

Explanatory Memorandum to the Education Workforce Council (Additional Categories of Registration and Further Education Teacher Qualifications) (Wales) Order 2024

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

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Education Workforce Council (Additional Categories of Registration and Further Education Teacher Qualifications) (Wales) Order 2024.

I am satisfied that the benefits justify the likely costs.

Lynne Neagle MS
Cabinet Secretary for Education

16 April 2024

PART 1

Description

1. The Education Workforce Council (Additional Categories of Registration and Further Education Teacher Qualifications) (Wales) Order 2024 (“the 2024 Order”) amends the categories of persons required to register with the Education Workforce Council (“the EWC”) as set out in Table 1 of Schedule 2 to the Education (Wales) Act 2014 (“the 2014 Act”).
2. The 2024 Order also amends regulation 19 of the Education Workforce Council (Main Functions) (Wales) Regulations 2015/140 (“the 2015 Regulations”) and regulation 4 of the Education Workforce Council (Registration Fees) Regulations 2017/92.

Matters of interest to the Legislation, Justice and Constitution Committee

3. None

Legislative background

4. The 2024 Order amends statutory instruments which are subject to different legislative procedures. Section 40 of the Legislation (Wales) Act 2019 (“the 2019 Act”) provides that provision subject to the negative procedure may be combined in the same instrument as provision subject to the draft affirmative procedure. As a result, the draft affirmative procedure applies to the 2024 Order.
5. Section 39 of the 2019 Act provides that where the Welsh Ministers have a power or duty to make subordinate legislation in the form of regulations, rules or an order made by statutory instrument, they may exercise the power or duty by making the subordinate legislation in any of those forms by statutory instrument.
6. The 2024 Order has been made in exercise of the powers conferred on the Welsh Ministers by the 2014 Act.
7. Section 5(1) of the 2014 Act gives the Welsh Ministers an order making power to confer or impose on the EWC such additional functions as they consider appropriate. Section 12(1) provides a power for the Welsh Ministers to, by regulations, make provision about the fees which may be payable in connection with registration. Section 13(1) allows the Welsh Ministers to make, by regulations, such further provision about the register and registration as they consider necessary or expedient. Under section 15(1), the Welsh Ministers may by regulations provide that education may not be provided by a person in or for a further education institution in Wales unless the person has a specified qualification and is registered in the category of further education teacher.

8. Paragraph 2(1) of Schedule 2 to the 2014 Act provides the Welsh Ministers with the power to, by order, add, amend, or remove a category of registration or the description of category.
9. Section 46 of the 2014 Act provides the Welsh Minister with the power to, by order, make such incidental, consequential, supplemental, transitory, or saving provision as they consider appropriate for the purposes of, or in connection with giving full effect to any provision made by or under the 2014 Act. This power includes the power to modify the 2014 Act or any other enactment.
10. Section 47(1) of the 2014 Act provides that any power of the Welsh Minister to make an order or regulations under the 2014 Act includes power to make such incidental, consequential, supplemental, transitional, transitory, or saving provision as the Welsh Ministers consider necessary and make different provision for different purposes. Section 47(2) of the 2014 Act provides that the draft affirmative procedure will apply to an order made under section 5, regulations made under section 12, or an order made under paragraph 2(2) of Schedule 2. Under section 47(3), any other statutory instrument containing an order or regulations under the 2014 Act is to be subject to annulment in pursuance of a resolution of Senedd Cymru.

Purpose and intended effect of the legislation.

11. The purpose of the 2024 Order is to close gaps in the current registration requirements which means the level of professional regulation differs across the Welsh education workforce, even when individuals are carrying out similar roles. The 2024 Order also amends the 2015 Regulations by making provision in relation to a ‘specified qualification’ as required under section 15(1)(a)(i) of the 2014 Act.
12. The 2024 Order requires community-based adult learning practitioners and principals and senior leaders in further education institutions to register with the EWC. Professional registration will help ensure more practitioners have the confidence of the public because they can demonstrate they have the skills, knowledge, and character to safely and effectively perform the duties required within their profession. Registration also provides a route for individuals or organisations to raise concerns and have those concerns investigated independently.
13. Therefore, the 2024 Order makes the following amendments:

Category	Description
Further education teacher	Amendments made to the 2015 Regulations to require all teachers who work within the further education teacher category to hold a specified qualification, as defined in the new Schedule 6 to the 2015 Regulations.
Adult Learning Practitioner	New category of registration added to require a person who provides further education and training

	to adults for a community-based adult learning provider to register with the EWC and have a specified qualification.
Principal or senior leader in further education	New category of registration added to require a person who is managing teaching and learning in or for a further education institution in Wales to register with the EWC.

14. The 2024 Order amends Table 1 of paragraph 1 of Schedule 2 to the 2014 Act to add the following categories of registration:

Category	Description
Principal or senior leader in further education	A person who is managing teaching and learning in or for a further education institution in Wales.
Adult Learning Practitioner	A person who provides further education and training to adults for or on behalf of a community-based adult learning provider.

15. The 2024 Order inserts Schedule 6 into the 2015 Regulations which specifies the qualifications required to work as a further education teacher in Wales. The specified qualifications are broadly Level 5 teaching qualifications or above.
16. The 2024 Order specifies in the Schedule the qualifications required to work as an adult learning practitioner in Wales. The specified qualifications are broadly Level 3 teaching qualification or above.
17. The EWC will be required to register these individuals and check that they have a specified qualification.

Consultation

18. Before making an order under section 5 or paragraph 2 of Schedule 2 to the 2014 Act, the Welsh Ministers must consult such persons as they consider appropriate.
19. The additional categories now included in the 2024 Order were originally intended to form part of the Education Workforce Council (Additional Categories of Registration) (Wales) Order 2023 ("2023 Order").
20. As such they were included within a 12-week consultation on the 2023 Order which ran from 1 March 2022 to 24 May 2022 setting out the proposed changes to registration categories.
21. That consultation received 338 responses, and there was widespread support for the proposals. Concerns were raised relating to what the detail of the Order would cover. This has been addressed through the second consultation on the draft instrument. Fees associated with the new categories of registration were also discussed in the consultation in 2022.

22. A summary of feedback and the Welsh Government's response are published on the Welsh Government website. The first consultation is available to view at: <https://gov.wales/new-registration-categories-education-workforce-council>.
23. The consultation was drawn to the attention of a wide audience of key stakeholders including independent schools, local authorities, and other stakeholders such as the Children's Commissioner for Wales, National Independent Safeguarding Board (NISB), Estyn, Care Inspectorate Wales (CIW). In addition, officials engaged with the EWC, Education Training Standards, the Interim Youth Work Board and wider youth work sector, further education, and work-based learning practitioners to ensure their views were considered.
24. A further consultation on the draft 2024 Order ran from 26 September 2023 to 21 November 2023.
25. A summary of the responses to this consultation was published on 21 December 2023 and can be found here: [Education Workforce Council \(Additional Categories of Registration\) \(Wales\) Order 2024 | GOV.WALES](#)
26. The overall response to the consultation was positive. Whilst most respondents agreed that a minimum level of qualification for those working in the sector was a positive intervention, there was concern as to whether the level of qualification specified for both further education teachers and adult learning practitioners were appropriate. Several respondents also feared that the lists of these qualifications, as set out in the legislation, would become obsolete soon after publication. A response to both issues within the summary.
27. In determining the qualification requirements for registration, we collaborated closely with stakeholders from across the post-16 education sector including the University and College Union (UCU), the National Education Union (NEU), the Education Workforce Council (EWC), Colegau Cymru, Learning & Work Institute and specific representatives from the further education sector and community-based adult learning providers.
28. The list of qualifications included within this legislation has been shared with teaching unions and the further education and community-based adult learning sectors through discussion and negotiation, as well as through the second consultation. No amendments to the list of qualifications were received as part of the consultation, but the list has been amended to ensure that it is up to date at the time of making the order.

Part 2

REGULATORY IMPACT ASSESSMENT

1. A key feature of many professions is a requirement to register with a professional body that sets and maintains professional standards, retaining public confidence and demonstrating a shared commitment to professionalism. Professional standards within the education workforce in Wales are regulated by the EWC.
2. The 2014 Act sets out the requirements for practitioners to register in the category or categories of registration for the role they undertake. [Schedule 2](#) to the 2014 Act sets out the current categories of those required to register with the EWC, which include:

Category	Description
Further education teacher	A person who provides (or wishes to provide) education (as defined by section 140(3) of the 2002 Act) in or for a further education institution in Wales.
Further education learning support worker	A person, other than a further education teacher, who directly or indirectly provides (or wishes to provide) any of the services described in section 16(2) in or for a further education institution in Wales.

3. Gaps were identified in the requirement of the further education workforce to register with the EWC, including:
 - Post-16 teachers who deliver community based adult learning for or on behalf of a local authority or the Welsh Ministers.
 - Senior leaders and principals within further education institutions in Wales.
4. To address this, the 2024 Order makes provision to require the above categories to be required to register with the EWC. Additionally, the 2024 Order makes provision to require a further education teacher to hold a 'specified qualification' as required under section 15(1)(a)(i) of the 2014 Act.

Option 1: Do nothing.

5. If this Order is not made, there would be no requirement for further education teachers to hold a specified qualification in order to teach at further education institutions in Wales.
6. Additionally, there would continue to be a difference in the level of professional regulation across the Welsh education workforce, even when individuals are conducting similar roles. This lack of equity undermines the workforce.
7. Do nothing is not considered appropriate.

Option 2: Make the legislation.

8. By making the proposed amendments, the Welsh Ministers will be able to ensure that further education teachers are suitably qualified.

9. Requiring further education practitioners within the post-16 education workforce to register with the EWC will also:
- Provide equity across the post-16 workforce ensuring the level of professional regulation is consistent across the Welsh education workforce, especially when individuals are conducting similar roles.
 - Provide a route for individuals or organisations to raise concerns and have those concerns investigated independently.
 - Enable the views of practitioners of community-based adult learning to be included and considered when surveys of the post-16 workforce are conducted.
 - Provide adult learning practitioners with access to professional learning and guidance that is currently not available to them.
 - Provide an additional layer of safeguarding for learners by ensuring that senior leaders are held accountable to a set of professional standards that are on par with their workforce.
10. Requiring practitioners in further education institutions and community-based adult learning to hold a minimum level of qualification could put a further burden on practitioners. However, the positive impacts, as outlined above outweigh any negatives. In addition, practitioners will have between 3 and 5 years to achieve the required level of qualification.

Other options

11. There are no feasible alternative, non-legislative options for closing the gaps in the registration requirements for the post-16 education workforce or to make provision for further education teachers to hold a specified qualification. The establishment of the EWC was a Programme for Government commitment, to ensure education practitioners are part of a professional body that maintains and improves standards of professional conduct. This change builds on that commitment and cannot be achieved without these legislative changes.

Costs and benefits of option 1: Do nothing

12. There is a cost to registrants for complying with the requirement to register with the EWC. [The Education Workforce Council \(Registration Fees\) Regulations 2017](#) set out in regulation 4 that the cost for each category (as set out in [Schedule 2](#) of the 2014 Act) is £46 per annum.
13. Doing nothing may be of benefit to those who have concerns that requiring registration may dissuade people from working in the sector. We do not believe there is evidence to support this concern, but it is something we will work with the sector to monitor and manage.

Costs and benefits of option 2: Make the legislation.

14. There is a cost to registrants for complying with the requirement to register with the EWC. [The Education Workforce Council \(Registration Fees\) Regulations 2017](#) set out in Regulation 4 that the cost for each category (as set out in [Schedule 2](#) of the 2014 Act) is £46 per annum.
15. Currently, the fees are subsidised by the Welsh Government, so the fees payable differ depending on the category in which a person is required to register. Both new categories will have a fee set at £46 per annum, with subsidies applied bringing the total fee payable to individuals down to either £45 for principals and senior leaders or £15 for adult learning practitioners. Whilst the payment of any additional fee for individuals is unlikely to be welcomed, there was support within the consultation for the fairness of the proposed fee and subsidy structure.
16. Concern was raised through the consultation on the cost of fees for those working in the adult learning community who are often on low income and work few hours. This concern would be addressed by the proposal to extend the subsidy currently enjoyed by learning support workers in both schools and post-16 education, to adult learning practitioners.
17. The effects of the 2024 Order do not require additional funding from the Welsh Government as the EWC has confirmed that it will absorb any additional subsidies within its existing funding. There are clearly additional costs to individuals who will be required to register, and their employers should they choose to supplement these fees. There may be an impact on institutions, and the third sector, who may decide to contribute to those fees for their employees. Only one institution affected by these proposals is a registered charity. It is also a designated Further Education Institution which receives funding directly from the Welsh Government. Its workforce has been required to register since 2015, and therefore the impact on the Third Sector will be negligible.
18. The introduction of the requirement to hold a specified teaching qualification for further education teachers means that individuals who do not currently hold one or more of the listed qualifications will no longer be able to work as a further education teacher for a further education institution in Wales. This is subject to the proviso that those who are working towards a specified qualification may continue to work in the sector for a period of 3 years, if working full time, or 5 years, if working part time. Initial consultation with the sector suggested this was a suitable and adequate timescale.
19. According to the Annual Education Workforce Statistics for Wales for 2022, published on 1 March 2022, there were 321 individuals registered as further education teachers who held qualifications at a level below those specified in the 2024 Order. This equates to 5% of the individuals registered within this category. An additional 1,022 (15%) were 'unknown'. However, some may already be working towards a higher-level qualification and be enrolled on relevant courses to achieve this.

