




Llywodraeth Cymru
Welsh Government

 Unpublished

OPEN CONSULTATION

Education Workforce Council Investigating Committee and Fitness to Practise Committee membership

We want your view on how we propose to amend the membership of the Education Workforce Council's Investigating Committees and Fitness to Practise Committees.

First published: 29 August 2023

Last updated: 29 August 2023

This document was downloaded from GOV.WALES and may not be the latest version.

Go to <https://www.gov.wales/education-workforce-council-investigating-committee-and-fitness-practise-committee-membership-html> for the latest version.

Get [information on copyright](#).

Contents

[Background to fitness to practise](#)

[The current situation](#)

[The issue](#)

[The proposal](#)

[Miscellaneous amendments](#)

[Impacts](#)

[Consultation questions](#)

[UK General Data Protection Regulation \(UK GDPR\)](#)

[Your rights](#)

[Footnotes](#)

This document was downloaded from GOV.WALES and may not be the latest version.

Go to <https://www.gov.wales/education-workforce-council-investigating-committee-and-fitness-practise-committee-membership-html> for the latest version.

Get [information on copyright](#).

Background to fitness to practise

Fitness to practise means having the skills, knowledge, competence, and character to practise in a profession.

Fitness to practise is also the process used by statutory professional regulators to deal with cases referred to them. The Education Workforce Council (EWC) is responsible for this regulatory work in relation to the education workforce in Wales.

The EWC considers referrals made to it relating to a practitioner's unacceptable professional conduct, serious professional incompetence and/or conviction of a relevant criminal offence. The EWC also has responsibility for considering any applicant's suitability for registration and admission to the Register of Education Practitioners. In addition, they are the appeals body if an Appropriate Body decides that a Newly Qualified Teacher (NQT) has failed to complete their statutory induction period satisfactorily and the NQT wishes to appeal that decision.

Discipline

The EWC receives referrals which may lead to an investigation by an Investigating Committee or consideration by an Interim Suspension Order Committee for potential fitness to practise proceedings from a variety of sources including the Disclosure and Barring Service (DBS), Police, and employers. The majority come from employers who have a statutory responsibility to make

This document was downloaded from GOV.WALES and may not be the latest version.

Go to <https://www.gov.wales/education-workforce-council-investigating-committee-and-fitness-practise-committee-membership-html> for the latest version.

Get [information on copyright](#).

referrals to the EWC where they dismiss a member of staff, or they leave in circumstances where they may otherwise have been dismissed. This involves allegations of unacceptable professional conduct, serious professional incompetence and/or a conviction of a relevant offence.

Suitability for registration

Prospective registrants are asked to answer questions relating to their history when completing the declaration section of the application form to register with the EWC. If someone answers 'yes' to any question in their declaration, their suitability for admission to the Register of Education Practitioners will be assessed by EWC officers. In some cases, EWC officers will determine that the application should be referred to an independent suitability committee which is convened to consider the declaration made.

The EWC's fitness to practise casework is therefore vitally important in maintaining the professional standards of the education workforce in Wales.

To carry out its fitness to practise functions, EWC is required to establish a number of different committees. This consultation is concerned only with those specified in regulation 26 of the Education Workforce Council (Main Functions) (Wales) Regulations 2015 ("the 2015 Regulations"), namely the "Investigating Committee" and the "Fitness to Practice Committee".

This document was downloaded from GOV.WALES and may not be the latest version.

Go to <https://www.gov.wales/education-workforce-council-investigating-committee-and-fitness-practise-committee-membership-html> for the latest version.

Get [information on copyright](#).

Investigating Committee

The function of the “Investigating Committee” is to carry out such investigations as the EWC considers appropriate and to determine whether a registrant has a case to answer where:

- (a) it is alleged that a registered person:
 - (i) is guilty of unacceptable professional conduct or serious professional incompetence, or
 - (ii) has been convicted (at any time) of a relevant offence, or
- (b) it appears to the Council that a registered person may be so guilty or have been so convicted

Fitness to Practice Committee

The function of the “Fitness to Practice” Committee hearings is to determine cases referred by an Investigating Committee.

When considering such cases, the “Fitness to Practice Committee” must firstly consider whether the facts of the allegations are proven and whether they amount to unacceptable professional conduct, serious professional incompetence, and/or a conviction for a relevant offence.

The Committee will then decide whether registration should be affected by the imposition of a disciplinary order.

In addition, the “Fitness to Practice Committee” must:

- (i) determine applications to vary or set aside a condition in a conditional registration order
- (ii) determine applications to vary or set aside a condition in a suspension order
- (iii) determine applications to review a prohibition order, or matters arising in relation to disciplinary orders under regulations
- (iv) determine applications to determine the consequences of failure to comply with a conditional registration order
- (v) review of disciplinary orders made in respect of a registered person

The current situation

Regulation 26 of the 2015 Regulations sets out the membership and procedure requirements of committees in relation to the EWC’s fitness to practise casework. Specifically, that regulation sets out the membership requirements for both 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.

