

Draft Order laid before Senedd Cymru under section 47(2) of the Education (Wales) Act 2014, for approval by resolution of Senedd Cymru.

DRAFT WELSH STATUTORY
INSTRUMENTS

2021 No. (W.)

EDUCATION, WALES

**The Education Workforce Council
(Interim Suspension Orders)
(Additional Functions) Order 2021**

EXPLANATORY NOTE

(This note is not part of the Order)

The Education Workforce Council (“the Council”) was continued in existence by section 2 of the Education (Wales) Act 2014 (“the 2014 Act”). Section 4 of the 2014 Act sets out the main functions of the Council. Section 5 of the 2014 Act allows the Welsh Ministers to make an order conferring or imposing additional functions on the Council.

Accordingly, this Order confers the additional functions on the Council relating to the imposition, review and revocation of interim suspension orders.

Article 3(1) of this Order confers on the Council the function of imposing interim suspension orders. Interim suspension orders may only be imposed following a hearing convened by the Council and prior to the imposition of a disciplinary order (see section 27(2) of the 2014 Act for a definition of “disciplinary order”) (article 3(2)).

An interim suspension order may not have effect for a period of more than 18 months (unless it is extended; see article 17 (extension of interim suspension orders by the High Court)) (article 3(6)).

Where an interim suspension order is imposed, the name of the registered person to whom it relates must be removed from the register the Council maintains in accordance with section 9 of the 2014 Act (article 3(5)). The term “registered person” has the meaning given by section 27(1) of the 2014 Act. Where the registered person is registered in more than one category of registered person they will be removed

from all categories of registration (“categories of registration” has the meaning given in section 9(3) of the 2014 Act). The categories of registered person are set out in table 1 of Schedule 2 to the 2014 Act.

Article 4 of this Order makes provision in relation to the minimum period of notice the Council must give the registered person of its intention to make an interim suspension order.

Article 5 of this Order gives the registered person a right to appear at a hearing, to be represented at a hearing and make both written and oral representations at any hearing convened to consider the imposition of an interim suspension order.

An interim suspension order must record the information set out in article 6 of this Order and takes effect in accordance with article 7 of this Order.

Article 8 makes provision about the content of the notice of the making of an interim suspension order and on whom the notice should be served. Article 20 makes provision as to when notice is deemed to have been served on the registered person.

Article 9 provides the registered person with the right to a public hearing in respect of the imposition of interim suspension order and in respect of the review of that order pursuant to article 12 of this Order. Unless a registered person or former registered person exercises their right to a public hearing the Council will hold such hearings in private.

Article 10 of this Order gives the former registered person a right to appeal to the High Court against an imposition of an interim suspension order within 28 days of the notice of the order being served.

An interim suspension order is revoked in accordance with article 11 of this Order.

Article 12 of this Order makes provision in connection with an application for review of an interim suspension order by the person to whom it relates. An application must be accompanied by the information set out in article 13 of this Order.

Whether or not a former registered person to whom an interim suspension order relates requests that the order be reviewed, article 14 of this Order provides that the Council must keep the order under review at such intervals as it considers appropriate.

Article 15 of this Order gives a former registered person to whom the order relates a right to appear at a hearing, to be represented at a hearing and to make both written and oral representations to a hearing convened to consider revoking the interim suspension order.

Article 16 of this Order requires the Council to serve on the former registered person notice of its decision in respect of his or her application for review on the interim suspension order.

The Council may apply to the High Court for an extension, or further extension of an interim suspension order beyond 12 months (article 17).

The Council may make such rules of procedure as it sees fit in respect of its decisions to impose, review or revoke an interim suspension order (article 18). Such rules of procedure must be provided to registered persons and former registered persons and published in accordance with article 19. Such rules of procedure may be found on the website of the Council.

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to this Order. As a result, a regulatory impact assessment has been prepared as to the likely costs and benefits of complying with this Order. A copy can be obtained from the Department for Education and Public Services in the Welsh Government, Cathays Park, Cardiff, CF10 3NQ.

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2021 No. (W.)

