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Welsh Government
Consultation – summary of responses

Education Workforce Council Investigating Committee and Fitness to Practise Committee membership

Proposals to amend the Education Workforce Council (Main Functions)
(Wales) Regulations 2015

31 January 2024

Mae'r ddogfen yma hefyd ar gael yn Gymraeg.
This document is also available in Welsh.

Overview

This report presents a summary of the views and perspectives held by respondents to our consultation proposing amendments to the membership of the Education Workforce Council's Investigating Committees and Fitness to Practise Committees.

Action required

This document is for information only.

Further information and related documents

Large print, Braille and alternative language versions of this document are available on request.

Welsh Government consultation document: Education Workforce Council Investigating Committee and Fitness to Practise Committee membership

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Additional copies

This summary of response and copies of all the consultation documentation are published in electronic form only and can be accessed on the Welsh Government's website.

Link to the consultation documentation: [Education Workforce Council Investigating Committee and Fitness to Practise Committee membership | GOV.WALES](#)

Introduction

1. Fitness to practise means having the skills, knowledge, competence, and character to practise in a profession.
2. Fitness to practise is also the process used by statutory professional regulators to deal with cases referred to them.¹ The Education Workforce Council (EWC) is responsible for this regulatory work in relation to the education workforce in Wales.

The current situation

3. Regulation 26 of the Education Workforce Council (Main Functions) (Wales) Regulations 2015 (“the 2015 Regulations”) sets out the membership and procedure requirements of the “Investigating Committee” and the “Fitness to Practice Committee” (“the Committees”). One such requirement is that the Committees must include one registered person member and one lay person member. A registered person member is a person who is registered with the EWC in the same registrant category as the person facing the proceedings and is employed or otherwise engaged as such at the date of their appointment to the Committee.
4. Further to recent amendments to the categories of registration, as contained in the Education Workforce Council (Additional Categories of Registration) (Wales) Order 2023 which came into force in May 2023, there are now 11 separate categories of registration, and potentially more in the future:
 - maintained school teacher
 - further education teacher
 - independent school teacher
 - independent special post-16 institution teacher
 - work-based learning practitioner
 - youth worker
 - maintained school learning support worker
 - further education support worker
 - independent school learning support worker
 - independent special post-16 institution learning support worker
 - youth support worker

The issue

5. Under the current requirements in regulation 26 of the 2015 Regulations, the EWC often experiences challenges in sourcing members for the Committees. This can cause delays for investigations and hearings, and therefore present increased risks to the wellbeing of those involved in the process. With a larger number of categories, should the legislation remain unchanged, the EWC would need to recruit practitioners from potentially very small pools of

¹ [What is fitness to practise? \(ewc.wales\)](https://www.ewc.wales/).

registrants to conduct its regulatory work in those categories only.

The proposal

6. We proposed to amend the 2015 Regulations governing the membership of the Committees, which would mean the EWC will have more flexibility to appoint panel members from a wider pool of registered practitioners. The principles of fairness and transparency would remain and no person facing fitness to practise proceedings would be disadvantaged by the amendment.
7. Instead of the Committees requiring 'a registered person from the same category of registration as the registered person who is the subject of the disciplinary proceedings', it would instead require a person who fulfils the following criteria:
 - they must be registered with the EWC (but not necessarily in the same category as the person who is subject to the proceedings), and
 - they must be 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.
8. It is the case now that the EWC decides on whether a person's experience and understanding make them a suitable appointee as a registered member. Whilst not an express statutory requirement, the EWC does in any event consider that matter when making such appointments.
9. Allowing the EWC to have greater flexibility in appointing Committee panel members in this way will allow proceedings to take place without delay.

Miscellaneous amendments

Change to the name of the Fitness to Practise Committee

10. The 2015 Regulations refer to the "Fitness to Practice Committee" but should refer to instead to the "Fitness to Practise Committee". This is a minor technical change and has no impact on the work the EWC or the Committees.

Change to Schedule 2 of the 2015 Regulations: Matters to be recorded on the Register

11. Paragraph 21 of Schedule 2 of the 2015 Regulations sets out that the EWC must keep on the Register the "terms of any restriction or particulars of any prohibition for the time being in force in relation to the registered person as the result of a direction given under section 142 of the 2002 Act", that is the prohibition from teaching section of the Education Act 2002.
12. To give full effect to this provision and enable the EWC to keep an accurate register, the 2015 Regulations require a small amendment to include a reference to Section 167A in the Paragraph 21 of Schedule 2.