This document was downloaded from GOV.WALES and may not be the latest version.

Go to <https://www.gov.wales/education-workforce-council-investigating-committee-and-fitness-practise-committee-membership-html> for the latest version.

Get [information on copyright](#).

A lay member is a person who is not registered with the EWC and is not a prohibited person [\[footnote 1\]](#). A prohibited person could not be a registered person member by virtue of the fact that status would prevent them from maintaining their registration.

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

Induction appeals

If an employer decides an NQT has failed to meet the Professional Standards for Teaching and Leadership during their induction period, the NQT can appeal to the EWC against that decision. In these situations, the EWC would only ever

This document was downloaded from GOV.WALES and may not be the latest version.

Go to <https://www.gov.wales/education-workforce-council-investigating-committee-and-fitness-practise-committee-membership-html> for the latest version.

Get [information on copyright](#).

include a registered school teacher practitioner panel member on an Induction Appeals Committee as the registered person member.

The issue

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 will need to recruit practitioners from potentially very small pools of registrants to conduct its regulatory work in those categories only. Where the registrant numbers in a group are particularly small, there is more likelihood of familiarity with one another which is likely to result in conflicts of interest. Therefore, it will be significantly challenging for the EWC to recruit members to sit on Committees to consider cases in respect of those categories of registration. This will be a particular problem for some of the smaller new categories of registration where the workforce is small.

In addition, it is possible for persons facing investigation and fitness to practise proceedings to be registered in more than one category. With the addition of more registration categories, finding suitable persons for the Committees is likely to be even more administratively difficult.

Further, registrants are entitled to request that their hearing is conducted

This document was downloaded from GOV.WALES and may not be the latest version.

Go to <https://www.gov.wales/education-workforce-council-investigating-committee-and-fitness-practise-committee-membership-html> for the latest version.

Get [information on copyright](#).

through the medium of Welsh. This compounds the problem further as the number of available Committee panel members who are able to work through the medium of Welsh is limited in some sectors.

Finally, the Committee roles are voluntary, and practitioners' participation must be supported by line managers and employers to facilitate release time from their usual job. School learning support staff and those in further education may have a particular difficulty in a) being supported to apply for the role, and b) obtaining release time that allows them to commit to sitting as a member. This means the number of practitioners who are able and willing to volunteer as Committee members from some registrant categories is very low.

The proposal

We are proposing to amend the 2015 Regulations governing the membership of the Committees, which will 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.

Registered Person member

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

This document was downloaded from GOV.WALES and may not be the latest version.

Go to <https://www.gov.wales/education-workforce-council-investigating-committee-and-fitness-practise-committee-membership-html> for the latest version.

Get [information on copyright](#).

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)^[footnote 2], 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

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.

All fitness to practise panel members are appointed through an in-depth recruitment process where their behaviours and skills are assessed. Those successfully appointed have a structured induction programme, mentoring and compulsory attendance at annual training. All panel members commit to acting impartially and with integrity.

Allowing the EWC to have greater flexibility in appointing Committee panel members in this way will allow proceedings to take place without delay.

Should the proposal to amend the 2015 Regulations be taken forward, the EWC will also consult on its **Disciplinary procedures and rules (ewc.wales)** to ensure they fully reflect the new legislative requirements.

We think these changes are needed to future-proof the regulatory function of the

This document was downloaded from GOV.WALES and may not be the latest version.

Go to <https://www.gov.wales/education-workforce-council-investigating-committee-and-fitness-practise-committee-membership-html> for the latest version.

Get [information on copyright](#).

EWC. This increased flexibility in relation to the registered person member of the Committees will allow proper regulation of all registrant categories to continue, regardless of how many registrant categories there are now or those added in the future.

Miscellaneous amendments

Change to the name of the Fitness to Practice Committee

The 2015 Regulations refer to the “Fitness to Practice Committee” but should refer to instead to the “Fitness to Practise Committee”. This change would be in keeping with other fitness to practise committees such as the Social Care Fitness to Practise Committee. We propose to amend the title of the committee accordingly. 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

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.

This document was downloaded from GOV.WALES and may not be the latest version.

Go to <https://www.gov.wales/education-workforce-council-investigating-committee-and-fitness-practise-committee-membership-html> for the latest version.

Get [information on copyright](#).

Section 142 was repealed in the Safeguarding Vulnerable Groups Act 2006 with effect from 12 October 2009 (subject to some transitional provisions). At the same time, Section 167A of the 2002 Act, that is the prohibition on participation in management of independent schools, came into force.

Although Section 167A has been in force since 2009 no directions have been made as the necessary regulations have never been made to prescribe the relevant grounds or procedure. The proposed Independent Schools (Prohibition on Participation in Management) Regulations 2023 (“the 2023 Regulations”) will provide these powers. The 2023 Regulations are planned to come into force in early 2024.

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.

Impacts

The full impacts of the proposals to amend the membership of the Committees have been assessed in the integrated impact assessment.

