
Ymateb i Ymgynghoriad / Consultation Response

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Dyddiad / Date:	11.12.20
Pwnc / Subject:	Education Workforce Council: interim suspension orders

Background information about Estyn

Estyn is the Office of Her Majesty's Inspectorate for Education and Training in Wales. As a Crown body, Estyn is independent of the Welsh Government.

Estyn's principal aim is to raise the standards and quality education and training in Wales. This is primarily set out in the Learning and Skills Act 2000 and the Education Act 2005. In exercising its functions, Estyn must give regard to the:

- Quality of education and training in Wales;
- Extent to which education and training meets the needs of learners;
- Educational standards achieved by education and training providers in Wales;
- Quality of leadership and management of those education and training providers;
- Spiritual, moral, social and cultural development of learners; and,
- Contribution made to the well-being of learners.

Estyn's remit includes (but is not exclusive to) nurseries and non-maintained settings, primary schools, secondary schools, independent schools, pupil referrals units, further education, adult community learning, local government education services, work-based learning, and teacher education and training.

Estyn may give advice to the Assembly on any matter connected to education and training in Wales. To achieve excellence for learners, Estyn has set three strategic objectives:

- Provide accountability to service users on the quality and standards of education and training in Wales;
- Inform the development of national policy by the Welsh Government;
- Build capacity for improvement of the education and training system in Wales.

This response is not confidential.

Response

Introduction

Estyn supports the general principles of the proposed Education Workforce Council (EWC) interim suspension orders. We understand how the proposals will address recommendation 21 of the CYPE committee's report on the Teachers' Professional Learning and Education Inquiry where it recommends that the remit of the EWC should be extended to provide it with the power to suspend teachers in appropriate circumstances. We also recognise that the proposed order would enable the Council to suspend all categories of Registered Persons not only school teachers. We support the need for this important change to safeguard and protect children and young people.

Estyn also recognises the importance of ensuring that the Welsh language is not treated less favourably than the English language when the Council undertakes initial meetings and reviews.

We have outlined a few further points for the Council to consider. These include:

- In paragraph 32, outlining more clearly what evidence has been used to suggest that the police may be more likely to refer serious allegations to the Council under Common Law Police Disclosure.
- Reviewing the statements in paragraph 56 to provide greater clarity about how risks for the Registered Person and the public would be balanced. The primary purpose of an ISO is to ensure the protection and safeguarding of children and young people. If the allegation raises significant safeguarding concerns, we suggest that normally the Council should impose an ISO regardless of the circumstances of the individual.
- In paragraph 70 and 72, it would be useful to add the dates when the ISO would both start and expire.
- In paragraphs 71 the second and third bullet points should recognise that the Registered Person may be employed in more than one provider or registered with more than one teaching agency.
- In paragraphs 78 and 80 the proposal does not state explicitly whether the Registered Person has the right to be accompanied at a hearing by another person for support.
- In paragraphs 84- 87 the proposal does not outline whether or not the review panel would be expected to produce a written report of the review of the ISO and with whom this would be shared.

In addition to the above, this change has the potential to slightly reduce the risk of unsuitable persons gaining employment in independent schools, the workforce of which are not currently required to register with the EWC. For example, an ISO may be more likely to show on a DBS check at the point of recruitment or would be

clear if the employer (the independent school) check the EWC register. However, we would like to use this opportunity to reiterate our view that regulations should be made to require staff in independent schools to be registered with the EWC.

Consultation questions

Question 1 – Do you agree with our proposals to give the Council ISO powers? (Please see paragraphs 22–47 of the consultation document for the reasons why we think the Council should have these powers.)

Agree	<input checked="" type="checkbox"/>	Disagree	<input type="checkbox"/>	Neither agree nor disagree	<input type="checkbox"/>
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Additional comments

We agree that it is an appropriate amendment to provide the Council with the power to impose an interim suspension order for any member where there is an allegation of unacceptable professional conduct, professional incompetence or it is alleged that the Registered Person has been convicted of a criminal offence. We agree that the three reasons outlined in the consultation document to support this amendment are reasonable. In particular, we agree that imposing an interim suspension order would help safeguard children if a person attempted to undertake any private tuition/tutoring or employment in an independent school while suspended from their role in any education provider, pending an investigation into their conduct.

