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WELSH STATUTORY INSTRUMENTS

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**2015 No. 140**

**The Education Workforce Council (Main  
Functions) (Wales) Regulations 2015**

**PART 5**

**Disciplinary functions**

**Establishment of Investigating Committees**

**20.** The Council must establish one or more committees to be known as Investigating Committees for the purposes of carrying out the functions in section 26(1) and (2) of the 2014 Act.

**Delegation of Investigating Committees' functions**

**21.—**(1) An Investigating Committee may delegate to an employee of the Council the functions of—

- (a) deciding whether to investigate, and investigating, allegations of a particular character or description, or particular allegations—
  - (i) against a registered person; or
  - (ii) that a registered person has been convicted of a relevant offence;
- (b) deciding whether a registered person has a case to answer in relation to a matter investigated under sub-paragraph (a);
- (c) discontinuing a case against a registered person where the employee has decided under sub-paragraph (b) that there is no case to answer.

(2) Part 5 of these Regulations applies to the exercise of a function by an employee of the Council as they would apply to the exercise of that function by an Investigating Committee.

**Establishment of Fitness to Practice**

**22.—**(1) The Council must establish one or more committees to be known as Fitness to Practice Committees for the purposes of carrying out the functions referred to in paragraph (2).

(2) The functions of a Fitness to Practice Committee are to—

- (a) determine cases referred to it by an Investigating Committee where it appeared to the Investigating Committee that the registered person has a case to answer in relation to—
  - (i) unacceptable professional conduct;
  - (ii) serious professional incompetence; or
  - (iii) conviction of a relevant offence;
- (b) consider whether to make a disciplinary order in relation to that registered person and if it considers that such an order should be made, to make such an order where a Fitness to Practice Committee finds a registered person—

- (i) guilty of unacceptable professional conduct;
  - (ii) guilty of serious professional incompetence; or
  - (iii) to have been convicted of a relevant offence; and
- (c) determine applications under regulations 37, 39 or 40, or matters arising in relation to disciplinary orders under regulations 38 or 41.

### **Form and content of code of conduct and practice**

**23.** The code of conduct and practice must contain as a minimum provision dealing with the following matters—

- (a) basing relationships between learners and registered persons on mutual trust and respect;
- (b) having regard to the safety and well-being of learners;
- (c) working in a collaborative manner with colleagues and other professionals;
- (d) developing and maintaining good relationships with parents, guardians and carers;
- (e) acting with honesty and integrity;
- (f) being sensitive to the need for confidentiality, where appropriate;
- (g) taking responsibility for maintaining the quality of professional practice; and
- (h) upholding public trust and confidence in the education workforce.

### **Use of the code of conduct and practice in disciplinary matters**

**24.** An Investigating Committee or a Fitness to Practice Committee must take into account any failure by a registered person to comply with the code of conduct and practice in any disciplinary proceedings against that person.

### **Provision of copies of the code of conduct and practice**

**25.—(1)** The Council must make copies of the code of conduct and practice available free of charge to all registered persons—

- (a) when the code of conduct and practice is first issued or on a person's first registration (if the person was not a registered person when the code of conduct and practice was first issued); and
- (b) when the code of conduct and practice is revised.

(2) The Council must make available a copy of the code of conduct and practice at any website maintained by it on the internet.

(3) Subject to paragraph (1) the Council must on request provide copies of the code of conduct and practice on payment of such reasonable charge as it may decide.

### **Membership and procedure of Committees**

**26.—(1)** The Council must include on an Investigating Committee or a Fitness to Practice Committee ("a Committee")—

- (a) one or more lay members; and
- (b) one or more registered person member.

(2) The quorum for a meeting of a Committee is three members, including one lay member and one registered person member.

(3) A person who is a member of the Council must not be appointed as a member of a Committee.

(4) A person who is a member of the Investigating Committee investigating a case must not be appointed as a member of the Fitness to Practice Committee which determines that case.

(5) Subject to paragraphs (1) to (4) and regulations 37, 39 and 40, the Council may make such provision as it see fit as to—

- (a) the membership of a Committee;
- (b) the terms on which a Committee's members are to hold and vacate office; and
- (c) the procedure of a Committee.

