

Draft Order laid before Senedd Cymru under section 47(2) of the Education (Wales) Act 2014, for approval by resolution of Senedd Cymru.

DRAFT WELSH STATUTORY
INSTRUMENTS

2021 No. (W.)

EDUCATION, WALES

**The Education Workforce Council
(Interim Suspension Orders)
(Additional Functions) (Wales)
Order 2021**

EXPLANATORY NOTE

(This note is not part of the Order)

The Education Workforce Council (“the Council”) was continued in existence by section 2 of the Education (Wales) Act 2014 (“the 2014 Act”). Section 4 of the 2014 Act sets out the main functions of the Council. Section 5 of the 2014 Act allows the Welsh Ministers to make an order conferring or imposing additional functions on the Council.

This Order confers additional functions on the Council relating to the imposition, review, extension and revocation of interim suspension orders.

Article 3 of this Order provides for the making of an interim suspension order. Article 3(1) confers on the Council the function of making an interim suspension order in respect of a registered person. Article 3(2) provides that the Council must convene a hearing to consider whether the requirements for making an interim suspension order have been met. Article 3(3) provides that the Council appoint persons to an independent panel to determine any hearing it convenes under paragraph (2). Article 3(4) provides for the circumstances under which an interim suspension order is to be made. Article 3(5) provides that where an interim suspension order is made, the name of the registered person to whom it relates must be removed from the register the Council maintains. Article 3(6) provides that an interim suspension order may not have effect for a period of more than 18 months (unless it is extended by virtue of an application to the High Court pursuant to article 17).

Article 4 of this Order makes provision in relation to the minimum period of notice the Council must give the registered person of its intention to make an interim suspension order.

Article 5 of this Order gives the registered person a right to appear, to be accompanied, to be represented and to make both written and oral representations at a hearing convened to consider the making of an interim suspension order.

Article 6 of this Order provides for the content of an interim suspension order.

Article 7 of this Order provides for the effective date of an interim suspension order.

Article 8 of this Order makes provision about the content of the notice of the making of an interim suspension order and on whom the notice should be served. Article 20 makes provision as to when notice is deemed to have been served on the registered person.

Article 9 of this Order provides the registered person with the right to a public hearing in respect of the making of an interim suspension order and in respect of the review of that order pursuant to article 12 of this Order. Unless a registered person or former registered person exercises their right to a public hearing such hearings will be held in private.

Article 10 of this Order gives the former registered person a right of appeal to the High Court against the making of an interim suspension order within 28 days of the notice of the order being served.

Article 11 of this Order provides for the revocation of an interim suspension order.

Article 12 of this Order makes provision in connection with an application for review of an interim suspension order by the person to whom it relates. An application must be accompanied by the information set out in article 13 of this Order.

Article 14 of this Order gives a former registered person to whom the order relates a right to appear, to be accompanied, to be represented, and to make both written and oral representations at a hearing convened to review the interim suspension order.

Article 15 of this Order requires the Council to serve on the former registered person notice of its decision in respect of their application for review of the interim suspension order.

Article 16 of this Order provides that the Council must keep the interim suspension order under review at such intervals as it considers appropriate.

Article 17 of this Order provides for the extension or further extension of an interim suspension order beyond 18 months by the High Court.

Article 18 of this Order makes provision for rules of procedure to be made by the Council in respect of its decisions to impose, review, extend or revoke an interim suspension order.

Article 19 of this Order provides for the publication and provision of copies of documents to registered and former registered persons.

Article 20 of this Order makes provision for the service of a notice on a person under this Order.

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to this Order. As a result, a regulatory impact assessment has been prepared as to the likely costs and benefits of complying with this Order. A copy can be obtained from the Department for Education and Public Services in the Welsh Government, Cathays Park, Cardiff, CF10 3NQ.

Draft Order laid before Senedd Cymru under section 47(2) of the Education (Wales) Act 2014, for approval by resolution of Senedd Cymru.

DRAFT WELSH STATUTORY
INSTRUMENTS

2021 No. (W.)

EDUCATION, WALES

**The Education Workforce Council
(Interim Suspension Orders)
(Additional Functions) (Wales)
Order 2021**

Made

Coming into force

1 April 2021

The Welsh Ministers, in exercise of the powers conferred on them by sections 5(1), 13(1), 46(1) and 47(1) of the Education (Wales) Act 2014⁽¹⁾, having consulted such persons as they consider appropriate, make the following Order.

In accordance with section 47(2) of that Act, a draft of this Order was laid before Senedd Cymru and approved by a resolution of Senedd Cymru⁽²⁾.

Title and commencement

1.—(1) The title of this Order is the Education Workforce Council (Interim Suspension Orders) (Additional Functions) (Wales) Order 2021.

(2) This Order comes into force on 1 April 2021.

(1) 2014 anaw 5. The power to make regulations under section 13 of the 2014 Act may be exercised to make an order by virtue of section 39 of the Legislation (Wales) Act 2019 (anaw 4) (“the 2019 Act”). See also section 40 of the 2019 Act for provision about the procedure that applies to this instrument.

