

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

## Consultation Response Form

The closing date is: 12 October 2011

Your comments must reach us by that date.

**THIS FORM IS NOT INTERACTIVE. If you wish to respond electronically please use the online response facility available on the Department for Education website ([www.education.gov.uk/consultations](http://www.education.gov.uk/consultations)).**

Information provided in response to this consultation, including personal information, may be subject to publication or disclosure in accordance with the access to information regimes, primarily the Freedom of Information Act 2000 and the Data Protection Act 1998.

If you want all, or any part, of your response to be treated as confidential, please explain why you consider it to be confidential.

If a request for disclosure of the information you have provided is received, your explanation about why you consider it to be confidential will be taken into account, but no assurance can be given that confidentiality can be maintained. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

The Department will process your personal data (name and address and any other identifying material) in accordance with the Data Protection Act 1998, and in the majority of circumstances, this will mean that your personal data will not be disclosed to third parties.

**Please tick if you want us to keep your response confidential.**

Reason for confidentiality:

Name Paul Fitzpatrick Human Resources Manager  
Organisation (if applicable) Rotherham Metropolitan Borough Council  
Address: Paul.fitzpatrick@rotherham.gov.uk

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

Telephone: 0370 000 2288

e-mail: [TeacherRegulation.CONULTATION@education.gsi.gov.uk](mailto:TeacherRegulation.CONULTATION@education.gsi.gov.uk)

If you have a query relating to the consultation process you can contact the Consultation Unit on:

Telephone: 0370 000 2288

e-mail: [consultation.unit@education.gsi.gov.uk](mailto:consultation.unit@education.gsi.gov.uk)

Please tick one category below that best describes you as a respondent.

<input type="checkbox"/> Head Teacher	<input type="checkbox"/> Teacher	<input type="checkbox"/> Governor/Chair of Governors
<input type="checkbox"/> Parent Carer	<input type="checkbox"/> Union/Professional Association	X Local Authority
<input type="checkbox"/> Other		

Please Specify:

Completed by Paul Fitzpatrick: Human Resources Manager, and Liz Buxton:  
Lead Adviser School Effectiveness Service on behalf of and in consultation  
with Elected Members of Rotherham Metropolitan Borough Council

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 6<sup>th</sup> 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".

**Q1) Does the definition of "teaching work" achieve the desired effect and help to identify who is covered by the new regulatory system?**

Yes

No

Not Sure

Comments: Whilst we broadly agree with the definition of 'teaching work' and agree that a definition is necessary to clarify the scope of the regulations, we feel that this may need to be extended to better capture the roles of those staff employed on School Teachers Pay and Conditions who do not actually teach on a daily timetabled basis. The new regulatory system needs to capture QTS staff at *all* levels within the leadership of the school as well as classroom practitioners, particular as there are no up-to-date leadership standards against which the performance of senior leaders in schools can usefully be judged other than the Headteacher Standards last updated in 2004. This would ensure that everyone fully understands that the regulations include all those who lead and manage those who teach as well as those with a regular formal teaching commitment of their own.

We would question why the phrase "*other than for the purposes of induction*" has been included in the definition as this appears to imply that an NQT is subject to the S133 'supervision' regulations which they are not.

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.

**Q2) Do you have any comments on the proposals for investigating misconduct referrals?**

Comments:

We believe these proposals may lead to a lack of consistency about what is reported and what is not. It is our view, in relation to misconduct that, as a minimum, any dismissal or resignation prior to potential dismissal, in relation to a safeguarding related issue should be required to be reported.

Equally, in relation to the issue of incompetent staff, we believe that if there is a determination to raise educational standards across the country then we need to ensure that incompetent teachers are not given the opportunity to move around the system, both to avoid procedures and to continue to work within the profession.

Teachers' Standards

Under the current arrangements GTCE Committees 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.

**Q3) Do you have any comments about the use of professional standards within the disciplinary process?**

Comments: We consider it absolutely essential in the interests of the integrity of the teaching profession and in the interest of fairness and transparency, that a common set of professional standards is used within the disciplinary process. This should be the same set of professional standards used to judge the performance of all who teach in schools. However, much of the leadership and management work of senior leadership staff is not currently captured sufficiently in the present of new professional standards and would consequently make it more difficult to judge a headteacher or other senior teacher leader not to be meeting the standards in relation to their specific roles and responsibilities.

**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.

**Q4 a) Do you have comments on our proposals for the make-up of professional conduct hearings?**

Comments: The proposals should include a member of the panel with relevant experience of senior leadership and management in a school.