Summary of responses

13. The consultation received 27 responses from a cross-section of society, including the public, trade unions, regulatory bodies and various representative bodies, mostly within the education sector in Wales.
14. Not all respondents answered all the questions and one respondent simply provided broad support for the proposals without specific answers to any of the questions posed.
15. 11 responses were provided where no name or organisation was given, or where the respondent asked for their response to be treated anonymously. Wishes expressed by respondents to remain anonymous have been respected throughout this summary report. A list of respondents is provided at Annex A.

Proposal to amend the requirements for the Committees

16. There was clear support to amend the requirements for the Committees.
17. There were 25 responses to Question 1 – *Do you agree with the proposal to amend the requirements for the Committees?* Of these, 68% of respondents agreed, 20% did not agree with the proposals, and 12% were unsure.
18. Some respondents were concerned that the amendment would mean that panel members who are not in the same registrant category as the person facing proceedings would not have the knowledge or empathy of the sector or specific role to be effective on a Committee.
19. The EWC will continue to ensure all fitness to practise Committee panel members are appointed through an in-depth recruitment process where their behaviours and skills are assessed. Those successfully appointed will have a structured induction programme, mentoring and compulsory attendance at annual training. All Committee members will be required to commit to acting impartially and with integrity.
20. There was agreement that the amendment would expedite the convening of suitable Committees thereby creating flexibility, reducing the risk of prolonged procedures and the continuation of any associated harms. However, one respondent suggested that registrants from the same category should be pursued the first instance. Whilst they appreciated that it may be difficult to get Committee members to sit on these Committees, especially when seeking members from a small pool of registrants, they felt strongly that at least one of those sitting on fitness to practise Committees should be representative of the registrant group of the person facing proceedings.
21. In many cases, the EWC will continue to appoint panel members according to the registrant group of the person facing proceedings. Only where this is not possible due to small numbers of trained panel members in that category will it be necessary to appoint a member from an alternative group. In this case, the

training provided by the EWC will ensure all panel members are able to be effective, impartial and act with empathy and integrity.

Impacts of the proposal

22. There were 26 responses to Question 2 - *Do you agree with our assessment of the impacts of the proposal?* Of these, 65% of respondents agreed, 23% did not agree, and 12% were unsure.
23. Some respondents were not content with the integrated impact assessment, raising concerns that the assessment had no mention of negative impacts. While most of the effects are likely to be positive or neutral, they felt that some of the effects may be negative – for example, a lack of understanding of certain positions/roles that will lead to a lack of empathy.
24. Other than the flexibility for the EWC to appoint panel members from a wider pool of registrants, there are no changes proposed to the policy relating to fitness to practise or investigating Committees. The Welsh Government therefore undertook an assessment of the impacts proportionate with the proposal at hand. Nothing in the proposal affects the current arrangements for considering any bias or impact on protected characteristics. The EWC's processes will change merely to become more flexible.
25. One respondent was particularly concerned about the idea that school learning support staff would not have an appropriate registered person member on their Committee, as they felt that learning support staff are routinely excluded from key planning decisions in schools, and this could add to the sense of discrimination.
26. The Welsh Government is confident that the EWC's comprehensive recruitment process, along with their assessment of behaviours and skills for fitness to practise Committee members, will ensure that the appropriate panel members are appointed in a timelier manner without affecting the integrity of the panel.

Proposal for miscellaneous amendments

27. There were 26 responses to Question 3 - *Do you agree with the proposals for miscellaneous amendments to the 2015 Regulations?* Of these, 84% of respondents agreed, 8% did not agree with the proposals, and 8% were unsure.
28. One respondent agreed that the miscellaneous amendments would bring the 2015 Regulations in line with legislation changes and correct grammatical errors.

The Welsh language and general comments

29. The consultation asked the following questions to establish views on the effect on and opportunities for use of the Welsh language:

Question 4 - *What, in your opinion, would be the likely effects of the amendment to the Committees on the Welsh language? We are particularly interested in any likely effects on opportunities to use the Welsh language and on not treating the Welsh language less favourably than English. Do you think that there are opportunities to promote any positive effects? Do you think that there are opportunities to mitigate any adverse effects?*

Question 5 – *In your opinion, could the proposed amendments be formulated or changed so as to: have positive effects or more positive effects on using the Welsh language and on not treating the Welsh language less favourably than English; or mitigate any negative effects on using the Welsh language and on not treating the Welsh language less favourably than English?*

Question 6 - *We have asked a number of specific questions. If you have any related issues which we have not specifically addressed, please use this space to report them?*