(2) The reference in section 47(2) to the National Assembly for Wales now has effect as a reference to Senedd Cymru, by virtue of section 150A(2) of the Government of Wales Act 2006 (c. 32).

Interpretation

2. In this Order—

“the 2014 Act” (“*Deddf 2014*”) means the Education (Wales) Act 2014;

“agent” (“*asiant*”) has the meaning given in section 37 of the 2014 Act;

“category of registration” (“*categori cofrestru*”) is to be construed in accordance with section 9(3) of the 2014 Act;

“the Council” (“*y Cyngor*”) means the Education Workforce Council continued in existence by section 2(1) of the 2014 Act;

“disciplinary order” (“*gorchymyn disgyblu*”) has the meaning given in section 27(2) of the 2014 Act;

“former registered person” (“*cyn-berson cofrestredig*”) means a person who has been removed from the register maintained by the Council in accordance with this Order;

“interim suspension order” (“*gorchymyn atal dros dro interim*”) means a measure which temporarily removes a registered person from the register pending an investigation and a disciplinary hearing;

“the register” (“*y gofrestr*”) means the register established and maintained by the Council under section 9 of the 2014 Act;

“registered person” (“*person cofrestredig*”) means (subject to section 27 of the 2014 Act) a person registered in the register established under section 9 (including those registered on a provisional basis) of the 2014 Act.

Interim suspension orders

3.—(1) The Council may make an interim suspension order in respect of a registered person.

(2) The Council may not make an interim suspension order under paragraph (1) unless it has first convened a hearing to consider whether the requirements for making an interim suspension order have been met.

(3) The Council must appoint such persons as it considers appropriate to a panel to determine a hearing it convenes under paragraph (2).

(4) An interim suspension order may only be made under paragraph (1)—

- (a) before a decision whether or not to make a disciplinary order is made, and
- (b) if the Council considers it necessary in the public interest to make an interim suspension order.

(5) Where the Council makes an interim suspension order under paragraph (1), it must remove the registered person's name from the register it maintains.

(6) An interim suspension order may not have effect for a period exceeding 18 months (unless it is extended by the High Court; see article 17 (extension of interim supervision orders by the High Court)).

(7) An interim suspension order may only be made under paragraph (1) if it is in accordance with—

- (a) this Order, and
- (b) the rules of procedure made by the Council under article 18.

Notice of intention to make an interim suspension order

4.—(1) The Council must give the registered person to whom the proposed interim suspension order relates not less than 10 working days' notice of the intention to make such an order.

(2) The notice under paragraph (1) must inform the registered person—

- (a) of the nature of the allegations against them, and
- (b) of their rights under article 5.

Entitlement to appear and make representations

5. In respect of a hearing convened by the Council at which consideration is being given to the making of an interim suspension order in respect of a registered person, that person is entitled—

- (a) to make representations prior to the hearing (whether the person attends the hearing or not),
- (b) to appear before the hearing,
- (c) to make oral representations at the hearing,
- (d) to make written representations at the hearing, and
- (e) to be represented and to be accompanied, by any person or persons whom they desire, at the hearing.

Content of interim suspension order

6. An interim suspension order must record the—

- (a) decision of the Council,
- (b) date on which the order is made, and
- (c) date on which the order takes effect.

Date of effect of interim suspension order

7. An interim suspension order takes effect on the date on which notice of it is served on the person in relation to whom it is made except where the Council otherwise decides in which case it will take effect on the date set out in the order.

Notice of making of interim suspension order

8.—(1) The Council must serve a notice of the interim suspension order on the person in relation to whom it is made within 3 working days of the date on which the order is made.

(2) The notice must contain the following information—

- (a) the text of the order,
- (b) a description of the effect of the order,
- (c) the Council's reasons for making the order, and
- (d) an explanation of the registered person's right to request that the Council convene a hearing to review the order in accordance with article 12.

(3) The Council must serve notice of the order on the registered person's present or last employer or employers and, where relevant, agent or agents.

Right to request public hearing

9.—(1) Subject to paragraph (2), the panel may deliberate in private at any time and for any purpose during or after a hearing.

(2) A registered person or former registered person to whom the proposed interim suspension order relates may request that any hearing pursuant to article 3 or 12 take place in public.

(3) Where a registered person or former registered person requests the hearing take place in public, the panel may exclude the public from a hearing or any part of a hearing—

- (a) where it appears to the panel that it is necessary in the interests of justice to exclude the public, or
- (b) where it is necessary to protect the interests of children.

Appeals

10.—(1) A former registered person in respect of whom an interim suspension order has been made may appeal against the order to the High Court.

(2) An appeal under paragraph (1) must be made within the period of 28 days beginning with the date

on which notice of the order is served on the former registered person.

(3) In respect of such an appeal, the High Court may—

- (a) revoke the interim suspension order;
- (b) vary the period for which the interim suspension order is to have effect;
- (c) make no change to the interim suspension order.

(4) The decision of the High Court is final and may not be appealed.

Revocation of interim suspension order

11. An interim suspension order ceases to have effect if—

- (a) prior to carrying out an investigation pursuant to section 26(1) of the 2014 Act the Council determines that there is no case to answer in relation to the proposed interim suspension order,
- (b) the Council discontinues an investigation pursuant to section 26(3)(a) or (c) of the 2014 Act⁽¹⁾ into the conduct that is the subject of the interim suspension order,
- (c) the Council has made a decision as to whether or not to impose a disciplinary order, or
- (d) following a review pursuant to article 12, the Council determines that the interim suspension order made under article 3 is to be revoked.

Application for review of an interim suspension order

12.—(1) A former registered person may request the Council review an interim suspension order that relates to that person—

- (a) before the expiry of 6 months from the date on which—
 - (i) the interim suspension order was made, or
 - (ii) the High Court extended, or further extended, the interim suspension order under article 17(2)(b);
- (b) thereafter before the expiry of a subsequent period of 6 months;

(1) The Council may determine a registered person has no case to answer in accordance with section 26(3)(a) of the 2014 Act or that the case should be discontinued on some other basis in accordance with section 26(3)(c) of the 2014 Act.

- (c) at any time if new evidence becomes available that is relevant to the case or there is a material change of circumstances since the interim suspension order was made.

(2) Where a former registered person requests under paragraph (1) that the Council review the interim suspension order, the Council must convene a hearing to consider the case—

- (a) before the expiry of the period of 6 months from the date the order was made, where paragraph (1)(a) applies,
- (b) before the expiry of the period of 6 months from the date of the last review, where paragraph (1)(b) applies, and
- (c) within 10 working days of receipt of the request, where paragraph (1)(c) applies.

(3) Where an interim suspension order made under article 3 has been the subject of an appeal under article 10, any reference in paragraph (1) or (2) to the date on which the order was made is to be read as a reference to the date of the High Court's decision under article 10.

(4) An interim suspension order may only be reviewed by the Council in accordance with—

- (a) this Order, and
- (b) the rules of procedure made by the Council under article 18.

Information to accompany application for review

13. An application for review pursuant to article 12 must—

- (a) be made in writing,
- (b) specify the grounds on which the former registered person seeks to have the interim suspension order reviewed, and
- (c) be accompanied by every document relied upon in support of the application.

Entitlement to appear and make representations

14. In respect of any hearing convened by the Council pursuant to article 12(2) a former registered person to whom the interim suspension order relates is entitled—

- (a) to make representations prior to the hearing (whether the person attends the hearing or not),
- (b) to appear before the hearing,
- (c) to make oral representations at the hearing,
- (d) to make written representations at the hearing or prior to it, and

- (e) to be accompanied and to be represented, by any person or persons whom they desire, at the hearing.

Notice of decision following review of interim suspension order

15. The Council must serve notice on the former registered person of any decision made following a review held under article 12, and the reasons for that decision, within 3 working days of that decision being made.

Review by the Council

16.—(1) Notwithstanding article 12, the Council must keep under review an interim suspension order at such intervals as it considers appropriate.

(2) A review pursuant to paragraph (1) must be carried out in accordance with the rules of procedure made by the Council under article 18.

(3) Following a review pursuant to paragraph (1), the Council may—

- (a) revoke the interim suspension order,
- (b) make no change to the interim suspension order, or
- (c) in the event that there is a requirement to do so, make an application to the High Court for an extension in accordance with article 17.

Extension of interim suspension orders by the High Court

17.—(1) If the Council considers an interim suspension order should be extended beyond 18 months it must apply to the High Court.

(2) On an application, the High Court may—

- (a) revoke the interim suspension order,
- (b) extend, or further extend, the interim suspension order for up to 12 months, or
- (c) make no change to the order or to the period for which the order is to have effect.

(3) In this article, a reference to an interim suspension order includes a reference to an interim suspension order as extended or further extended.

Other provision about procedure to be made by the Council

18.—(1) The Council may, as it sees fit, make such other provision as to the procedure to be followed by it in connection with—

- (a) decisions to impose or not impose an interim suspension order,

- (b) consideration of the imposition of an interim suspension order, or
- (c) the review, extension and revocation of an interim suspension order.

(2) The Council may from time to time revise any rules of procedure made in accordance with this article.

Publication and provision of copies of documents

19.—(1) The Council must publish any rules of procedure made under article 18—

- (a) on a website which it maintains on the internet, and
- (b) in such other manner as it sees fit.

(2) The Council must, at the request of any person, provide that person with a copy of such rules of procedure made under article 18.

Service of notices

20.—(1) A notice required to be served on a person under this Order may be served by—

- (a) delivery to that person personally,
- (b) post to the address notified by the person to the Council or if there is no such notification to their last known address, or
- (c) electronic mail, where that person so requests it.

(2) A notice served in accordance with this article is deemed, unless the contrary is shown, to have been served—

- (a) in the case of service under paragraph (1)(a), on the day it was delivered,
- (b) in the case of service under paragraph (1)(b), the next working day, and
- (c) in the case of service under paragraph (1)(c), on the day it was sent.

Name

Minister for Education, one of the Welsh Ministers

Date