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Nodiadau Esboniadol

Education (Wales) Act 2014

2014 anaw 5

Explanatory Notes

£6.00

EDUCATION (WALES) ACT 2014

EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes are for the Education (Wales) Act 2014 which was passed by the National Assembly for Wales on 25 March 2014 and received Royal Assent on 12 May 2014. They have been prepared by the Department for Education and Skills of the Welsh Government to assist the reader of the Act. The Explanatory Notes should be read in conjunction with the Act but are not part of it.

BACKGROUND

2. The General Teaching Council for Wales (GTCW) was established under the Teaching and Higher Education Act 1998. It has been responsible for the registration and regulation of teachers since that time.
3. The Act renames the GTCW as the Education Workforce Council (the Council) and expands its remit to include the registration and regulation of more of the people who are involved in teaching and learning in Wales. As a consequence of this change, the Act updates the Council's constitution, governance arrangements and functions. The Act also provides a mechanism for new categories of person to be added to the regulatory remit of the Council.
4. The Act also takes the opportunity to restate some of the relevant provisions relating to teachers and learning support workers which are currently in the Education Act 2002.
5. Part 3 of the Act deals with three miscellaneous education topics. Section 42 deals with term and holiday dates and the times of school sessions, section 43 deals with the arrangements for appointing Her Majesty's Inspectors of Education and Training in Wales, and section 44 makes provision to clarify that local authority education functions can be performed by nominated persons for all purposes when there is a direction in place to that effect.

COMMENTARY ON SECTIONS

Section 1 – Overview

6. This section summarises the main provisions of the Act. It is intended to be a signposting provision and to introduce key concepts. It also introduces the index of defined words and expressions which may be found in Schedule 4 to the Act.

Sections 2 to 6 (and Schedule 1) – Education Workforce Council

7. Section 2 changes the name of the GTCW to the Education Workforce Council and introduces Schedule 1 which sets out the updated constitution of that body.

8. Subsection (1)(a) confirms that the GTCW and the Education Workforce Council are the same legal entity. This means, for example, that the contractual terms and conditions of its employees are unaffected by the changes.
9. Section 3 sets out the principal aims of the Council:
 - to contribute to the improvement of the standards of teaching and the quality of learning in Wales; and
 - to maintain and improve standards of professional conduct amongst teachers and others in the education workforce in Wales.
10. Section 4 establishes the main functions of the Council:
 - a. to provide advice on matters related to the persons whom the Council regulates, and on teaching and learning matters (see section 7);
 - b. to promote careers in registrable professions (see section 8);
 - c. to establish and maintain a register (see section 9);
 - d. to keep itself informed about the induction of the education workforce and to hear appeals in relation to decisions relating to induction (see sections 17 and 19);
 - e. to review and revise a code of conduct and practice (see section 24);
 - f. to investigate and take action in relation to unacceptable professional conduct and professional incompetence (see section 26); and
 - g. to hold and provide information (see sections 33 and 35).
11. By virtue of section 5 the Welsh Ministers may confer or impose additional functions on the Council, by way of an order. Before making such an order the Welsh Ministers must consult appropriate persons or bodies (for example, the Council).
12. Section 6 gives powers to the Welsh Ministers to give directions to the Council. This could be used in circumstances where the Welsh Ministers had concerns about the governance of the Council or in relation to the manner in which it was exercising its functions. The Council must comply with such a direction.
13. However, the Welsh Ministers may not give a direction in relation to a specific application for registration, an appeal relating to such an application or a specific disciplinary case.

Sections 7 and 8 - Provision of advice and promotion of careers

14. As set out in section 4 of the Act, one of the main functions of the Council is to provide advice on matters related to the persons whom it regulates, and on teaching and learning matters.
15. Under section 7 the Welsh Ministers may require the Council to provide advice to them or to other persons on 'relevant matters' (these are set out in section 7(2)).
16. The Council may also give such advice to other persons as it considers appropriate. Advice may be given on a range of matters including training, career development, performance management and fitness to practice.

