

**EXPLANATORY MEMORANDUM TO  
THE GENERAL TEACHING COUNCIL FOR ENGLAND (DISCIPLINARY  
FUNCTIONS) (AMENDMENT) REGULATIONS 2011**

**2011 No. 2785**

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 The General Teaching Council for England ("the Council") is the national regulator of the teaching profession. Its Professional Conduct Committees and Professional Competence Committees ("the disciplinary committees") include in their membership members of the Council. The purpose of this instrument is to alter the provisions on the membership of those committees to prevent Council members sitting on a disciplinary committee.

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

3.1 Breach of the 21 day rule

The effect of regulation 8 of the 2001 Regulations prior to amendment by this instrument is that the disciplinary committees are required to include at least one Council member. In the light of *Kaur* (see paragraph 4.1 below) the Council is concerned at the risk of challenge to disciplinary committee determinations and, pending the changes made by this instrument, those committees have adjourned any hearing in progress before them, postponed indefinitely the hearing in cases where the hearing date had been fixed, and are taking no steps to fix the hearing dates for cases which are due to have a hearing.

3.2 The Council needed to consider fully the implications of the judgment and whether there may be other possible solutions. It now wishes the Regulations to be amended without delay to remove the requirement for its disciplinary committees to include at least one Council member, in order that cases may be resumed or rearranged. The Secretary of State agrees that the position should be altered as a matter of urgency, which is why this instrument has a coming into force day of the day after laying before Parliament.

3.3 Other than the Council, the only persons potentially affected by the amendment are teachers awaiting the hearing of their cases. We would submit that their interests are best served by their being dealt with by a properly constituted tribunal as soon as possible. In addition, there is at least a possibility that whilst hearings are suspended some teachers will continue teaching who should not be doing so. There is no procedure under which any suspension can be imposed in the meantime.

#### **4. Legislative Context**

4.1 This instrument is being made to change the law following a case before the Court of Appeal involving the Institute of Legal Executives (ILEX), which is a regulator of the legal profession (*R (on the application of Kaur) v Institute of Legal Executives Appeal Tribunal and the Institute of Legal Executives* [2011] EWCA Civ 1108). In that case it was held that the presence of the Vice-President of ILEX on a disciplinary appeal panel gave rise to the appearance of bias, and it was observed that the presence of ILEX Council members on ILEX disciplinary panels would also cause a fair-minded and informed observer to conclude there was a real possibility of bias in the panel's decision-making. In the light of this judgment inclusion of members of the Council on the disciplinary committees may similarly give rise to the appearance of bias in the committees' proceedings. The General Teaching Council for England (Disciplinary Functions) Regulations 2001 (S.I. 2001/1268) ("the 2001 Regulations") make provision as to the membership of the disciplinary committees. These Regulations amend the 2001 Regulations to prevent a Council member from being a member of one of the disciplinary committees.

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

5.1 The 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 Council is the regulator for the teaching profession in England. It investigates cases of professional misconduct and professional incompetence and, where it believes there is a case to be answered, conducts hearings to determine whether the teacher has been guilty of unacceptable professional conduct or serious professional incompetence and to decide what sanction, if any, should be applied to the teacher concerned. The Council may apply a number of sanctions including, in the most serious cases, making a prohibition order which prevents the individual concerned from being employed as a teacher. Cases of professional misconduct are heard by Professional Conduct Committees and cases of professional incompetence are heard by Professional Competence Committees. There is a risk in the light of the decision in *Kaur* that decisions of the disciplinary committees could be challenged successfully (on appeal to the High Court or by judicial review) if a Council member is a member of the committee in question.

7.2 To maintain confidence in the profession and to protect children and the wider public it is essential that there are effective and credible arrangements for teacher regulation. The changes made by this instrument will remove the effect of current Regulations that risks the composition of the disciplinary committees being held to be

unlawful. There is no alternative to making this change if the regulatory system is to be able to function effectively.

## **8. Consultation outcome**

8.1 It is considered necessary make changes as a matter of urgency so consultation has been limited, but we have taken into account the views of the Council, who include representatives of the teaching profession and unions representing teachers. The Council supports the changes.

## **9. Guidance**

9.1 The Council will notify interested parties – no new guidance is necessary.

## **10. Impact**

10.1 There is no impact on business, charity or voluntary bodies.

10.2 The impact on the public sector is minimal.

10.3 An Impact Assessment has not been prepared for this instrument.

## **11. Regulating small business**

11.1 The legislation does not apply to small business.

## **12. Monitoring & review**

12.1 Given that the GTCE is being abolished by the Education Act 2011, (the intention is for abolition to take effect on 1<sup>st</sup> April 2012), there is limited scope for monitoring. We will monitor the number and progress of appeals and judicial reviews of cases determined by the disciplinary committees.

## **13. Contact**

Hazel Briant at the Department of Education Tel: 02073408121 or email: [hazel.briant@dfes.gov.uk](mailto:hazel.briant@dfes.gov.uk) can answer any queries regarding the instrument.