However, in paragraph 32, the proposal does not clearly outline the supporting evidence to suggest that the police may be likely to refer serious allegations to the council under Common Law Police Disclosure (CLPD) if the Council had ISO powers.

Question 2 – Do you agree with the ‘public interest’ test and further considerations that the Council will apply when considering whether to make ISOs? (Please see paragraphs 48–57 of the consultation document.)

Agree	<input checked="" type="checkbox"/>	Disagree	<input type="checkbox"/>	Neither agree nor disagree	<input type="checkbox"/>
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Additional comments

We agree with the public interest test and all other considerations that the Council would apply when considering whether to make an ISO. We are pleased that the

proposal clearly defines the meaning of both serious and significant concerns to assist the panel in making their decision. We also support the proposal that, before considering an ISO, the panel would seek advice from the police if the referral had come from a source other than the police, the employer or the DBS.

We do not agree fully with the statements in paragraph 56. The primary purpose of an ISO is to ensure the protection and safeguarding of children and young people. The personal, financial and professional consequences for the Registered Person should not be considered if the allegation is deemed to be of a serious or significant safeguarding nature to require an ISO. In these circumstances, the Council should impose an ISO regardless of the personal circumstances of the individual. However, if the allegation is of a serious nature but not involving safeguarding, then then Council would need to consider the proportionality of imposing an ISO and the impact of their action on the personal circumstances of the individual. It would be helpful to provide greater clarity about how risks for the Registered Person and the public would be balanced.

Question 3 – Do you agree with the proposed procedure for making ISOs? (Please see paragraphs 58–72 of the consultation document.)

Agree	✓	Disagree	<input type="checkbox"/>	Neither agree nor disagree	<input type="checkbox"/>
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Additional comments

Overall, the consultation document outlines appropriate proposals for the procedure to make an ISO. However, we feel that the following amendments should be made to strengthen the procedures:

In paragraph 70 it would be useful to add the date when the ISO should end.

In paragraph 71 the second and 3rd bullet points should recognise that the Registered Person may be employed in more than one provider and with more than one teaching agency and therefore the words employer and teaching agency should be plural.

In paragraph 72 the notice of the making of the ISO should also contain the date it starts and would expire.

The EWC have made a recommendation they shared with us that a panellist may be permitted to continue to sit on reviews of ISOs where they sat on the original panel as they believe that there is merit in having continuity. This is something which may need further consideration. In addition, in their response, the EWC sensibly suggest that a registered person may only request that a panel conduct a review of an interim suspension order if new evidence becomes available that is

relevant to the case or there is material change of circumstance since the interim order was imposed.

Question 4 – Do you agree with our proposals to give former Registered Persons the right to request a review of the ISOs that has been imposed on them? (Please see paragraphs 73–83 of the consultation document.)

Agree	<input checked="" type="checkbox"/>	Disagree	<input type="checkbox"/>	Neither agree nor disagree	<input type="checkbox"/>
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Additional comments

We agree that overall, the proposals are appropriate. In paragraphs 78 and 80, it is unclear whether the Registered Person has the right to be accompanied at a hearing by another person for support. This is different to being ‘represented’ and should be made clearer.

It is appropriate to propose that none of the members of the review hearing panel would be the same individuals as those who served on the original panel that imposed the ISO.

Question 5 – Do you agree with our proposals for the Council to keep ISOs under review? (Please see paragraphs 84–87 of the consultation document.)

Agree	<input checked="" type="checkbox"/>	Disagree	<input type="checkbox"/>	Neither agree nor disagree	<input type="checkbox"/>
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Additional comments

Overall, the proposal appears appropriate. However, the proposal does not outline whether or not the review panel would be expected to produce a written report of the review of the ISO and with whom this would be shared.

Question 6 – Do you agree with our proposals on when ISOs would be revoked by the Council? (Please see paragraphs 88–89 of the consultation document.)

Agree	✓	Disagree	<input type="checkbox"/>	Neither agree nor disagree	<input type="checkbox"/>
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Additional comments

The reasons proposed to revoke an interim suspension order appear appropriate.

Question 7 – Do you agree with our proposals for the use of the Council’s rules of procedure on decisions to impose ISOs, on the review of ISOs at the request of former Registered Persons, and on the Council keeping ISOs under review? (Please see paragraphs 90–94 of the consultation document.)