(6) In this regulation—

- (a) “lay member” (“*aelod lleyg*”) means a member of the Committee who is not—
  - (i) a registered person;
  - (ii) employed, or engaged to provide relevant services within the period of 5 years ending with the date of that person's appointment to the Committee;
  - (iii) barred from regulated activity relating to children (within the meaning of section 3(2) of the Safeguarding Vulnerable Groups Act 2006<sup>(1)</sup>);
  - (iv) subject to a disciplinary order made under the 2014 Act by virtue of which the person is ineligible to register; or
  - (v) disqualified from working in a post equivalent to a category of registration;
- (b) “registered person member” (“*aelod sy'n berson cofrestredig*”) means a person who is—
  - (i) a registered person from the same category of registration as the registered person who is the subject of the disciplinary proceedings; and
  - (ii) employed, or engaged otherwise than under a contract of employment, in one of the posts described in the categories of registration on the date of that registered person member's appointment to the Committee.

(7) A registered person member who ceases to be registered person or who ceases to be employed or engaged in one of the posts described in the categories of registration must cease to be a registered person member.

(8) A lay member who becomes a registered person ceases to be regarded as a lay member.

### **Exclusion or restriction of Committees' powers**

**27.—**(1) An Investigating Committee's functions under Part 5 of these Regulations are excluded in a case where—

- (a) it is alleged that a registered person is guilty of unacceptable professional conduct or has been convicted (at any time) of a relevant offence, or it appears to it that a registered person may be so guilty or have been so convicted; and
- (b) the Secretary of State considers that the case concerns the safety and welfare of persons who have not attained the age of 18 and wishes to consider the case with a view to exercising their powers under section 141B of the Education Act 2002 on the grounds—
  - (i) that a person is unsuitable to work with children, or
  - (ii) relating to a person's misconduct or health, or
- (c) the Disclosure and Barring Service, established by section 87(1) of the Protection of Freedoms Act 2012<sup>(2)</sup>, has included, or is considering whether to include, a registered

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(1) 2006 c. 47.

(2) 2012 c. 9.

person in either of the barred lists maintained under section 2 of the Safeguarding Vulnerable Groups Act 2006<sup>(3)</sup>.

(2) An Investigating Committee's functions under Part 5 of these Regulations are excluded in a case where—

- (a) it is alleged that a registered person is guilty of serious professional incompetence or it appears to it that a registered person may be so guilty; and
- (b) information has not been provided to the Council pursuant to Part 7 of these Regulations which the Investigating Committee considers is necessary to enable it to carry out its functions under Part 5 of these Regulations.

### **Proceedings of Investigating Committees**

**28.**—(1) Where an Investigating Committee decides to carry out an investigation in relation to a registered person, it must at such stage in the investigation as they consider appropriate—

- (a) inform the registered person of the nature of the allegation or case against them, and their rights under regulation 30;
- (b) afford the registered person an opportunity to submit evidence and make written representations; and
- (c) consider such evidence and representations and any other evidence and material available to it.

(2) An Investigating Committee may decide to discontinue an investigation at any time before a case is referred for determination by a Fitness to Practice Committee.

(3) When its investigation is complete the Investigating Committee must take one of the following steps—

- (a) refer the case for determination by a Fitness to Practice Committee; or
- (b) discontinue the case.

(4) Where an Investigating Committee decides to discontinue an investigation or a case it must inform the registered person concerned and their employer that—

- (a) the investigation has been discontinued; and
- (b) the registered person concerned had no case to answer.

(5) Where an Investigating Committee decides that a registered person has no case to answer, it must at that person's request publish a statement to that effect.

(6) The Council may make such other provision as to the procedure to be followed by an Investigating Committee in connection with the Investigating Committees' investigations and other proceedings as it sees fit, and may from time to time revise any rules of procedure made under this paragraph.

### **Proceedings of Fitness to Practice Committees**

**29.**—(1) A Fitness to Practice Committee must determine cases against registered persons referred to it by an Investigating Committee in accordance with these Regulations and rules made by the Council under regulation 34.

