

Addendum to the Consultation on the proposed Education Workforce Council (Interim Suspension Orders) (Additional Functions) (Wales) Order 2021

1. This Addendum draws attention to a revised version of the draft Order, which was issued on 7 September 2020 for consultation until 4 December 2020. To give time for consideration of the changes described below, the consultation period has been extended and will now close on 11 December 2020.
2. The revised draft Order inserts the following additional safeguards to the Interim Suspension Order (ISO) process:
 - a. A right of appeal for a former registered person to the High Court
 - b. A requirement that the Education Workforce Council make an application to the High Court for any extension of an ISO beyond 18 months.

Right of Appeal

3. Section 27 of the Education (Wales) Act 2014 defines a 'Disciplinary Order' as being:
 - a. a reprimand;
 - b. a conditional registration order;
 - c. a suspension order;
 - d. a prohibition order.
4. Under the provisions of section 32 of the 2014 Act, a person in respect of whom a Disciplinary Order has been made may appeal against the order to the High Court. The legislation therefore provides a right of appeal to the High Court against the decision of an Education Workforce Council Fitness to Practise Panel to impose orders which would not affect a person's registered status and ability to seek employment (for example a reprimand).
5. An ISO is not a 'disciplinary order'. As originally drafted, the draft Order did not include a right of appeal against the imposition of an ISO. This appeared unfair when considering the implications of an ISO, which would remove a person's name from the register and would prevent a registered person from working in their chosen profession for 18 months, as against other Disciplinary Orders.
6. We consider that to provide a right of appeal against the imposition of an ISO provides an additional safeguard for those registered with the Council as it ensures there is a method of independent scrutiny and challenge. It is consistent with the provisions in the Education (Wales) Act and contributes to the transparency of the process.
7. We have therefore amended the proposed Order at Article 10 to include a right of appeal to the High Court.

Extension of an ISO beyond 18 months

8. As originally drafted, the proposed Order does not deal expressly with what happens if a matter is not concluded within the maximum 18 months duration of an ISO.
9. Our proposal is that ISOs will only be used in very serious cases where there are safeguarding concerns. We understand there may be cases where a person is charged with a criminal offence where it may take longer than 18 months for the criminal justice system to conclude the case. For example, a case involving serious sexual allegations with a number of witnesses.
10. Whilst criminal proceedings are ongoing, the Council will not usually conduct its own investigation.
11. Under the provisions of the Order as previously drafted, it would have been open to the Council to impose a new ISO in these cases, provided the order remained necessary in the public interest.
12. We have amended the draft Order at Article 17 to add a requirement for the Council to apply to the High Court for any extension to an ISO beyond 18 months. This again contributes to the transparency of the process, and provides an additional safeguard as it ensures there is independent scrutiny by the Court in lengthy cases.

Explanatory Memorandum

As a result of the amendments to the draft Order, the following paragraph will be added to the Explanatory Memorandum:

Justice Impact Assessment

A formal justice impact assessment is not required for this secondary legislation. However, the Welsh Government is working with the Ministry of Justice to determine the potential impact of the following provisions on the court:

- A right for a former registered person to appeal to the High Court against the imposition of an ISO; and
- A requirement for the Council to make an application to the High Court if they wish to extend an ISO beyond 18 months.

Our current estimate is that approximately 1-2 ISOs per annum will be contested at a Council hearing. It is more difficult to assess how many applications for extension would be required as this will largely occur where there are delays in the criminal justice system. However, as ISOs are only expected to be imposed in very serious cases, we expect the overall numbers of ISOs to be low and we therefore assess the impact on the court to be minimal.

We continue to welcome responses to the consultation, which will now close on 11 December 2020.