In summary, the group most affected by this proposal is registrants. We believe that amending the requirements for the Committees as laid out above will have a positive or neutral impact. This is because the principles of fairness and transparency would continue under the new arrangements. It should also mean that Committees can be convened more quickly, especially for those conducted

This document was downloaded from GOV.WALES and may not be the latest version.

Go to <https://www.gov.wales/education-workforce-council-investigating-committee-and-fitness-practise-committee-membership-html> for the latest version.

Get [information on copyright](#).

through the medium of Welsh.

The EWC will continue with its regulatory function in a professional and transparent way so that, when issues occur, the public can remain confident in the conduct and competence of the education workforce in Wales.

Consultation questions

Question 1

Do you agree with the proposal to amend the requirements for the Committees?

Question 2

Do you agree with our assessment of the impacts of the proposal?

Question 3

Do you agree with the proposals for miscellaneous amendments to the 2015 Regulations?

Please use the consultation response form to respond to the above questions.

This document was downloaded from GOV.WALES and may not be the latest version.

Go to <https://www.gov.wales/education-workforce-council-investigating-committee-and-fitness-practise-committee-membership-html> for the latest version.

Get [information on copyright](#).

UK General Data Protection Regulation (UK GDPR)

The Welsh Government will be data controller for Welsh Government consultations and for any personal data you provide as part of your response to the consultation.

Welsh Ministers have statutory powers they will rely on to process this personal data which will enable them to make informed decisions about how they exercise their public functions. The lawful basis for processing information in this data collection exercise is our public task; that is, exercising our official authority to undertake the core role and functions of the Welsh Government. (Art 6(1)(e))

Any response you send us will be seen in full by Welsh Government staff dealing with the issues which this consultation is about or planning future consultations. In the case of joint consultations this may also include other public authorities. Where the Welsh Government undertakes further analysis of consultation responses then this work may be commissioned to be carried out by an accredited third party (for example, a research organisation or a consultancy company). Any such work will only be undertaken under contract. Welsh Government's standard terms and conditions for such contracts set out strict requirements for the processing and safekeeping of personal data.

In order to show that the consultation was carried out properly, the Welsh Government intends to publish a summary of the responses to this document. We may also publish responses in full. Normally, the name and address (or part of the address) of the person or organisation who sent the response are

This document was downloaded from GOV.WALES and may not be the latest version.

Go to <https://www.gov.wales/education-workforce-council-investigating-committee-and-fitness-practise-committee-membership-html> for the latest version.

Get [information on copyright](#).

published with the response. If you do not want your name or address published, please tell us this in writing when you send your response. We will then redact them before publishing.

You should also be aware of our responsibilities under Freedom of Information legislation and that the Welsh Government may be under a legal obligation to disclose some information.

If your details are published as part of the consultation response then these published reports will be retained indefinitely. Any of your data held otherwise by Welsh Government will be kept for no more than three years.

Your rights

Under the data protection legislation, you have the right:

- to be informed of the personal data held about you and to access it
- to require us to rectify inaccuracies in that data
- to (in certain circumstances) object to or restrict processing
- for (in certain circumstances) your data to be 'erased'
- to (in certain circumstances) data portability
- to lodge a complaint with the Information Commissioner's Office (ICO) who is our independent regulator for data protection

For further details about the information the Welsh Government holds and its use, or if you want to exercise your rights under the UK GDPR, please see

This document was downloaded from GOV.WALES and may not be the latest version.

Go to <https://www.gov.wales/education-workforce-council-investigating-committee-and-fitness-practise-committee-membership-html> for the latest version.

Get [information on copyright](#).

contact details below:

Data Protection Officer:
Welsh Government
Cathays Park
CARDIFF
CF10 3NQ

Email: dataprotectionofficer@gov.wales

The contact details for the Information Commissioner's Office are:

Wycliffe House
Water Lane
Wilmslow
Cheshire SK9 5AF

Tel: 0303 123 1113

Website: [Information Commissioner's Office](#)

Footnotes

[1] A prohibited person means any person who is:

- i) 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

This document was downloaded from GOV.WALES and may not be the latest version.

Go to <https://www.gov.wales/education-workforce-council-investigating-committee-and-fitness-practise-committee-membership-html> for the latest version.

Get [information on copyright](#).

- (ii) barred from regulated activity relating to children (within the meaning of section 3(2) of the Safeguarding Vulnerable Groups Act 2006)
- (iii) subject to a disciplinary order made under the 2014 Act by virtue of which the person is ineligible to register
- (iv) disqualified from working in a post equivalent to a category of registration

[2] The requirement for registration prevents any person who is ineligible for registration from being a registered person member (a prohibited person).

This document may not be fully accessible.

For more information refer to our [accessibility statement](#).

This document was downloaded from GOV.WALES and may not be the latest version.

Go to <https://www.gov.wales/education-workforce-council-investigating-committee-and-fitness-practise-committee-membership-html> for the latest version.

Get [information on copyright](#).