

EXPLANATORY MEMORANDUM TO

THE EDUCATION (SPECIFIED WORK AND REGISTRATION) (ENGLAND) (AMENDMENT) REGULATIONS 2008

2008 No. 1883

THE GENERAL TEACHING COUNCIL FOR ENGLAND (ELIGIBILITY FOR PROVISIONAL REGISTRATION) REGULATIONS 2008

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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. Description

2.1 The Education (Specified Work and Registration) (England) (Amendment) Regulations 2008 amend the Education (Specified Work and Registration) (England) Regulations 2003 to prohibit certain categories of unqualified teacher from carrying out specified work (teaching) in schools maintained by local education authorities and non-maintained special schools, unless they are provisionally registered with the General Teaching Council for England (GTCE), with effect from 1st September 2009. They also prohibit people from undertaking initial teacher training courses unless they are provisionally registered, with effect from 1st September 2008.

2.2 The General Teaching Council for England (Eligibility for Provisional Registration) Regulations 2008 set out the eligibility criteria for provisional registration and come into force on 1st September 2008.

2.3 Together, these Regulations will enable the GTCE to ‘screen out’ any person whom they do not consider to be suitable to be a teacher before they take up a teaching post as an unqualified teacher or begin initial teacher training. They will also enable the GTCE to make disciplinary orders against anyone who is registered with provisional registration where they find that person guilty of unacceptable professional conduct or serious professional incompetence, or that person has been convicted of a relevant offence.

2.4 All applicants for provisional registration will be exempt from the prohibition imposed upon them for a period of four weeks. This period will commence on the date they take up their teaching post or place on an initial teacher training course, provided they apply for such registration prior to taking up that post or place.

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

3.1 None.

4. Legislative Background

4.1 The Teaching and Higher Education Act 1998 provides for the establishment of the GTCE and the maintenance by the GTCE of a register of every person who is eligible for registration and applies to be registered under the General Teaching Council for England (Registration of Teachers) Regulations 2000. It also provides for the GTCE to make disciplinary orders against

registered teachers where they are found guilty of unacceptable professional conduct or serious professional incompetence, or have been convicted of a relevant offence, under the General Teaching Council for England (Disciplinary Functions) Regulations 2001.

4.2 The Education (Specified Work and Registration) (England) Regulations 2003 require teachers with qualified teacher status to be registered with full registration in order to carry out specified work (teach). The Education (Specified Work and Registration) (England) (Amendment) Regulations 2008 amend those Regulations to require other categories of teacher to be registered with provisional registration in order to carry out specified work; and people to be registered with provisional registration in order to undertake initial teacher training.

5. Territorial Extent and Application

5.1 These instruments apply only 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 GTCE has disciplinary powers to take action against any fully registered teacher. In exercising these powers the Council may take into account any failure to comply with the Code of Standards of Professional Conduct and Practice of Registered Teachers issued by them under the General Teaching Council for England (Registration of Teachers) Regulations 2000.

7.2 The Education (Specified Work and Registration) (England) (Amendment) Regulations 2008 introduce a new category - provisional registration - for those involved in teaching activities but who, because they are not qualified teachers are not covered by full registration. The new groups covered include:

- trainee teachers on initial teacher training courses; and
- certain categories of unqualified teacher, including instructors with special qualifications or experience, overseas trained teachers and teachers on the employment-based teacher training scheme.

7.3 Extending registration will provide more consistency across the profession as almost all of those who carry out specified work in schools (as set out in the Education (Specified Work and Registration) (England) Regulations 2003) would be subject to the same suitability assessment prior to registration and the same standards of professional conduct and practice after registration. For those training to become qualified teachers provisional registration will provide a useful stepping stone to full registration and enable the GTCE to assess whether an applicant is suitable to be a teacher before starting the training, rather than after the person is qualified.

7.4 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 2 May – 27 June 2008. Consultation attracted 45 responses, from a variety of individuals and organisations including teacher training providers, teacher unions and members of the school workforce.

7.5 Responses to questions about eligibility, implementation, how provisional registration will operate and Council membership were all favourable – with support ranging from 64-84%. Responses about the four week exemption period from the requirement were the least favourable (38% were supportive but 38% were not).

7.6 Some respondents misunderstood the proposal, assuming it extended to High Level Teaching Assistants and Cover Supervisors who carry out specified (teaching) work in schools. Others argued that these members of the school workforce should be included. These are not covered by provisional registration arrangements as they only carry out specified work in order to assist or support the work of a qualified or other nominated teacher and only under that teacher's direction and supervision. An analysis of the consultation responses is included in the Regulatory Impact Assessment attached. A consultation report will be published before provisional registration commences on 1 September 2008.

7.7 Confusion about the scope of provisional registration will be addressed by making this clear in guidance provided to governors and head teachers. The GTCE are confident that the four week exemption from the requirement to be registered is sufficient to enable them to determine suitability and register applicants for provisional registration. (Applicants for full registration are granted the same four week exemption period and this has not caused any problems.)

8. Impact

8.1 A Regulatory Impact Assessment is attached to this memorandum.

8.2 The impact on the public sector is minimal. There will be a slight impact on schools, which will need to provide data to the GTCE on around 15,000 unqualified teachers and instructors to ensure applicants are registered. Local authorities already provide data about the teaching profession, so there should be no extra burden on them.

9. Contact

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

Summary: Intervention & Options

Department /Agency: Department for Children, Schools and Families	Title: Impact Assessment of Introducing Provisional Registration with the GTCE for trainee and unqualified teachers.	
Stage: Consultation	Version:	Date: May 2008
Related Publications: consultation document on how to bring in provisional registration		

Available to view or download at:

<http://www.>

Contact for enquiries: Peter Windram

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What is the problem under consideration? Why is government intervention necessary?

Currently individuals undertaking teaching type work (specified) work or who are training to be teachers are not required to register with the General Teaching Council for England. Registering these individuals with this body increases the safeguarding of children in schools. Government needs to intervene to ensure registration is enforced and that the registration process is successful in enhancing the suitability and professionalism of the school workforce. Without Government intervention the enforcement of registration for these groups would not be possible.

What are the policy objectives and the intended effects?

The policy links closely to the Government's safeguarding agenda. It provides extra protection to ensure that those entering schools are professionally suitable. For trainee teachers the Council will be able to assess for suitability before an applicant starts training and ensure the trainee complies with the Council's code of conduct and practice while training. It will also provide more consistency across the profession as all those able to undertake specified work in schools unsupervised will be assessed for suitability before being registered and will be subject to the same regulatory framework.

What policy options have been considered? Please justify any preferred option.

The consultation paper sets out the options being considered, including coverage, timing and funding. The preferred option represents the Government's best judgement on how to meet the objectives of the policy and on distribution of costs between the Council, registrants and employers. To do nothing, leaving it to schools and local authorities to assess through current employment practices runs the risk of an increasingly inconsistent approach to assessing suitability and potentially allowing unsuitable people to enter schools to train or teach.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects? PR is being implemented in two phases – September 2008 for trainee teachers and September 2009 for unqualified teachers. We would expect an initial review of its implementation to be carried out in 2010.

Ministerial Sign-off For SELECT STAGE Impact Assessments:

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister:

Jim Knight.....Date: 24 April 2008

Summary: Analysis & Evidence

Policy Option:	Description: Introducing Provisional Registration
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COSTS	ANNUAL COSTS	Description and scale of key monetised costs by 'main affected groups' The costs of setting up and operating the system have been assessed at £1.09m. The DCSF will provide up to £800,000 to the GTCE in grant funding to support implementation.			
	One-off (Transition)		Yrs		
	£ 1.09m		2		
	Average Annual Cost (excluding one-off)				
	£ 0	Total Cost (PV)	£1.09m		
Other key non-monetised costs by 'main affected groups' - Employers and training providers will need to check that candidates are registered and LAs will need to provide data to the GTCE on new registrants. Improved systems should ensure that there is no extra burden (see costs and benefits section below).					

BENEFITS	ANNUAL BENEFITS	Description and scale of key monetised benefits by 'main affected groups'			
	One-off		Yrs		
	£				
	Average Annual Benefit (excluding one-off)				
	£ 0	Total Benefit (PV)	£ 0		
Other key non-monetised benefits by 'main affected groups' - Efficiency savings (time and resources) for schools, reduces risk of bad outcomes (by preventing unsuitable people entering workforce), increased parental confidence in school workforce, longer term potential reduction in mis-conduct (if central registration acts as an effective national code of practice).					

Key Assumptions/Sensitivities/Risks - In evidence section below.

Price Base Year	Time Period Years	Net Benefit Range (NPV) £	NET BENEFIT (NPV Best estimate) £ Not estimated
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What is the geographic coverage of the policy/option?	England			
On what date will the policy be implemented?	Sept 2008/Sept2009			
Which organisation(s) will enforce the policy?	GTCE			
What is the total annual cost of enforcement for these organisations?	£			
Does enforcement comply with Hampton principles?	Yes/No			
Will implementation go beyond minimum EU requirements?	N/A			
What is the value of the proposed offsetting measure per year?	£ 0			
What is the value of changes in greenhouse gas emissions?	£ 0			
Will the proposal have a significant impact on competition?	No			
Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium	Large
Are any of these organisations exempt?	Yes/No	Yes/No	N/A	N/A

Impact on Admin Burdens Baseline (2005 Prices)			(Increase - Decrease)	
Increase of £	Decrease of £	Net Impact	£	

Key: Annual costs and benefits: Constant Prices (Net) Present Value

Evidence Base (for summary sheets)

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There are two main objectives for the introduction of the policy

- Consistency of treatment across the teaching and training workforce when assessing for professional suitability – the General Teaching Council for England (GTCE) is the professional body for teaching with a remit that includes maintaining and improve standards of professional conduct amongst teachers. This regulatory role involves:
 - Ensuring that an applicant for registration is eligible;
 - Assessing whether an applicant for registration is suitable to be a teacher; and
 - Investigating allegations against registered teachers and disciplining them where appropriate.

Only qualified teachers are required to be registered but an increasingly diverse workforce means that there are others able to undertake specified work (teaching type work) unsupervised in schools, mainly overseas trained teachers and instructors. Requiring these groups to be registered (with provisional registration) would provide a more consistent approach to assessing the suitability and maintaining standards of conduct and competence of the workforce. For trainee teachers it also makes sense to assess applicants training for suitability before commencing training rather than after qualifying and possibly being found unsuitable to start teaching.

- Safeguarding agenda – the existing system of vetting and barring is changing and a review of the handling of misconduct issues in the school workforce has taken place. List 99, which is a list of those prohibited from working with children in education settings in England and Wales and includes those convicted for crimes such as deception and those unsuitable for health reasons as well as for sexual offences, will be replaced with a list of people barred from working with children across all settings specifically because they are assessed to pose a risk of harm to those children. Employers of school staff, namely schools or local authorities, or training providers will need to assess applicants to ensure that issues of professional misconduct are picked up before employing them in schools. The GTCE regulatory framework already provides an additional safeguard in respect of qualified teachers by refusing registration (or withdrawing it) – and therefore the eligibility to teach in schools in England – to those found to be unsuitable or to have committed acts of unacceptable professional conduct or have been convicted of a relevant offence. It would be beneficial to schools and providers to extend this safeguard to those who would be required to be provisionally registered.

Options for the policy

The options include:

- Do nothing. Some people previously on List 99 for purely misconduct issues – like deception or failing to follow schools policy - will no longer be barred when List 99 closes. In the case of qualified teachers, they would need to be registered with the GTCE before re-joining the workforce and the Council's regulatory framework would apply. Others currently barred would not and it would be for individual employers and training providers to take action where there is an issue of suitability or misconduct. Without a national regulatory body in place the risk would be that some of those previously barred would rejoin the workforce without a proper assessment of the suitability of the person to do so. Even where the person is refused or dismissed from one school or provider, there would be nothing to prevent an individual from moving on and applying to another.
- No change to regulation but to provide more guidance to employers on current vetting procedures. It is already the intention to revise staffing guidance in the light of the new safeguarding arrangements and to encourage schools to check for a previous misconduct barring when filling school vacancies. There is however no requirement for them to do so and no guarantee that all will. As with the previous option, having a national regulatory body would help prevent unsuitable applicants from joining the school teaching or training workforce.

How the scheme will operate

- Largely as it does now for qualified teachers. Individuals will be required to be registered with provisional registration with the Council before starting teacher training or undertaking specified work in schools. Once registered, they would be expected to comply with the Council's Code of Conduct and Practice for Registered Teachers. The Council has disciplinary powers to take action in cases of alleged unacceptable professional conduct, serious professional incompetence (but not for trainees on mainstream ITT courses) or conviction of a relevant offence.

Sectors affected

- Effect on schools and local authorities will be very limited. The current registration system run by GTCE will be extended to include trainee, unqualified teachers and instructors (around 55,000 extra registrants on top of 500,000 existing registered teachers).
- Local authorities (as employers) and schools will need to check whether individuals are registered before allowing them onto courses or schools (which they already do for registered teachers). The GTCE provides a free on-line or phone-in service which will be extended to incorporate provisional registration.

Groups affected

- We would not expect the policy to have any gender, race or disability bias. If implemented, the policy would require all trainee or unqualified teachers to be registered with the GTCE. There is nothing to suggest that any one category of applicant is more likely to fail registration than any other.

Impact

- Minimal impact on the education sector. Slight expansion of existing GTC data collection exercise with schools to include unqualified teachers and instructors (15,000 extra across England) and ensuring the applicant is registered with the GTCE. As LAs already provide data for the teaching profession, there should be no extra burden in providing data on unqualified teachers and instructors.

Costs and Benefits

Costs

- Costs to schools or local authorities – should be no extra costs to employers and providers in checking applicants are registered before they undertake specified work or commence training. The Council is currently rolling out its new on-line checking system (free) to schools to improve the current checking system. Costs of operating the system to be reviewed after April 2010.
- Costs to the Council – the costs of setting up and operating the system between now and April 2010 have been estimated by the Council at £1.09m (.The DCSF will provide grant funding of up to £800,000 over the next two years to support the implementation of the policy).
- Cost to applicants for provisional registration – none at present. To be reviewed in April 2010.

Benefits

- Removal of people who are unsuitable on misconduct grounds from schools and teacher training programmes.
- Improved professionalism of the workforce as the Council's Code of Conduct and Practice for Registered Teachers is applied to wider sections of the school and training workforce.
- Time saved by schools on employment issues if unsuitable people removed from workforce.

Implementation and delivery

- Two phases – September 2008 for candidates on teacher training courses and September 2009 for unqualified teachers and instructors. This should give the Council time to implement effectively. We will work closely with the Council on the policy's implementation.

Monitoring and review

- We will work closely with the Council on success criteria for the policy. The introduction of phase 1 will provide the opportunity to assess how well the policy is being implemented for this group and provide time to adapt for phase 2 if necessary.

Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	Yes/No	Yes/No
Small Firms Impact Test	Yes/No	Yes/No
Legal Aid	Yes/No	Yes/No
Sustainable Development	Yes/No	Yes/No
Carbon Assessment	Yes/No	Yes/No
Other Environment	Yes/No	Yes/No
Health Impact Assessment	Yes/No	Yes/No
Race Equality	Yes	No
Disability Equality	Yes	No
Gender Equality	Yes	No
Human Rights	Yes/No	Yes/No
Rural Proofing	Yes/No	Yes/No

ANNEX

CONSULTATION ANALYSIS

	Yes	No	Not Sure	No Comment
1. Are the proposals clear in terms of who would be covered by the requirement to be provisionally registered?	38 84.4%	4 8.9%	3 6.7%	
2. Are the phasing arrangements for PR clear and reasonable?	32 70.5%	6 13.3%	4 8.9%	3 6.7%
3. Is it clear how the Council's regulatory framework would apply to those who would be provisionally registered?	39 86.4%	1 2.2%	4 8.9%	1 2.2%
4. Do you agree with the Council Membership conditions which would apply for those with provisional registration?	29 64.4%	12 26.7%	4 8.9%	
5. Are the proposals for the funding of the programme up until 2010 reasonable?	23 51.1%	11 24.4%	7 15.5%	4 8.9%
6. Is the four week exemption from the requirement to be registered sufficient to ensure applicants are registered before starting training or specified work in schools?	17 37.7%	17 37.7%	7 15.5%	4 8.9%