

## **Explanatory Memorandum to the Education Workforce Council (Main Functions) (Wales) (Amendments Relating to Parental Bereavement Leave and Shared Parental Leave) Regulations 2023**

This Explanatory Memorandum has been prepared by the Education Directorate and is laid before Senedd Cymru in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

### **Minister Declaration**

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Education Workforce Council (Main Functions) (Wales) (Amendments Relating to Parental Bereavement Leave and Shared Parental Leave) Regulations 2023. I am satisfied that the benefits justify the likely costs.

### **Minister for Education and Welsh Language**

30 March 2023

## **PART 1**

### **1. Description**

1. The Education Workforce Council (Main Functions) (Wales) (Amendments Relating to Parental Bereavement Leave and Shared Parental Leave) Regulations 2023 (“the 2023 Regulations”) amend the Education Workforce Council (Main Functions) (Wales) Regulations 2015 (S.I. 2015/140 (W.8)) (“the 2015 Regulations”).
2. The 2015 Regulations are made under section 14 of the Education (Wales) Act 2014 (anaw 5) (“the 2014 Act”), which states at section 14(1) that specified services may not be provided by a person in a school unless the person is a qualified teacher, or satisfies specified requirements, and is registered in a specified category of registration.
3. The 2015 Regulations provide that a person may not carry out specified work<sup>1</sup> in a school unless they are a qualified teacher or satisfy the requirements in at least one paragraph of Schedule 3. A learning support worker may also carry out specified work in a school if they satisfy the conditions set out in regulation 18A.
4. Where a person is permitted to carry out specified work, pursuant to regulation 18A or a paragraph in Schedule 3, for a specified period (as in paragraph 4(2) relating to overseas teachers who can do so for a period of 2 years), they can only carry out “specified work” for the period specified without obtaining qualified teacher status.
5. Regulation 16 states that the Education Workforce Council will extend the specified period a person can carry out specified work in a school in circumstances where a person is absent from work as a result of exercising their right to one of the listed statutory rights, which are maternity leave, parental leave, paternity leave and adoption leave.
6. The 2023 Regulations amend regulation 16 of the 2015 Regulations to include parental bereavement leave and shared parental leave in the list of statutory leave entitlements which the Education Workforce Council will apply to extend a specified period a person is able to carry out “specified work” without qualified teacher status.

### **2. Matters of special interest to the Legislation, Justice and Constitution Committee**

7. None.

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<sup>1</sup> Regulation 17 sets out what activities are “specified work” for the purposes of the 2015 Regulations

### **3. Legislative background**

8. Part 7 of the Children and Families Act 2014 (c.6) made provision for new statutory rights to shared parental leave and shared parental pay to be inserted into the Employment Rights Act 1996 (c.18) (“the 1996 Act”), with detail of the rights set out in the Shared Parental Leave Regulations 2014 (S.I. 2014/3050).
9. Section 1 of and the Schedule to the Parental Bereavement (Leave and Pay) Act 2018 (c.24) inserted new statutory rights into the 1996 Act for employees in the event of the death of a child or a stillbirth, with detail of the rights set out in the Parental Bereavement Leave Regulations 2020 (S.I. 2020/249).
10. The 2015 Regulations provide in regulation 15 that no person may carry out specified work in a school unless they are (a) a qualified teacher, or (b) satisfy the requirements in at least one of the paragraphs in Schedule 3. Regulation 17 sets out what activities are ‘specified work’ for the purposes of the 2015 Regulations.
11. Regulation 18A sets out the requirements that must be met for a learning support worker to provide the services set out in regulation 17 (“specified work”).
12. Schedule 3 of the 2015 Regulations sets out the requirements to be satisfied by persons who are not qualified teachers in order to carry out specified work in a school in Wales. Where the requirements include a specified period, as in paragraph 4(2) relating to overseas teachers, the person is permitted to carry out specified work in a school only for that specified period without qualified teacher status.
13. Under regulation 16 of the 2015 Regulations, the Education Workforce Council will extend the specified period (whether arising under a requirement in Schedule 3 or regulation 18A) by a period equal to the aggregate of any period or periods during which the person is absent from work due to the exercise of the statutory rights stated in the regulation. The 2015 Regulations currently list only the rights to maternity leave, parental leave, paternity leave and adoption leave. The 2023 Regulations amend regulation 16 of the 2015 Regulations to include parental bereavement leave and shared parental leave in the list of statutory leave entitlements which the Education Workforce Council will apply to extend a specified period a person is able to carry out specified work without qualified teacher status.
14. The 2023 Regulations are made under sections 14 and 47(1) of the 2014 Act. Section 47(1) of the 2014 Act provides that any power to make an order or regulations under the Act is exercisable by statutory instrument and includes the power to make such incidental or consequential provision as

the Welsh Ministers consider necessary or expedient for the purposes of, or in connection with, the Act.