30. 21 responses were received to question 4, 10 responses were received for question 5, and 7 responses to question 6.
31. In response to Question 4, most respondents did not consider the proposals would have any negative effects on the use of the Welsh language. Respondents thought that more flexibility when appointing Committee members should have a positive effect on the Welsh language, and thought the ability to undertake any hearings through the medium of Welsh should be easier to accommodate by expanding the potential pool of Committee members.
32. One respondent thought the proposals would positively affect the ability for all registrants to be able to be heard in the language of their choice.
33. One respondent wrote that although the change would speed up the process and therefore was a positive one, they also felt that it treated the Welsh language less favourably but did not explain how. However, the majority felt otherwise.
34. One respondent noted that, because independent schools are not required to teach Welsh, there may be a shortage of Welsh speakers from the sector available to be panel members.
35. One respondent wrote, whilst they understand that the intention to increase the availability of potential Welsh language registrant Committee members, they believe the overwhelming factor must be the suitability and relevant experience of the panel members.

36. One respondent wrote that removing the requirement for the registered person to be in the same registrant category as the person facing the proceedings will afford the EWC greater flexibility to appoint registered people, particularly those who speak Welsh. Committees to be conducted through the medium of Welsh will be able to be convened more quickly, thereby increasing opportunities for the use of Welsh language. However, it will be important that Welsh speakers appointed to a Committee beyond their registrant category and/or where their professional practice is not in the medium of Welsh, receive the same high-level induction and ongoing training that enables them to understand any contextual nuances between registrant categories.
37. In response to question 5, one respondent suggested using a 'where appropriate' clause, but did not further explain this comment. Another respondent suggested a possible change would be to allow retired practitioners to become Committee members, thereby increasing the pool of available Committee members.
38. One respondent commented that fitness to practise hearings are held in English by default unless the registrant indicates otherwise, and this is not equitable. The respondent felt that the registrant should be required to indicate the preferred language at the outset of the process rather than a default position favouring the English language being adopted. The EWC has confirmed that fitness to practise hearing committees do not have a default language; Welsh language and English language have equal status within the EWC's processes.
39. One respondent wrote it is essential that documentation, and where appropriate, legislation is provided in both Welsh and English simultaneously. The decision whether a Committee is conducted through the medium of Welsh resides with the person who is subject to the proceedings, and these amendments should not have any influence upon their decision to request the proceedings are conducted through the medium of Welsh.
40. 7 responses were received in relation to question 6 which offered respondents the opportunity to comment on any related issues.
41. One respondent was concerned about unacceptable time delays when referrals are made, and linked this with safeguarding practices in local authorities, particularly in relation to section 5 referrals.

42. One respondent questioned when a registrant agrees to sit on a Committee at what stage would they be advised on the individual's category and how would they be given the opportunity to agree they are confident to be able to act as the registered person Committee member. Under EWC's existing policies and procedures, each member may be invited to sit on a particular hearing if they have been appointed by the EWC as a panel member. To be appointed as panel member they must meet the requirements of regulation 26 of the 2015 Regulations and comply with the EWC's own policies in this respect. For example, if the case involved a school teacher, the panel members would be appointed as a lay member or a registered person member (school teacher). They would be informed of that at the time of the appointment. The Welsh Government anticipates the process following the introduction of the amendment Regulations will be the same and that a person will be informed of their panel member status (lay or registered person member) at the time they are invited to join the panel.
43. One respondent raised a concern over the lack of clarity over the registration of unqualified teachers working in the school sector as there continues to be no specific reference to this group of teachers. We are considering this issue further but it is not relevant to the making of the proposed amendment Regulations.
44. One respondent offered to work with the Welsh Government and the EWC to encourage support staff to apply to become Committee members. The Welsh Government will explore this suggestion with the EWC.

Welsh Government response and next steps

45. The Welsh Government is grateful to everyone who took the time to respond to the consultation. As a summary document, not all the issues raised in responses will have been reflected fully, but each response has been considered carefully. It is the intention for the amendment Regulations to come into force in March 2024.
46. The Welsh Government will explore any additional, related issues raised in this consultation and decide if further actions are required.

Annex A: List of respondents

A total of 27 responses were received to this consultation. Of these, 11 respondents asked to remain anonymous. Those listed here are the people and organisations who gave their permission to publish their details.

ACT Training
Bridgend College
Colegau Cymru
Social Care Wales (SCW)
J P Jones
Gethin Davies
Gwenan Edwards
NAHT
UWC Atlantic College
NASUWT The Teachers' Union Cymru
Undeb Cenedlaethol Athrawon Cymru (UCAC)
Education Workforce Council (EWC)
Estyn
UNISON Cymru
UCU Cymru
National Education Union Cymru