

**EXPLANATORY MEMORANDUM TO
THE TEACHERS' DISCIPLINARY (AMENDMENT) (ENGLAND)
REGULATIONS 2014**

2014 No. 1685

1. This explanatory memorandum has been prepared by The Department for Education and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments (JCSI).

2. **Purpose of the instrument**

2.1 This instrument amends the existing Teachers' Disciplinary Regulations ("the Regulations"), which provide for the procedure to be followed by the Secretary of State in reaching a decision as to whether to make a prohibition order under section 141B(2) of the Education Act 2002, prohibiting a person from carrying out teaching work. It amends the position in respect of the eligibility criterion for teacher professional conduct panel members; makes clear the limitations on the evidence that witnesses in teacher misconduct hearings can be required to provide in accordance with the vires in paragraph 2(2) of Schedule 11A to the Education Act 2002; and clarifies the requirement to serve notice of a prohibition order on any person who has engaged the teacher in question to carry out teaching work.

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

3.1 This instrument makes changes to the Regulations in response to the third JCSI report of 2012/13, published on the 20th June 2012. The Department apologises for the length of time that has elapsed, which has largely been due to the wish to make these changes in conjunction with operational amendments in order to avoid making amending regulations more times than is strictly necessary.

3.2 The JCSI reported regulation 10 of the Regulations for failure to comply with proper legislative practice and for doubt as to whether it is *intra vires*. The Committee also reported regulation 13(4)(b) for defective drafting.

3.3 Regulation 10 allows the Secretary of State and professional conduct panels to summon witnesses. The JCSI considered that if a witness summons may be issued under Part 34 of the Civil Procedure Rules 1998, given the existence of regulation 12, which envisages the attendance of witnesses, regulation 10 is merely informative and so should not appear as an operative provision.

3.4 We are of the view that Part 34 is available. Under that Part, the court may issue a witness summons in aid of any inferior court or tribunal that does not have the power to do so itself. Whilst there is no definition or caselaw confirming that the panel would count as the type of inferior court or tribunal covered by the rule, on a purposive interpretation there is nothing to indicate that “tribunal” should be given a narrow reading and the purpose of the provision is to assist the inferior court or tribunal to discharge its functions. It is exercising a quasi-judicial function rather than purely administrative functions. The case which appears to be most on point on this issue is *Peach Grey & Co v Sommers* (1995 IRLR 363). In that case, discussing whether a tribunal fell within this description the court held that:

“An industrial tribunal exercises judicial functions and has many of the characteristics of a court of law, even though it is not a court of record. It was *established by Parliament*, it has a legally qualified chairman appointed by the Lord Chancellor and (like the Employment Appeal Tribunal which is a court of record) other *members representing employers and employees drawn from panels compiled by the Secretary of State* for Employment. It *sits in public to decide cases which affect the rights of subjects and it has power to compel the attendance of witnesses, administer oaths, control the parties' pleadings by striking out and amendment, and order discovery; the parties before it can have legal representation; it has rules of procedure relating to the calling and questioning of witnesses and addresses on behalf of the parties*; it can award costs; *it must give reasons for its decisions which, on a point of law, can be appealed to the EAT and the Court of Appeal.*”.

All the characteristics italicized above apply equally to a professional conduct panel hearing a teacher’s disciplinary case.

3.5 Having considered carefully the JCSI’s comments, we nonetheless wish to retain regulation 10. The National College for Teaching and Leadership (“the NCTL”), who administer the teacher misconduct system on behalf of the Secretary of State, find that it provides an extremely effective and frequently used mechanism to persuade witnesses to attend a hearing, or provide required information at a hearing without the need to obtain a court summons. It also replicates a similar provision in the regulations that governed the previous system for teacher regulation. They are of the view that deleting it would have adverse operational and costs consequences in terms of an increased need to obtain summonses.

3.6 With regard to the vires, the amending regulations insert a provision reflecting the wording of paragraph 2(2) of Schedule 11A by including a provision excusing witnesses from giving evidence or producing documents where they could not be compelled to do so in civil proceedings.

3.7 The amending regulations also add to regulation 13(4)(b) to provide for service of notice of a prohibition order on those engaging the services of a teacher rather than employing them, in order to expressly provide for the two limbs of the definition of “teacher” in regulation 2, which provides that

“teacher means a person who is employed or engaged to carry out teaching work...”.

4. Legislative Context

4.1 This instrument is made as a direct response to the third JCSI report. In addition, it amends the position in respect of the eligibility criterion for teacher professional conduct panel members.

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 first amendment, at regulation 2(2), clarifies the intended policy position in respect of the constitution of professional conduct panels. It revises the criterion for determining which ex-teachers will be eligible to be members of a panel. The revision makes clear that the requirement to have been a practicing teacher in the preceding five years will be determined at the point the individual is appointed by the Secretary of State to the position of panelist, as opposed to allocation to a particular panel. This revision will result in a revised criterion that is more practical to administer.

7.2 Regulation 2(3) reflects the provisions in the primary legislation, Schedule 11A to the Education Act 2002, which provides that any witness who attends a teacher disciplinary hearing may only be required to provide information that they could otherwise be compelled to provide during civil proceedings.

7.3 This instrument also extends, at regulation 2(4), the existing requirement to serve notice of any new prohibition order on the employer of the teacher concerned, to any person by whom the teacher was engaged to carry out teaching work. This ensures that any person who appoints an individual to work as a teacher will be informed about the prohibition, regardless of the method by which the appointment was made.

8. Consultation outcome

8.1 The technical nature of the changes do not require consultation. These amendments place no additional requirements on schools or local authorities and are made only to improve, provide clarification and consistency of approach to the NCTL for their own operational purposes.

9. Guidance

9.1 The technical nature of the changes impact only on the procedures of the NCTL. The changes will be reflected within the NCTL's procedural advice, which is publically available at:

<https://www.gov.uk/government/publications/teacher-misconduct-disciplinary-procedures>

10. Impact

10.1 The impact on business, charities or voluntary bodies is negligible.

10.2 The impact on the public sector is negligible.

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 other than, possibly, teaching agencies with regard to the change to regulation 13(4)(b). Notice of a prohibition will, in future, be served on any person who engages a teacher to carry out teaching work. The impact of the change will be negligible.

11. Monitoring & review

12.1 The Department works collaboratively with the NCTL, which allows for a regular assessment to be made of the effectiveness of the processes and procedures used to regulate the teaching profession. The impact of the revisions made by this Statutory Instrument on the NCTL's activity will be considered as part of that ongoing activity.

13. Contact

Peter Windram at the Department for Education (Tel: 01325 735698 or email: peter.windram@education.gsi.gov.uk) can answer any queries regarding the instrument.