**Q4 b) Do you agree with our definitions of who should be considered as a teacher for the purposes of the panels?**

Agree

Disagree

Not sure

Comments: See Q4a) The knowledge and experience of teachers with senior leadership experience is key to understanding the impact that some staff have on the well-being of the organisation and the degree to which a member of staff not meeting professional expectations can influence others and impede the progress of the school's improvement agenda.

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.

**Q5) Do you agree that any provision the Secretary of State may make for the procedure of a professional conduct hearing should be published?**

X Agree

Disagree

Not sure

Comments: This is essential to ensure consistent understanding of the process, and fair and equitable implementation of the procedures.



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.

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.

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.

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.

**Q6) Do you have comments on these proposals for the proceedings of professional conduct hearings?**

Comments:

No comments.

Prohibition Orders

A prohibition order has the effect of preventing a teacher from being employed as a teacher as set out in the consultation document. 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.

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.

**Q7) Do you have any comments the procedures for making prohibition orders?**

<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	<input type="checkbox"/> Not Sure
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Comments:  No comments.
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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.

**Q8) Do you agree that a minimum period of 2 years before which a teacher can apply to have their prohibition order reviewed is appropriate and proportionate?**

<input checked="" type="checkbox"/> Agree	<input type="checkbox"/> Disagree	<input type="checkbox"/> Not sure
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Comments:  No comments
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**Q9) Do you have any other comments to make in relation to prohibition orders?**

Comments:

No comments.

*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.

**Q10) 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?**

Agree

Disagree

Not sure

Comments:

Many teachers move between schools in areas of the wider UK and whilst in some aspects of educational practice it is entirely appropriate for different local practices and policies, this should not apply to such important areas as outcomes of misconduct. It is essential that a teacher who is barred from teaching on grounds of misconduct in Wales, Scotland and Northern Ireland is also automatically barred from teaching in England. It is not possible to conceive of a situation which would result in barring from the profession in England which would not mean that the same sanction should be applied elsewhere in the UK.

If this is not to automatic, then we would be concerned about the transparency of the process to come to this decision.

*Provision of information by employers, contractors or agencies*

As set out in the consultation document, 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.

**Q11) 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 ?**

Comments:

We have no comments regarding the information requirements. However, we would seek to confirm that in maintained schools the authority for making a referral would rest with the Local Authority (rather than, for example, any individual Governor).

*Changes to Teacher Induction Regulations*

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.

**Q12) 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?**

Comments:

1. This Council recognises that the changes with regard to GTC also impact on the regulations for Induction of Newly Qualified Teachers and support the changes.

2. It is also important to note that the GTC currently provides employer access to confirm the status of teachers with regard to QTS, NQT Induction status, and whether/why an Induction extension has been imposed. Headteachers are often appointing teachers prior to their formal award of QTS and some times, even when the teacher has left Initial Teacher Training, QTS status can be unclear due to the time taken to issue formal certificates. It is essential that access to this database is maintained when the GTC ceases to exist be this within the remit of the DfE or the Teaching Agency

3. This council does not agree that the decision to report should be at the discretion of the employer. There should be a requirement to report all cases of serious misconduct to the Secretary of State in fairness to all those

subject to these measures. Without this requirement, some employers may be tempted not to report which will result in inequality across the country in an area where absolute consistency is necessary to safeguard pupils and the integrity of the profession.

Thank you for taking the time to let us have your views. We do not intend to acknowledge individual responses unless you place an 'X' in the box below.

**Please acknowledge this reply**

Here at the Department for Education we carry out our research on many different topics and consultations. As your views are valuable to us, would it be alright if we were to contact you again from time to time either for research or to send through consultation documents?

xYes

No

All DfE public consultations are required to conform to the following criteria within the Government Code of Practice on Consultation:

Criterion 1: Formal consultation should take place at a stage when there is scope to influence the policy outcome.

Criterion 2: Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible.

Criterion 3: Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals.

Criterion 4: Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach.

Criterion 5: Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained.

Criterion 6: Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.

Criterion 7: Officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience.



If you have any comments on how DfE consultations are conducted, please contact Carole Edge, DfE Consultation Co-ordinator, tel: 01928 438060 / email: [carole.edge@education.gsi.gov.uk](mailto:carole.edge@education.gsi.gov.uk)

**Thank you for taking time to respond to this consultation.**

Completed questionnaires and other responses should be sent to the address shown below by 12 October 2011

Send by post to: Lynne Stokes, Teacher Performance & Regulation Project, 6th Floor, 2 St Paul's Place, 125 Norfolk Street, Sheffield, S1 2FJ

Send by e-mail

to: [TeacherRegulation.CONULTATION@education.gsi.gov.uk](mailto:TeacherRegulation.CONULTATION@education.gsi.gov.uk)