(2) Where a Fitness to Practice Committee decides at any time after a case is referred to them by an Investigating Committee to discontinue that case, it must inform the registered person concerned and their employer that the—

- (a) investigation has been discontinued; and

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(3) 2006 c. 47.

- (b) registered person concerned had no case to answer.
- (3) Where a Fitness to Practice Committee decides that a registered person has no case to answer, it must at that person's request publish a statement to that effect.
- (4) A Fitness to Practice Committee may refer a case to an Investigating Committee.

### **Entitlement to appear and be represented at hearings**

- 30.—**(1) A registered person is entitled to appear and make oral representations and to be represented, by any person or persons whom they desire, at any hearing of a Fitness to Practice Committee at which their case is considered.
- (2) Where a registered person does not appear at a hearing of a Fitness to Practice Committee at which their case is considered, the registered person is entitled to make written representations.

### **Attendance of witnesses**

- 31.** A Fitness to Practice Committee may require any person to attend and give evidence or to produce documents or other material evidence at any hearing.

### **Requirement for hearings to be held in public**

- 32.—**(1) A Fitness to Practice Committee must announce its determination of the outcome of all hearings in public and subject to paragraphs (2) and (3) all hearings of a Fitness to Practice Committee must take place in public.
- (2) A Fitness to Practice Committee may deliberate in private at any time and for any purpose during or after a hearing.
- (3) A Fitness to Practice Committee may exclude the public from a hearing or any part of a hearing—
- (a) where it appears to the committee that it is necessary in the interests of justice to exclude the public;
  - (b) where the registered person against whom disciplinary proceedings are being taken makes a written request that the hearing should be in private, and the Fitness to Practice Committee does not consider it to be contrary to the public interest to hold the hearing in private; or
  - (c) where it is necessary to protect the interests of children.

### **Administration of oaths and affirmations**

- 33.** A Fitness to Practice Committee may require any witness at a hearing to give evidence on oath or affirmation and for that purpose there may be administered an oath or affirmation in due course.

### **Other provisions about Fitness to Practice Committees**

- 34.** The Council may make such other provision as to the procedure to be followed by a Fitness to Practice Committee in connection with the committee's determinations and other proceedings as it sees fit, and may from time to time revise any rules of procedure made under this paragraph.

### **Disciplinary orders**

- 35.—**(1) A disciplinary order must record the decision of the Fitness to Practice Committee, the date on which the order is made, and the date on which the order takes effect.

(2) A disciplinary order takes effect on the date on which notice of it is served on the person in relation to whom it is made except where a Fitness to Practice Committee otherwise decide.

(3) A Fitness to Practice Committee must serve a notice of the disciplinary order on the person in relation to whom it is made containing the following information—

- (a) the text of the order;
- (b) a description of the effect of the order;
- (c) the Fitness to Practice Committee's reasons for making the order;
- (d) notification of the registered person's right to appeal to the High Court against the order and the time period for making such an appeal;
- (e) where the order is a conditional registration order, an explanation of—
  - (i) the steps a Fitness to Practice Committee are empowered to take should the registered person fail to comply with a condition specified in it; and
  - (ii) that person's right to apply to vary or revoke a condition specified in the order and the method for making such an application;
- (f) where the order is a suspension order which specifies conditions, an explanation of the registered person's right to apply to vary or revoke a condition specified in the order and the method for making such an application; and
- (g) where the order is a prohibition order, an explanation of the registered person's right to apply for a determination that they are eligible for registration and the method for making such an application.

(4) A Fitness to Practice Committee must serve notice of the order on the registered persons present or last employer and, where relevant, agent.

(5) Where following the determination of a case by a Fitness to Practice Committee it decides not to make a disciplinary order in relation to a registered person, the committee must notify the registered person concerned and their employer—

- (a) of its decision and the reasons for it; and
- (b) whether it decided that the case against them was not proved.

(6) Where it does not find the case against a registered person proved, a Fitness to Practice Committee must at the registered person's request publish a statement to that effect.

### **Publication of disciplinary orders**

**36.—**(1) Subject to paragraph (2) the Council must publish the information set out in paragraph (3) in relation to a disciplinary order—

- (a) on a website which it maintains on the internet for the period for which the order is to have effect or for a period of six months starting on the date on which the order takes effect (whichever is the later); or
- (b) in such other manner as it sees fit.