Agree	✓	Disagree	<input type="checkbox"/>	Neither agree nor disagree	<input type="checkbox"/>
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Additional comments

The proposals outlined in paragraph 90 to 94 of the consultation document appear appropriate.

Question 8 – Are you content with the proposed Order at Annex A? (A summary of the proposed Order is at paragraphs 96–140 of the consultation document.)

Agree	✓	Disagree	<input type="checkbox"/>	Neither agree nor disagree	<input type="checkbox"/>
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Additional comments

Overall, the proposed Order contained in Annex A is appropriate. Additional considerations that we have listed in questions 1 to 7 are also relevant to the information contained in Annex A

Question 9 – Do you agree with our analysis of the potential impact of ISOs on Registered Persons? (Please see paragraphs 7.14–7.33 of the RIA at Annex B.)

Agree	✓	Disagree	<input type="checkbox"/>	Neither agree nor disagree	<input type="checkbox"/>
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Additional comments

The analysis of the potential impact of imposing an ISO appears appropriate and has covered potential issues. We agree that any suspension from duties is damaging to the professional and personal reputation of a Registered Person, even if they are later cleared of all wrongdoing. It is therefore of the utmost importance that an ISO is only imposed when the procedures outlined in the consultation document are followed and that the panel seeks advice from the police when the source of the allegation is from an individual or party other than the police, the employer or the DBS.

It is also appropriate to recognise the potential impact of an ISO both on the Registered Person and members of their family’s mental health and wellbeing.

Question 10 – Do you agree with our analysis of the monetary cost of giving the Council the power to impose, review and revoke ISOs? (Please see paragraphs 7.34–7.55 of the RIA at Annex B.)

Agree	✓	Disagree	<input type="checkbox"/>	Neither agree nor disagree	<input type="checkbox"/>
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Additional comments

The analysis outlined in paragraph 7.34 to 7.55 seems appropriate. It is based on actual figures and predictions if the number of cases were to increase significantly. Based on this analysis, it seems unlikely that the EWC would need to increase its registration fees that would be able to meet all costs of initial ISO meetings and review meetings from within their current budget. We therefore agree that, based on the figures outlined in the analysis, the monetary cost of the ISO and review process is therefore modest.

Question 11 – Do you agree with the conclusion of our costs benefit analysis that option 2, in which the Council is given the power to impose, review and revoke ISOs, is the preferred option? (Please see the entirety of Part 7 of the RIA, and the conclusion at paragraphs 7.62–7.64 of the RIA at Annex B.)

Agree	✓	Disagree	<input type="checkbox"/>	Neither agree nor disagree	<input type="checkbox"/>
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Additional comments

Based on the detail contained in part 7 of the regulatory impact assessment, we agree that option 2 is the preferred option.

Question 12 – We would like to know your views on the effects that our proposals to give the Council powers to impose, review and revoke ISOs would have on the Welsh language, specifically on:

- i) opportunities for people to use Welsh
- ii) treating the Welsh language no less favourably than the English language.

What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?

Additional comments

In paragraph 63 and 77, the proposal clearly outlines that any hearing or review may take place through the medium of English or Welsh and that this would be at the request of the Registered Person. The EWC would need to ensure that they had sufficient panel members available for both an initial hearing and any review to enable them to conduct all meetings in Welsh. As long as all requests by a Registered Person to conduct meetings through the medium of Welsh were met, the proposals would not have any negative impact on opportunities for people to use Welsh and would not treat the Welsh language less favourably than the English language.

Question 13 – Please also explain how you believe the proposed policy to give the Council powers to impose, review and revoke ISOs could be formulated or changed so as to have:

- i) positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language
- ii) no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

Additional comments

The conditions outlined in question 12 would need to be met in order to make sure that all Registered Persons had the opportunity to participate in meetings conducted through the medium of Welsh, if this was their preferred language of communication.

Question 14 – 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.

Our initial concerns regarding procedures for extending an interim suspension order or issuing a new order if the investigation and disciplinary hearing has not been completed within an 18 month time period from the date that the suspension order was first imposed have been addressed within the addendum document.

Responses to consultations are likely to be made public, on the internet or in a report. If you would prefer your response to remain anonymous, please tick here: