahon@education.gsi.gov.uk](mailto:dominic.mahon@education.gsi.gov.uk) can answer any queries regarding the instrument.