

**Cyngor Addysgu
Cyffredinol Cymru**

**General Teaching
Council for Wales**



**Response to the consultation on SVG Act
2006: ISA scheme – 15th February 2008**

Response to the consultation on SVG Act 2006: ISA Scheme

Introduction

1. The General Teaching Council for Wales is the statutory, self-regulating professional body for teachers in Wales. It seeks to raise the status of teaching by maintaining and promoting the highest standards of professional practice and conduct in the interests of teachers, pupils and the general public.
2. The Council aims to provide an independent, representative and authoritative voice for the teaching profession in Wales and seeks to provide robust advice to the Welsh Assembly Government and other organisations on teaching issues.
3. The Council welcomes the opportunity to respond to this consultation. In doing so, it will restrict its comments to matters within its remit.

Question 1: Do you agree with the proposals for refining the definition of vulnerable adults (paragraph 2.5 – 2.7)? If not, please explain why. Not applicable

Not within the Council's remit.

Question 2: Are you content with our proposed understanding of frequency? (paragraphs 3.4 – 3.6). No

The Council is clear that teaching is a regulated activity and is of the understanding that all persons undertaking the “specified work” of a teacher in a maintained or independent school will need to be members of the new scheme.

However, the Council finds the statement in paragraphs 3.3 and 3.6 unclear, namely:

Paragraph 3.3 – “It is important to note that for an activity to be considered as regulated activity, alongside the satisfaction of criteria relating to the activity and / or establishment where it takes place, it must be carried out by the same person frequently or satisfy the ‘period condition’ that is intensity”

Paragraph 3.6 - “The policy position is that frequently should be clarified through guidance as meaning once a month or more often”.

Some teachers, such as those who have retired will undertake supply teaching work less frequently than once a month.

The Council would ask for clarification that all teachers working in a maintained or independent school will need to be members of the scheme regardless of the number of days they teach.

Question 3: Are there situations other than those described in paragraphs 3.8 – 3.12 where children are ‘merely incidental’ to the provision of regulated activity to adults? No

The Council is satisfied that paragraph 3.8 adequately clarifies the position in respect of registered teachers. The Council will not comment on other possible situations outside of its remit.

Question 4: Do you agree with our proposals to include those forms of transport specified in paragraph 3.24 and 3.25 as regulated activity? Do you have any further comments on these proposals? Yes

The Council supports the proposals made.

Question 5: Do you agree that Children's Centres should be classed as establishments under the SVG legislation in the same way as schools? Are there any other settings that should be covered? (paragraphs 3.26 – 3.34). Not applicable

Not within the Council's remit.

Question 6: Do you agree that endorsing organisations should be able to check ISA status of the groups specified in paragraphs 4.2 – 4.11? Yes

The Council welcomes this proposal.

As a regulatory body for teachers, the Council currently needs to ensure that all registered teachers who are employed in schools are not barred (by the Secretary of State) from working with children. As such, the Council has arrangements with DCSF which enables it to check List 99.

Furthermore, the Council has suitability for registration criteria which involves requesting an enhanced disclosure from the CRB for the applicant.

The proposals set out in paragraphs 4.2 – 4.11 will enable the Council to continue to discharge these functions appropriately.

Question 7: Do you agree that adoption agencies should be able to check ISA status on the groups set out in paragraph 4.12 – 4.17? Do you have any other comments on these proposals? Not applicable

Not within the Council's remit.

Question 8: Do you agree that it should be possible to check ISA status on the groups set out in paragraph 4.18 – 4.21? Not applicable

Not within the Council's remit.

Question 9: Are you content with our proposals relating to ContactPoint in paragraph 4.25? Do you have any other comments? Not applicable

Not within the Council's remit.

Question 10: Do you agree that employers should be required to obtain an Enhanced Disclosure before employing a barred individual in controlled activity? (paragraphs 5.7 – 5.8) Not applicable

The Council understands that the regulation making powers that underpin the policy on controlled activity in relation to Wales is devolved to the Welsh Assembly Government. Accordingly, the proposals in paragraphs 5.1 to 5.11 apply to England only.

Question 11: Are there good reasons for employers in controlled activity to also have access to Enhanced Disclosures for individuals who are not barred and who are ISA registered? (paragraphs 5.4 – 5.6) If so, for what purpose would information provided on the Disclosure be used? Not applicable

As question 10.

Question 12a: Do you agree that employers, before employing a barred individual in controlled activity, should be required to conduct, make a record of and retain a copy of a risk assessment? (paragraph 5.9). Not applicable

As question 10.

Question 12b: Do you agree that employers, before employing a barred individual in controlled activity, should be required to ensure the person will be appropriately supervised? (paragraph 5.10). Not applicable

As question 10.

Question 12c: Should the employer be required to record these supervision arrangements in the risk assessment? (paragraph 5.10). Not applicable

As question 10.

Question 13: Do you agree that the employer should be required by regulations to obtain Enhanced Disclosures and repeat the risk assessment at set intervals? If so, how frequently should it be repeated? (paragraph 5.13). Not applicable

As question 10.

Question 14: Do you agree with our proposed phasing principles? Are their particular issues for certain sectors? (paragraphs 7.1 – 7.4) Yes

The Council accepts that a phasing strategy is necessary given that around 11 million people will eventually be registered under the new scheme. The Council would highlight the delays and teething problems experienced during the implementation of the Criminal Records Bureau as illustration of the need to set a realistic implementation timetable.

However, the Council wishes to draw attention to the following specific issue.

Under the phasing principles proposed, it will take a number of years for all teachers in Wales to be registered under the new scheme.

Until all teachers are registered and the Council is able to notify the ISA that it has an interest in a person's status, the Council will need to rely on the ISA identifying that a person is / might be a GTCW registered teacher from relevant case

information. The Council is concerned that this interim process is not foolproof and there will be potential for the Council not to be notified of the barring of a teacher.

