

# EDUCATION ACT 2011

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### Part 3: School Workforce

#### Abolition of the General Teaching Council for England

##### *Section 7: Abolition of the General Teaching Council for England*

98. *Section 7* amends section 1 of THEA 1998 to remove references to the General Teaching Council for England (the “GTCE”). The amendment has the effect of abolishing the GTCE, but the General Teaching Council for Wales (the “GTCW”) continues unaffected.

##### *Section 8: Functions of Secretary of State in relation to teachers*

99. *Subsection (1)* inserts new sections 141A to 141E into EA 2002, providing for the Secretary of State to exercise regulatory functions for the teaching profession in England.
100. New section 141B allows the Secretary of State to consider allegations of unacceptable professional conduct, conduct that may bring the profession into disrepute or convictions of a relevant offence and to decide whether to prohibit the person from teaching by making a prohibition order. (Teachers covered by these arrangements are set out in the new section 141A.)
101. New section 141C provides that the Secretary of State must keep a list (available for the public to view) of teachers who are subject to a prohibition order (barred from teaching) or teachers who have failed the teacher induction period in circumstances that may be prescribed. The Secretary of State can include a person on the list who has been banned from teaching in Wales, Scotland or Northern Ireland.
102. New section 141D provides that where a teacher has been dismissed for serious misconduct (or where they would have been dismissed had they not resigned) the employer must consider whether to refer the case to the Secretary of State. Section 141E ensures that the same applies in respect of teachers employed through supply agencies or contractors.
103. *Subsection (2)* inserts new Schedule 11A into EA 2002 which makes provision about the regulations to be made by the Secretary of State under new section 141B. Paragraph 2 of the new schedule provides that the regulations must make provision about the procedures to be followed by the Secretary of State in making decisions about prohibiting a person from teaching. Paragraph 3 provides that regulations may allow the Secretary of State to make an interim prohibition order but only where he or she considers it necessary in the public interest to do so. Regulations must require the Secretary of State to review the order every six months if the teacher concerned applies for such a review. Paragraph 4 provides that the regulations may specify the effect of a prohibition order, including what teaching work the teacher may nevertheless carry

out and may make provision about the publication of information relating to cases. Paragraph 5 provides that the regulations must allow for the right to appeal against a prohibition order, within 28 days, to the High Court, from where there will be no further right to appeal (this replicates current regulatory arrangements under the GTCE). They may also provide for a teacher who is subject to a prohibition order to apply to have the order set aside and the procedures for this. Paragraph 6 allows regulations to provide that notice of a prohibition order be served on the teacher's employer and to require the employer to take action, such as dismissal. They may also make provisions about the effect in England of teachers being banned from teaching in Wales, Scotland or Northern Ireland.

### ***Section 9: Requirement for teachers in England to serve induction period***

104. **Section 9** inserts new sections 135A to 135C into EA 2002. The new sections largely reproduce section 19 of THEA 1998 regarding teachers' induction periods, and transfer existing provisions regarding induction from the GTCE to the Secretary of State as far as these relate to England. Arrangements for Wales are unaffected and remain covered by section 19 of THEA 1998.
105. New section 135A allows regulations to make provision for teachers to have completed an induction period of not less than three school terms and provides for a range of detail to be set out in regulations regarding the induction process. This includes the determination by the Secretary of State of the standards against which a person is to be assessed for the purpose of deciding whether the person has satisfactorily completed an induction period.
106. New section 135B provides that the regulations must include a right of appeal to the Secretary of State by a person aggrieved by an induction decision. There is to be no further right of appeal.
107. In addition, the new sections provide that regulations may allow teachers to complete their induction period within an independent nursery school where the school meets the conditions for induction. The regulations can also allow a teacher to serve more than one induction period. Other than the transfer of functions to the Secretary of State, these are the only substantive changes from section 19 of THEA 1998.

### ***Section 10: Abolition of the GTCE: transitional provision***

108. **Section 10** makes transitional provisions in respect of certain functions currently undertaken by the GTCE. It provides that any prohibition orders made by the GTCE will continue as if they had been made by the Secretary of State under new section 141B. Any conditional orders made by the GTCE will continue for the specified period or until revoked. The investigation of any teachers in England by the GTCE immediately prior to commencement may be continued by the Secretary of State.

### ***Section 11: Abolition of the GTCE: consequential amendments***

109. **Section 11** gives effect to Schedule 2 which makes consequential amendments to other enactments to reflect the changes made by provisions of this Act. Most of the changes are to remove references to the GTCE or to replace them with references to the Secretary of State.

### ***Section 12: Abolition of the GTCE: transfer schemes***

110. **Section 12** gives effect to Schedule 3 which enables the Secretary of State to create a scheme whereby members of GTCE staff can have their contracts of employment transferred to the Secretary of State, with appropriate civil service terms and conditions, unless they give notice of objection.

111. The Secretary of State may also create a property transfer scheme, through which the GTCE's assets and liabilities may transfer to the Secretary of State.

## **Reporting restrictions**

### ***Section 13: Restrictions on reporting alleged teacher misconduct***

112. *Subsection (1)* inserts three new sections into EA 2002 to restrict the reporting of allegations of offences by teachers in England and Wales. New section 141F restricts the publication of any information that would identify a teacher who is the subject of an allegation of misconduct that would constitute a criminal offence where the alleged victim of the offence is a registered pupil at the school. Such restrictions would remain in place unless or until the Secretary of State or the General Teaching Council for Wales publishes information about an investigation or decision in a disciplinary case arising from the allegation, or proceedings for the offence have been instituted. This expression is defined in section 141F(15) and includes where the teacher in question is charged with the offence to which the allegation relates. Restrictions would also be lifted if the individual to whom the restrictions apply publicly put forward their side of the story or gave their written consent for another to do so. In addition, they may be dispensed with on the application to court by any person. Restrictions will apply to allegations made against any teacher who works at a school, including supply and peripatetic teachers.
113. New section 141G makes it an offence to publish any information in breach of section 141F. It sets out who is guilty of an offence in the case of different forms of publication. Publication is defined in the provision and includes any communication which is addressed to the public at large or any section of the public. This will include communication via the internet. The definition of publication does not include documents prepared in connection with legal proceedings, or documents published by a professional regulatory body in the course of disciplinary proceedings against the individual. New section 141H sets out the defences available to a person charged with an offence under section 141G.
114. *Subsection (2)* gives effect to Schedule 4 which inserts a new Schedule 11B into EA 2002. This ensures that the provisions comply with the European Directive commonly referred to as the "E-Commerce Directive" (Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market).

## **Abolition of the Training and Development Agency for Schools**

### ***Section 14: Abolition of the Training and Development Agency for Schools***

115. **Section 14** repeals sections 74 to 84 of, and Schedule 13 to, EA 2005 which established the Training and Development Agency for Schools ("the TDA") and conferred functions on it. Repealing these sections will abolish the TDA.

### ***Section 15: Training the school workforce: functions of Secretary of State and Welsh Ministers***

116. **Section 15** amends Part 2 of EA 2002 and Part 3 of EA 2005 to ensure that, after the abolition of the TDA, the Secretary of State has the power to exercise the functions that the TDA currently exercises and to confer functions on the Welsh Ministers in relation to teacher training.
117. *Subsection (2)* amends section 14 of EA 2002. Section 14 gives the Secretary of State (in relation to England) or the Welsh Ministers (in relation to Wales) the power to give, or make arrangements for the giving of, financial assistance to any person for or in connection with any of the purposes mentioned in section 14(2). This amendment enables the Secretary of State and the Welsh Ministers to provide financial support to any person to receive training to become a teacher or a member of the school workforce.

*These notes refer to the Education Act 2011 (c.21)  
which received Royal Assent on 15 November 2011*

It also allows financial support to be given for training for people who are already teachers or members of the school workforce. The amendment to section 14(2ZA) enables financial support under section 14 to be given to those receiving training in higher education institutions.

118. *Subsection (3)* amends section 16 of EA 2002 which sets out the terms on which financial assistance under section 14 may be given. It provides that, when financial assistance is given for the purposes of teacher training, the Secretary of State or the Welsh Ministers will not be able to impose terms and conditions on higher education institutions relating to the admission of students or the selection of staff as a condition of funding. This is to ensure that the autonomy of higher education institutions is not compromised.
119. *Subsection (5)* amends Part 3 of EA 2005 to ensure that Welsh Ministers have the power to exercise the functions that the TDA currently exercises in relation to Wales. It imposes a general duty on the Welsh Ministers to ensure sufficient facilities are available for the training of teachers to serve in Wales and confers a power to promote careers in the school workforce in Wales.
120. *Subsection (6)* is concerned with the joint exercise of functions relating to the training of the school workforce by the Secretary of State and the Higher Education Funding Council for Wales (HEFCW). *Subsection (7)* enables the Secretary of State to request efficiency studies of institutions that are receiving financial support in the same way that HEFCW can and *subsection (8)* enables HEFCW and the Secretary of State to share information about training the school workforce and to require such information from others.

#### ***Section 16: Abolition of the TDA: consequential amendments***

121. **Section 16** gives effect to Schedule 5 which makes consequential amendments to other legislation to reflect the changes made by provisions in this Act relating to the training of the school workforce. Most of the changes are to remove references to the TDA or to replace them with references to the Secretary of State.

#### ***Section 17: Abolition of the TDA: transfer schemes***

122. **Section 17** gives effect to Schedule 6 which allows the Secretary of State to set up a transfer scheme providing for the transfer of staff and property from the TDA to the Secretary of State.

#### **Abolition of the School Support Staff Negotiating Body**

#### ***Section 18: Abolition of the School Support Staff Negotiating Body***

123. **Section 18** abolishes the School Support Staff Negotiating Body, which was established to consider matters relating to the remuneration and conditions of school support staff, with a view to reaching agreement on them.

#### **Staff: minor amendments**

#### ***Section 19: Staffing of maintained schools: suspension of delegated budget***

124. **Section 19** amends sections 35(7) and 36(7) of EA 2002 which make provision for the effect on staffing of any suspension of a school's delegated budget under section 17 of, or Schedule 15 to, SSFA 1998.
125. Section 66 of the EIA 2006 replaced section 17 of the SSFA 1998 in relation to England, with section 17 continuing to apply in relation to Wales only. These amendments are necessary to give effect to the intention that the effect on staffing of the suspension of a school's delegated budget should be the same for schools in England and Wales.