17. The Council must, every two months, notify the Welsh Ministers in writing of any advice it has given on relevant matters during the proceeding two months, and of the recipient of that advice.
18. Section 8 provides for the Council to be able to give advice, organise conferences and lectures and publish promotional materials so as to promote the careers of the registered educational workforce, as may be required by the Welsh Ministers. In addition to careers fairs, this may include organising conferences and lectures which will count towards the continuing professional development of registered persons.

Sections 9 to 13 (and Schedule 2) - Registration of the education workforce

19. Sections 9 to 13 deal with the registration of the education workforce. They need to be read in conjunction with Schedule 2, which is introduced by section 9.
20. By virtue of section 9, the Council is required to keep a register of every person who is eligible for registration and applies to be registered.
21. Schedule 2 sets out the exact descriptions of those who may be required to register and allows the Welsh Ministers (by virtue of paragraph 2 of the Schedule) to add new categories of persons who may be required to register by order. This might include, for example, youth workers or persons who are involved in the work based learning schemes established under section 31 of the Learning and Skills Act 2000, and persons who work in independent schools.
22. A person who wishes to be registered must apply to the Council, and must meet the eligibility conditions set out in section 10. If the person meets those conditions, the Council must register them.
23. Registration may be on a full or a provisional basis. There are a variety of circumstances where it may be appropriate for a person to be provisionally registered including while the person:
 - undertakes a period of induction;
 - starts teacher training; or
 - works towards obtaining a required qualification.

However, a person's eligibility to be registered is assessed only once.

24. The conditions a person must meet in order to be eligible to be registered needs to be read in conjunction with section 40. The conditions include a requirement for the Council to be satisfied that the applicant is suitable to be registered.
25. Section 11 provides a right of appeal against the Council's decision about an applicant's suitability to be registered.

26. Section 12 allows the Welsh Ministers to make regulations about the fees which the Council may charge in connection with registration. This includes both the amount of fees that may be charged and also the methods which may be used to collect those fees. For example, employers of registered persons could be required to deduct the fees from the person's salary and send that sum to the Council.
27. Section 13 allows the Welsh Ministers to make regulations about registration generally. Subsection (2) provides some examples of how the power may be exercised. This allows regulations to be made on a broad range of topics from the administrative and procedural aspects of registration through to the consequences of a person providing false or misleading information to the Council as part of the registration process, and how members of the public can access the information that the Council holds.

Sections 14 to 16 - Requirements to be satisfied in order to provide services

28. Sections 14 to 16 enable the Welsh Ministers to impose limitations on who may provide certain services in maintained (and special) schools, and in further education institutions in Wales. For example, the person may have to have certain qualifications or experience or meet certain conditions.
29. Section 14 makes provision in respect of school teachers and learning support workers. The regulations may specify the types of services which a person can't provide without meeting the various requirements. This may include, for example, teaching or preparing lesson plans.
30. Sections 15 and 16 deal with the provision of education and other services at (or for) further education institutions. The restriction on providing services unless certain requirements are met may be imposed on people who provide further education (or support such education) in the community.
31. Education in this context includes vocational, social, physical and recreational training.

Sections 17 to 22 - Induction of registered persons

32. Section 17 enables the Welsh Ministers to require a person to complete a period of induction before they can be fully registered.
33. Regulations made under this section may set out the details of what will be required by way of induction for each category of registration. This may include how long the induction period should be; where it must take place and who should assess if the induction period has been completed satisfactorily. The regulations may also provide for the consequences of not completing an induction period satisfactorily (for example, a person may not be able to be employed as a teacher in a maintained school).
34. Section 18 allows the Welsh Ministers to set the standards against which a person undertaking an induction period must be assessed. In setting those standards the Welsh Ministers must consult the Council.

35. Section 19 provides a person who has been judged not to have satisfactorily completed a period of induction with a right of appeal to the Council against the decision.
36. Section 20 makes provision to deal with circumstances in which a person or body with functions in connection with induction periods is failing to perform those functions, or is performing those functions in an inadequate way.
37. It does so by applying the relevant provisions of the Schools Standards and Organisation (Wales) Act 2013 to these functions. This gives the Welsh Ministers the power to intervene and to issue directions in accordance with that Act in relation to the governing body of a further education institution and in relation to appropriate bodies (other than local authorities and the governing bodies of maintained schools).
38. Because this Act is classified as one of the “Education Acts” (see section 45 of the Act) the Schools Standards and Organisation (Wales) Act 2013 already applies to local authorities and governing bodies of maintained schools or special schools. Subsection (3) confirms that there is no intention to affect the operation of that Act in this respect.
39. Section 22 deals with funding in situations where a person has failed to satisfactorily complete a period of induction but remains employed (on restricted duties) at a maintained school with a delegated budget. In these circumstances, a local authority may only make deductions of costs relating to the person’s remuneration from the school’s budget share if there are good reasons for doing so.

Section 23 – Appraisal of registered persons

40. Section 23 allows the Welsh Minister to make regulations requiring the appraisal of the performance of a registered person.

Sections 24 and 25 - Code of conduct and practice for registered persons

41. Section 24 requires the Welsh Ministers to prepare and publish a code of conduct and practice which specifies the standards which are expected of registered persons. The Code may specify different standards for the different categories within the education workforce.
42. The Council is required to keep the Code under review. It must review it within 3 years of when it was last published and whenever a new category of registration is added.
43. Section 25 allows the Welsh Ministers to make regulations about the Code. This includes making regulations about the form and content of the Code as well as about the consequences when a registered person has not complied with the Code.

Sections 26 to 32 - Disciplinary functions of the Council

44. By virtue of section 26, the Council is required to carry out investigations where it is alleged that a registered person (or where it appears to the Council that a registered person):
 - is guilty of unacceptable professional conduct or serious professional incompetence; or
 - has been convicted of a relevant offence.
45. Following its investigation the Council must decide what further action to take. Where the Council determines that a person is guilty (or has been convicted) the Council is able to make a disciplinary order. Where it finds no case to answer, the Council may discontinue the case.
46. For the purpose of section 26, section 27 makes explicit that the definition of a registered person includes a person who was registered at the time when the alleged conduct or offence took place (whether under section 9 of this Act or under section 3 of the Teaching and Higher Education Act 1998), as well as any person who has applied to be so registered.
47. Section 28 allows the Welsh Ministers to make regulations about the disciplinary functions of the Council. This includes making regulations about procedures for investigation, about disciplinary orders, and about the action that may be required of an employer when an employee is the recipient of a disciplinary order.
48. Regulations cannot require a person to give any evidence or produce any documents which they could not be compelled to give in civil proceedings in any court in England and Wales.
49. Sections 29, 30 and 31 set out the effect of some of the disciplinary orders available to the Council. These include:
 - imposing conditions on a person's registration (and if the conditions are not complied with, taking further action);
 - suspending a person's registration for a period of time of up to 2 years (preventing them from working as a registered person). At the end of the period of suspension, the person may have to comply with any conditions imposed for a further period; and
 - prohibiting a person from being a registered person indefinitely.
50. Section 32 provides a right of appeal against any disciplinary order made by the Council. Appeals must be made within 28 days. The High Court is able to make any order it considers appropriate in relation to an appeal, and the decision of the High Court is final.

Sections 33 to 38 - Information duties

51. Sections 33 to 38 deal with the retention and supply of information which is relevant to the Council's functions of registering and regulating persons who wish to be registered.

52. Section 33 allows the Welsh Ministers to make regulations requiring the Council to maintain records about various persons. This may include, for example, holding information about people who have applied and have been refused registration, or about people who have been removed from the register on disciplinary grounds.
53. Section 34 allows the Welsh Ministers to provide information about registered persons to the Council, either upon the request of the Council or where the Welsh Ministers consider that it is necessary or desirable for the Council to have that information. Section 34 allows the Secretary of State to provide information to the Council about individual teachers in schools either upon the request of the Council or where the Secretary of State considers that it is necessary or desirable for the Council to have that information.
54. Section 35 imposes a number of information duties on the Council. It allows the Welsh Ministers to require the Council to provide information to them (including information about registered persons). It also allows a person in respect of whom the Council holds information to be provided with that information.
55. Section 35 also enables the Welsh Ministers to make regulations which require the Council to provide information to specific persons or bodies (for any purposes and subject to any conditions which the Welsh Ministers may specify). For example, this power could be used to require the Council to provide information to the General Teaching Council for Scotland about a person who is the subject of a disciplinary order.
56. Section 36 requires employers of registered persons who are working in Wales to provide the Council with the name of any registered person which they employ to provide relevant services. It also requires such employers to notify the Council if a registered person is dismissed for unacceptable professional conduct or professional incompetence, or because of a conviction for a relevant offence, and to supply such further information to the Council as may be specified in regulations. This enables the Council to review whether it needs to investigate the person's conduct under its disciplinary powers.
57. Section 37 imposes similar duties to those imposed by section 36 on persons who act as an agent for a registered person.
58. Section 38 allows the Welsh Ministers to issue a direction, which may be enforced by an injunction, to any employer or agent of a registered person if the Welsh Ministers consider that a relevant employer or agent has failed or is likely to fail to comply with a duty under section 36 or section 37.

Section 39 and 40 - Transitional and transitory provision relating to registration

59. Section 39 provides for those teachers who are already registered with the GTCW and who have satisfactorily completed a period of induction to be automatically registered as a school teacher as soon as the new register maintained by the Council comes into force.

60. It also provides for teachers who are registered, but have not yet satisfactorily completed a period of induction, to be automatically registered as a school teacher on a provisional basis as soon as the new register comes into force.
61. Section 40 ensures that those persons who are prohibited from teaching by a disciplinary order under the Teaching and Higher Education Act 1998 or by virtue of a direction under section 142 of the Education Act 2002 remain ineligible for registration under the new system.

Section 42 (and Schedule 3) - Dates of terms and holidays and times of school sessions

62. The existing arrangements for determining the dates of terms and holidays and the times of school sessions are set out in section 32 of the Education Act 2002.
63. Section 42 amends the 2002 Act in respect of Wales by inserting new sections 32A, 32B and 32C.
64. New section 32A of the Education Act 2002 sets out the responsibilities of a local authority or governing body in setting school term and holiday dates for the schools for which they are responsible.
65. In setting dates, the local authorities and governing bodies must co-operate and co-ordinate with each other to ensure that the dates set are the same (or as close as possible to being the same) for every maintained school in Wales.
66. Once the dates have been determined, the Welsh Ministers are to be notified of the dates following a procedure to be set out in regulations.
67. New section 32B of the 2002 Act allows the Welsh Ministers to direct a local authority or governing body to determine different school term dates from those set under section 32A. This might occur, for example, where a special event is taking place which means that it might be desirable for a particular school or set of schools to be on holiday at a different time. It might also be used where an area has not set term dates in accordance with the rest of Wales.
68. Before making a direction under this section, the Welsh Ministers must carry out appropriate consultation. Regulations may be made about such consultation.
69. New section 32C of the 2002 Act is a restatement of the existing provision regarding school session times which relate to Wales in the current section 32 of the Education Act 2002.
70. The current legislative arrangements for England in section 32 of the Education Act 2002 regarding the determination of the dates of terms and holidays and the times of school sessions are preserved by paragraph 1 of Schedule 3.

Section 43 - Her Majesty's Inspectorate of Education and Training in Wales

71. Section 43 amends section 19 of the Education Act 2005.
72. As it stands, section 19 provides that Her Majesty's Chief Inspector of Education and Training in Wales (the "Chief Inspector") and Her Majesty's Inspectors of Education and Training, are appointed by Her Majesty by Order in Council. The Chief Inspector is also removed by Her Majesty by Order in Council.
73. Section 19(6) of the Education Act 2005 provides that the Welsh Ministers are to advise the Secretary of State on any recommendation to be made to Her Majesty as to the exercise of these powers of appointment and removal. However, by virtue of constitutional convention, the First Minister, in his capacity as a Privy Councillor, will in future advise Her Majesty in place of the Secretary of State. The statutory requirement for the Welsh Ministers to advise the Secretary of State is therefore removed by repealing section 19(6) of the 2005 Act.