In this regard, the Council currently has an arrangement where the DCSF Safeguarding Children's Unit has access to the GTCW Register of Qualified teachers to check whether a teacher is GTCW registered. However, the Council appreciates that any similar arrangement with the ISA would have Data Protection implications.

Question 15: Do you agree with the proposals regarding the checking arrangements for personnel suppliers including educational establishments? If not, why? (paragraph 9.2 – 9.13) No

The Council wishes to raise the following points in respect of proposals set out in paragraphs 9.2 to 9.13.

- (a) In the Council's experience, there is sometimes confusion as to who a teacher's employer is, namely a Local Education Authority (LEA), a school governing body or a private supply agency.

Furthermore, there is also ambiguity as to whose responsibility it is to make certain pre-employment checks, such as checking that a teacher is GTCW registered. This is despite the fact that an employer is breaking the law by employing a GTCW unregistered teacher in certain circumstances. This confusion tends to be exacerbated when teachers are supplied through private supply agencies.

In this regard, the Council considers that it is essential that LEAs, schools and private supply agencies are clear as to their duties in respect of the new scheme, through the issue of guidance material.

- (b) The Council welcomes the proposal under paragraph 9.12 that initial teacher education and training institutions (ITET) will need to check that a trainee teacher is ISA registered and register an interest in such a person with the ISA before he / she embarks on practical teaching practice in a school.

However, the Council raises concerns regarding the consultation proposal in paragraph 9.13 which states that "*where an Enhanced Disclosure has been carried out by an education institute as part of ITT a school which goes on to employ that teacher will not be required to obtain an additional Enhanced Disclosure in addition to checking the teacher is ISA registered and registering their own interest in the Individual*".

All newly qualified teachers who wish to work in maintained schools in Wales need to register with the Council. In registering a teacher, the Council seeks an Enhanced Disclosure from the CRB. This takes place after such a person completes his / her teacher training and is awarded Qualified teacher Status.

During the process, the Council has experienced a number of instances where criminal offences come to light, which have been committed during teacher training and which the ITET institution has no knowledge of.

If the consultation proposal is implemented, there will be instances where the first a employer (LEA and school) knows about a criminal offence committed

during teacher training is when GTCW informs them as part of its suitability for GTCW registration investigation.

Question 16: Do you agree with our proposals to retain existing statutory requirements for Enhanced Disclosures and not add any further requirements as part of the ISA scheme (paragraphs 9.25 – 9.30) Yes

The Council supports this proposal. However, the Council would ask that greater reference is made to the role of professional regulators such as GTCW in this regard. Namely, most regulators have in place suitability for registration criteria which involve an Enhanced Disclosure check which is separate to that made by employers.

Question 17: Should anything be added to this understanding of harm? (paragraphs 10.3 – 10.15) No

The Council finds the definition of harm set out in paragraphs 10.3 to 10.15 to be clear and does not propose any additions.

Question 18: Do you agree that the lists at annex G will capture all the information that the ISA would require to make barring decisions? Yes

The Council welcomes the fact that “Keepers of Registers” are clearly listed as organisations who will be required to provide information to the ISA in order for it to make specific barring decisions. The Council is in turn, content with information to be referred, as set out at Annex G.

The Council would, however, wish to highlight the complexity in the current referral arrangements for police forces and employers in Wales in respect of cases involving a GTCW registered teacher in Wales. This complexity relates to the fact that DCSF undertakes certain activities on behalf of the Welsh Assembly Government in relation to such matters. Current arrangements are as follows:

- The police - If a teacher commits a criminal offence, the relevant police force concerned will inform DCSF. If the matter does not involve the safety and welfare of children, the matter is passed to GTCW to investigate;
- Employers (conduct) – If a registered teacher is dismissed on misconduct grounds or resigns in circumstances where they might have been dismissed, their employer is legally required to notify the Welsh Assembly Government. Where the reason involves the safety and welfare of children, DCSF, acting on behalf of the Assembly will investigate the matter. If the matter does not involve child welfare or safety, the DCSF refers the matter to GTCW to investigate.
- Employers (competence) - If a registered teacher is dismissed on incompetence grounds or resigns in circumstances where they might have been dismissed, their employer must refer the matter to GTCW directly.

The Council understands that these referral processes will be revised and streamlined on the introduction of the ISA. While the Council welcomes the greater clarity the changes will bring, it will be for employers and police forces to identify whether a matter is for the ISA or GTCW. In this regard, the Council considers it essential, the ISA clearly communicates the new referral

arrangements and provides clarity to employers and police forces as to what matters will be for the ISA and what matters will be for professional regulators such as GTCW.

Question 19a: At what stage in the ISA consideration do you believe employers should be notified? (paragraph 11.3)

The Council concurs with paragraph 11.3 of the consultation document in that employers should be notified that the status of a person who they have a registered interest in has changed or they have left the scheme.

However, the Council highlights that such a notification should also be given to professional regulators.

The Council also proposes that both employers and professional regulators are informed when the ISA is “minded to bar” an individual. Given the seriousness of offences under the “minded to bar” category, the Council considers it appropriate to be notified of such cases.

Question 19b: What information should the ISA pass to employers at this stage? (paragraph 11.3)

The Council shall not comment specifically on what information employers might require.

However, in respect of its own requirements as a regulator, officers of the Council are in discussions with DCSF / Home Office / DoH officials through the ISA Regulators Group and Sub Group.

Other comments

The Council will need to make a number of revisions to its own registration and professional standards processes / procedures on implementation of the SVG / ISA. Some of these changes will require amendments to legislation.

On this basis, the Council wishes to emphasise that confirmation of when the new scheme will come into force is essential.