15. The 2023 Regulations are subject to the negative resolution procedure in accordance with section 47(3) of the 2014 Act.

#### **4. Purpose and intended effect of the legislation**

16. The purpose of the 2023 Regulations is to make provision to extend a “specified period” in circumstances where the person has been absent as a result of exercising their right to take parental bereavement leave or shared parental leave.

#### **5. Consultation**

17. The Education (Wales) Act 2014 imposes no legal duty to consult in relation to the proposed amendment regulations. Welsh Government officials have engaged closely with the Education Workforce Council in the preparation of these amending regulations. Formal consultation was not undertaken as this is not a policy in development, but rather an instrument to make appropriate consequential amendments to the 2015 Regulations following the making of the Children and Families Act 2014 and the Parental Bereavement (Leave and Pay) Act 2018.

## **PART 2 – REGULATORY IMPACT ASSESSMENT**

18. The Children and Families Act 2014 made provision for a new entitlement to shared parental leave and The Parental Bereavement (Leave and Pay) Act 2018 made provision for a new entitlement to statutory bereavement leave.
19. The amendments made by these Regulations relate to the requirement to be registered with the Education Workforce Council before being allowed to teach in Wales. Changes to the Education Workforce Council (Main Functions) (Wales) Regulations 2015 (“the 2015 Regulations”) have been made in relation to the circumstances in which the Education Workforce Council will extend a “specified period”.
20. Regulation 15 of the 2015 Regulations provides that no person may carry out specified work in a school unless they are (a) a qualified teacher, or (b) satisfy the requirements in at least one of the paragraphs in Schedule 3. Regulation 17 sets out what activities are ‘specified work’ for the purposes of the 2015 Regulations.
21. Regulation 18A sets out the requirements that must be met for a learning support worker to provide the services set out in regulation 17 (“specified work”).
22. Schedule 3 of the 2015 Regulations sets out the requirements to be satisfied by persons who are not qualified teachers in order to carry out specified work in a school. Where the requirements include a specified period, as in paragraph 4(2) relating to overseas teachers, the person is permitted to carry out specified work in a school only for that specified period without qualified teacher status.
23. Under regulation 16 of the 2015 Regulations, the Education Workforce Council will extend a specified period (whether arising under a requirement in Schedule 3 or regulation 18A) by a period equal to the aggregate of any period or periods during which the person is absent from work due to the exercise of the statutory rights stated in the regulation. The 2015 Regulations currently list only the rights to maternity leave, parental leave, paternity leave and adoption leave.
24. The 2023 Regulations amend regulation 16 of the 2015 Regulations to include parental bereavement leave and shared parental leave in the list of statutory leave entitlements which the Education Workforce Council will apply to extend a specified period a person is able to carry out specified work without qualified teacher status.

## **6. Options**

25. Two options have been considered:

### *Option 1 – do nothing*

Without this amendment, not all of the current statutory leave entitlements for parents are properly reflected in the 2015 Regulations.

### *Option 2 – make the Regulations now*

Given the importance of the statutory rights at the heart of these amendments, the Welsh Ministers have chosen option 2, to make the Regulations now.

## **7. Costs and benefits**

26. There are no additional costs to the Welsh Government in making this legislation, and no identified additional costs to schools or local authorities. It is expected that the numbers of individuals affected by this legislation in any given year will be very small, and in many cases their work is supervised by a qualified teacher, so no additional cover at a cost to the employer would be required.

27. The primary benefit of making this amendment is treating teachers in Wales with fairness and compassion, showing the value that is placed on the education workforce.

## **8. Post implementation review**

28. It is unlikely that any disruption will be caused by this amendment but Welsh Government officials will continue to liaise with the Education Workforce Council once the Regulations are in force to monitor and address any issues.