Section 44 - Local authority education functions exercisable by the persons directed

74. Section 44 amends the School Standards and Organisation (Wales) Act 2013 to clarify that, where a direction is made by Welsh Ministers for local authority education functions to be performed by another body, whilst that direction is in force those education functions can be exercised for all purposes by that body.

Section 45- Status as an Education Act

75. Section 45 provides that the Act is to be included in the list of Education Acts set out in section 578 of the Education Act 1996. This means, among other things, that any functions conferred on a local authority under this Act will be an education function (see section 36A of the Education Act 1996) and subject to the Welsh Ministers' various powers of intervention under the School Standards and Organisation (Wales) Act 2013.

Section 46 - Ancillary provision

76. The powers conferred on the Welsh Ministers by this section allow them to make such orders as they consider appropriate for the Act to achieve its purposes and have its full effect.
77. Examples of how this power might be used include:
- to make changes to other legislation in consequence of the changes made by this Act;
 - to provide additional clarity around any of the new procedures;
 - to deal with unforeseen details arising during the implementation of the new system.
78. Where this power is used to amend the text of primary legislation it must be laid before and approved by the National Assembly for Wales before it comes into force (by virtue of section 47(2)(d)).

Section 47 - Orders and regulations

79. This section sets out that regulations and orders under the Act are to be made by statutory instrument, and sets out the National Assembly for Wales's procedure in respect of these instruments.
80. It also provides that the Welsh Ministers can make incidental, consequential, supplemental, transitional, transitory and saving provision in connection with those instruments. For example, if a new category of registration is added, this power could be used to ensure that appropriate transitional arrangements are in place while the new workers register.
81. Orders and regulations may make different provision for different categories of registration. For example, different induction or appraisal requirements can be made for teachers and further education learning support workers.

Section 50 - Commencement

82. This section deals with when the Act comes into force.
83. While it is largely self-explanatory, it is worth noting that subsection (2) brought into force section 42 (dates of terms and holidays and times of school sessions) on the day that the Act received Royal Assent, but only insofar as it is necessary to allow regulations to be made under the new sections 32A and 32B of the Education Act 2002. This allows the procedures for notification of term dates etc. to be in place before the new duties on local authorities and governing bodies are brought into force.

Schedule 1

84. Schedule 1 is introduced by section 2(2) and makes provision in connection with the constitution and powers of the Council. It provides detail about matters such as the Council's membership, the appointment of the chief officer, the Council's functions and the establishment of committees.

Schedule 2

85. Schedule 2 is introduced by section 9(3), and sets out the categories and definitions of persons eligible for registration with the Council. Schedule 2 provides a power for the Welsh Ministers to change the categories of registered workers by order. This could include adding, amending or removing categories, and specifying services that may not be provided by a person unless he or she is registered.

Schedule 3

86. Schedule 3 is introduced by section 48. Part 1 of Schedule 3 makes consequential amendments to the Education Act 2002 and the School Standards and Organisation (Wales) Act 2013. Part 2 of Schedule 3 repeals certain provisions of the Teaching and Higher Education Act 1998 and the Education Act 2002.

Schedule 4

87. Schedule 4 is introduced by section 1. It provides an index of defined words and expressions used in the Act.

RECORD OF PROCEEDINGS IN NATIONAL ASSEMBLY FOR WALES

88. The following table sets out the dates for each stage of the Act's passage through the National Assembly for Wales. The Record of Proceedings and further information on the passage of this Act can be found on the National Assembly for Wales' website at: <http://www.assemblywales.org/bus-home/bus-legislation.html>

Stage	Date
Introduced	01 July 2013
Stage 1 - Debate	03 December 2013
Stage 2 Scrutiny Committee - consideration of amendments	23 January 2014
Stage 3 Plenary - consideration of amendments	11 March 2014
Stage 4 Approved by the Assembly	25 March 2014
Royal Assent	12 May 2014

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