(2) The duty to publish the information in paragraph (3) does not apply where in the opinion of the Council not publishing appears necessary—

- (a) in the interests of justice; or
- (b) to protect the interests of children.

(3) The information to be published is—

- (a) the name of the person in relation to whom the order is made and the name of the—
  - (i) school at which the person was last employed;

- (ii) further education institution or higher education institution at which the person was last employed, or
  - (iii) local authority where the person was last employed by a local authority otherwise than at a school or further education or higher education institution;
- (b) the type of disciplinary order;
- (c) the date on which the disciplinary order was made and takes effect;
- (d) the period for which the disciplinary order has effect (where specified);
- (e) whether the person was found to have been guilty of unacceptable professional conduct or serious professional incompetence or to have been convicted of a relevant offence;
- (f) where the person was found to have been convicted of a relevant offence, the nature and date of the conviction in question; and
- (g) where the person was found to have been guilty of unacceptable professional conduct or serious professional incompetence, an indication of the nature of the conduct which led to the making of the order.

#### **Application to vary or set aside a condition in a conditional registration order**

**37.**—(1) An application by a registered person who has received a conditional registration order to vary or revoke any condition in the order must—

- (a) be made in writing;
- (b) specify the grounds on which the registered person seeks to have any condition specified in the order varied or revoked, and
- (c) be accompanied by every document relied upon in support of the application.

(2) Where an application is made under paragraph (1) the Fitness to Practice Committee considering that application must not include as a member any person who was a member of the committee which made the order to which the application relates.

#### **Consequences of failure to comply with a conditional registration order**

**38.** Where a Fitness to Practice Committee is satisfied that a registered person against whom a conditional registration order has been made has failed to comply with any condition of it, it may make a suspension or prohibition order in relation to the registered person.

#### **Application to vary or set aside a condition in a suspension order**

**39.**—(1) An application by a person who has received a suspension order to vary or revoke a condition specified in the order must—

- (a) be made in writing;
- (b) specify the grounds on which the person seeks to have any condition specified in the order varied or revoked, and
- (c) be accompanied by every document relied upon in support of the application.

(2) Where an application is made under paragraph (1) the Fitness to Practice Committee considering that application must not include as a member any person who was a member of the committee which made the order to which the application relates.

**Application to review a prohibition order**

**40.**—(1) An application by a person who has received a prohibition order from the Council to determine whether they are eligible for registration must—

- (a) be made in writing;
- (b) specify the grounds on which the person seeks to have any condition specified in the order varied or revoked; and
- (c) be accompanied by every document relied upon in support of the application.

(2) Where an application is made under paragraph (1) the Fitness to Practice Committee considering that application must not include as a member any person who was a member of the committee which made the order to which the application relates.

**Review of disciplinary orders**

**41.** A Fitness to Practice Committee may at any time revoke a disciplinary order made by it where—

- (a) the only or main reason for making the order was that the person in relation to whom the order was made had been convicted of a relevant offence, and after the date the order was made the conviction in question was quashed; or
- (b) after the order was made the Fitness to Practice Committee obtain evidence not considered by it before they made the order, and it is satisfied that had it been aware of that evidence before it made the order it would not have made it.

**Service of notices and orders**

**42.** A notice required to be served on a person for the purposes of disciplinary proceedings must be served in accordance with regulation 54.

**Publication and provision of copies of documents**

**43.**—(1) The Council must publish any rules of procedure made under regulation 28(6) or 34—

- (a) on a website which it maintains on the internet; and
- (b) in such other manner as it sees fit.

(2) The Council must at the request of any registered person provide that person with a copy of such rules of procedure made under regulation 28(6) or 34.

(3) The Council may charge a reasonable fee for the provision of the rules of procedure in accordance with paragraph (2) but such charge must not exceed the cost of supply.

(4) The Council must publish any statement they are required to publish under regulation 28(5), 29(3) or 35(6) on a website which it maintains on the internet, and if it so wishes it may publish the statement in such other manner as it sees fit.