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**The Education Workforce Council
(Interim Suspension Orders)
(Additional Functions) Order 2021**

<i>Made</i>	***
<i>Laid before Senedd Cymru</i>	***
<i>Coming into force</i>	***

The Welsh Ministers, in exercise of the powers conferred on them by sections 5(1) and 46(1) of the Education (Wales) Act 2014⁽¹⁾, having consulted such persons as they consider appropriate, make the following Order.

In accordance with section 47(2) of that Act, a draft of this Order was laid before Senedd Cymru and approved by a resolution of Senedd Cymru⁽²⁾.

Title and commencement

1.—(1) The title of this Order is the Education Workforce Council (Interim Suspension Orders) (Additional Functions) Order 2021.

(2) This Order comes into force on [] 2021.

Interpretation

2. In this Order—

(1) 2014 anaw 5.
(2) The reference in section 47(2) to the National Assembly for Wales now has effect as a reference to Senedd Cymru, by virtue of section 150A(2) of the Government of Wales Act 2006 (c. 32).

“the 2014 Act” (“*Deddf 2014*”) means the Education (Wales) Act 2014;

“agent” (“*asiant*”) has the meaning given in section 37 of the 2014 Act;

“the Council” (“*y Cyngor*”) means the Education Workforce Council continued in existence by section 2(1) of the 2014 Act;

“disciplinary order” (“*gorchymyn disgyblu*”) has the meaning given in section 27(2) of the 2014 Act;

“former registered person” (“*cyn-berson cofrestredig*”) means a person who has been removed from the register maintained by the Council in accordance with this Order;

“register” (“*cofrestr*”) means the register established and maintained by the Council under section 9 of the 2014 Act;

“registered person” (“*person cofrestredig*”) has the meaning given in section 41(1) of the 2014 Act.

Interim suspension orders

3.—(1) The Council may make an interim suspension order in respect of a registered person.

(2) The Council may not impose an interim suspension order under paragraph (1) unless it has first convened a hearing to consider the case.

(3) The Council must appoint such persons as it considers appropriate to a panel to determine any hearing it convenes under paragraph (2).

(4) An interim suspension order may only be made under paragraph (1)—

- (a) before a decision whether or not to make a disciplinary order is made, and
- (b) if the Council considers it necessary in the public interest to make an interim suspension order.

(5) Where the Council imposes an interim suspension order under paragraph (1), it must remove the registered person’s name from the register it maintains.

(6) An interim suspension order may not have effect for a period exceeding 18 months (unless it is extended; see article 17 (extension of interim supervision orders by the High Court)).

(7) An interim suspension order may only be made under paragraph (1) if it is in accordance with—

- (a) this Order, and
- (b) the rules of procedure made by the Council under article 18.

Notice of intention to make an interim suspension order

4.—(1) The Council must give the registered person to whom the proposed interim suspension order relates not less than 10 working days notice of the intention to make such an order.

(2) The notice under paragraph (1) must inform the registered person—

- (a) of the nature of the charge against them, and
- (b) of their rights under article 5.

Entitlement to appear and make representations

5. In respect of any hearing convened by the Council at which their case is considered a registered person is entitled—

- (a) to make representations prior to the hearing (whether the person attends the hearing or not),
- (b) to appear before the hearing,
- (c) to make oral representations at the hearing,
- (d) to make written representations at the hearing, and
- (e) to be represented, by any person or persons whom they desire, at any such hearing.

Content of interim suspension order

6. An interim suspension order must record the—

- (a) decision of the Council,
- (b) date on which the order is made, and
- (c) date on which the order takes effect.

Date of effect of interim suspension order

7. An interim suspension 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 the Council otherwise decides in which case it will take effect on the date set out in the order.

Notice of making of interim suspension order

8.—(1) The Council must serve a notice of the interim suspension order on the person in relation to whom it is made within 3 working days of the date on which the order is made.

(2) The notice must contain the following information—

- (a) the text of the order,
- (b) a description of the effect of the order,

- (c) the Council's reasons for making the order, and
- (d) an explanation of the registered person's right to request the Council to revoke that order in accordance with article 12.

(3) The Council must serve notice of the order on the registered person's present or last employer and, where relevant, agent.

Right to request public hearing

9.—(1) Subject to paragraph (2), the Council may deliberate in private at any time and for any purpose during or after a hearing.

(2) A registered person or former registered person to whom the proposed interim suspension order relates may request that any hearing pursuant to article 3 or 12 take place in public.

(3) Where a registered person or former registered person requests the hearing take place in public, the Council may exclude the public from a hearing or any part of a hearing—

- (a) where it appears to the Council that it is necessary in the interests of justice to exclude the public, or
- (b) where it is necessary to protect the interests of children.

Appeals

10.—(1) A former registered person in respect of whom an interim suspension order has been made may appeal against the order to the High Court.

(2) An appeal under paragraph (1) must be made within the period of 28 days beginning with the date on which notice of the order is served on the former registered person.

(3) In respect of such an appeal, the High Court may—

- (a) revoke the interim suspension order;
- (b) vary the period for which the interim suspension order is to have effect;
- (c) make no change to the interim suspension order.

(4) The decision of the High Court is final and may not be appealed.

Revocation of interim suspension order

11. An interim suspension order ceases to have effect if—

- (a) prior to an investigation by the Council pursuant to section 26(1) of the 2014 Act

commencing the Council determines that there is no case to answer in relation to the proposed interim suspension order,

- (b) the Council discontinues an investigation pursuant to section 26(3)(a) or (c) of the 2014 Act⁽¹⁾ into the conduct that is the subject of the interim suspension order,
- (c) the Council has made a decision as to whether or not to impose a disciplinary order, or
- (d) the Council determines that the interim suspension order imposed under article 3 should be revoked following a review pursuant to article 12.

Application for review of an interim suspension order

12.—(1) A former registered person may request the Council revoke an interim suspension order that relates to that person—

- (a) within 6 months of the date on which the order is made, and
- (b) thereafter at intervals of 6 months from the date of the last review.

(2) Where a former registered person requests under paragraph (1) that the Council revoke the interim suspension order, the Council must convene a hearing to consider the case within 10 working days of receipt of the request.

(3) An interim suspension order may only be revoked by the Council in accordance with—

- (a) this Order, and
- (b) the rules of procedure made by the Council under article 18.

(4) No person who was appointed to the panel in accordance with article 3(3) for the hearing where the interim suspension order was made may be a member of the panel to review that order pursuant to this article.

Information to accompany application for review

13. An application for review pursuant to article 11 must—

- (a) be made in writing,
- (b) specify the grounds on which the former registered person seeks to have the interim suspension order revoked, and

(1) The Council may determine a registered person has no case to answer in accordance with section 26(3)(a) of the 2014 Act or that the case should be discontinued on some other basis in accordance with section 26(3)(c) of the 2014 Act.

- (c) be accompanied by every document relied upon in support of the application.

Review by the Council

14.—(1) Notwithstanding article 12, the Council must keep under review an interim suspension order at such intervals as it considers appropriate.

(2) A review pursuant to paragraph (1) must be carried out in accordance with the rules of procedure made by the Council under article 18.

Entitlement to appear and make representations

15. In respect of any hearing convened by the Council pursuant to article 12(2) a former registered person to whom the order relates is entitled—

- (a) to make representations prior to the hearing (whether the person attends the hearing or not),
- (b) to appear before the hearing,
- (c) to make oral representations at the hearing,
- (d) to make written representations at the hearing or prior to it, and
- (e) to be represented, by any person or persons whom they desire, at any such hearing.

Notice of decision following review of interim suspension order

16. The Council must within 3 working days of its decision under article 12(3), serve notice on the former registered person of that decision and the reasons for it.

Extension of interim suspension orders by the High Court

17.—(1) The Council may apply to the High Court for an interim suspension order to be extended or further extended.

(2) On an application, the High Court may—

- (a) revoke the interim suspension order,
- (b) extend, or further extend, the interim suspension order for up to 12 months, or
- (c) make no change to the order or to the period for which the order is to have effect.

(3) In this article, a reference to an interim suspension order includes a reference to an interim suspension order as extended or further extended.