20. There was support within the second consultation on the proposals to require those working as further education teachers to hold a Level 5 teaching qualification or above.
21. The introduction of the minimum teaching qualification for adult learning practitioners in the 2024 Order means that individuals who do not currently hold one of the specified qualifications will not be able to register with the EWC, unless they are working towards it.
22. The numbers of individuals currently delivering community-based adult learning who are not qualified to this level is not known, but initial consultation with the sector indicates that this is a suitable level for practitioners.
23. There was concern raised within the consultation on the potential impact of this requirement on the adult learning sector. However, this is mitigated by the fact that practitioners will have up to 5 years to attain the qualification and the positive benefits of registration outweighed the potentially negative impact.
24. Adult learning practitioners have not previously been required to register with the EWC, but registration will provide an additional layer of safeguarding both for practitioners and learners. It will also serve to 'professionalise' the adult learning sector, which is long overdue. Furthermore, it will provide an opportunity for adult learning practitioners to access professional development opportunities, support, and guidance that has previously been inaccessible to them.
25. Existing support provided by the Welsh Government to the further education sector by way of the Professional Learning Fund (subject to budget agreement) would be eligible for use to support the delivery of the qualifications specified within the legislation. Officials will continue to work with the further education and adult learning sectors to support the delivery of relevant qualifications to ensure the workforce is able to achieve the required qualification levels.
26. Requiring the further education workforce to hold a specified teaching qualification at Level 5 (or above), whilst challenging to some, was deemed to be the appropriate level to ensure all teachers within the sector have the necessary teaching skills required. It was seen, by the sector, as a fundamental step towards professionalisation of the sector, and parity of esteem between members of the wider education workforce.
27. Currently, around 85,000 individuals are registered with the EWC, and this number is expected to rise by around 1,900 because of the 2023 Order. This will rise again with introduction of the 2024 Order.

28. The EWC can accommodate the additional registrants within its existing set-up and with no increase to annual fees for individuals. These additional registrants paying between £15 and £45 could provide an aggregate additional income to the EWC of circa £57,000. The cost of fees to the individual, together with the subsidy provided by the Welsh Government, covers the costs of the administration of processing registration. The Welsh Government will work closely with the EWC to ensure the fee structure remains appropriate over the coming years.
29. Officials estimate that based on the predicted increase in registrants, and the EWC's extensive casework experience, a further 2-3 fitness to practice referrals could be made per year. The costs of providing the hearings will be covered by the additional fees.
30. Professional registration is a vital element of ensuring that public trust and confidence is maintained in the education workforce; as well as safeguarding the interests of learners and the public. In addition, professional registration helps to maintain confidence amongst the workforce itself. The fee paid enables all those practitioners required to register with the EWC to benefit from the support and recognition of a professional body that upholds professional standards. This in turn contributes to the improvement of the standards of teaching and quality of learning in Wales.
31. The Welsh Government wants to ensure that, whichever career pathway practitioners take, they continue to develop and deepen their pedagogy and skills through effective professional learning.

Summary of findings of integrated impact assessment process

Welsh language

32. No impact – either positive or negative – is expected on the Welsh language.
33. The EWC has had a Welsh language strategy in place since its inception in 2015 and complies with 148 Welsh language standards imposed by the Welsh Language Commissioner covering service delivery, operational, policy making, record keeping and promotion.

Children's Rights

34. Most learners affected by the 2024 Order will be aged 16+, but the impact on all learners will be positive as extending registration will safeguard more learners. However, the impact on children will be indirect.

Equality and Human Rights

35. The 2024 Order to require additional registrant groups may have a negative impact on some individuals from low-income households. This is because any additional cost could be a burden for them. However, the costs are low, and the Welsh Government subsidises these costs, particularly for the lowest earners in the education workforce.
36. The Education Workforce Council (Main Functions) (Wales) Regulations 2015, as amended, stipulate a code must be published which specifies the standards of professional conduct and practice expected of persons registered with the EWC.
37. The Professional Standards for FE Teachers and Work-Based learning Practitioners have been revised to incorporate adult learning practitioners; and new Professional Standards have been written for Senior Leaders and support workers in the post-16 sector.
38. This [Code of Professional Conduct and Practice](#) sets out the key principles of good conduct and professional practice EWC registrants uphold, and is intended to inform, support, and guide all in their day to day conduct and practice. It is also information for parents, the public, and stakeholders involved in the education of learners and young people in Wales, and learners and young people themselves, as to the standards they can expect from registrants. The Code includes a requirement for registrants to demonstrate a commitment to equality and diversity. This sits alongside a duty of care for the safety, physical, social, moral, and educational wellbeing of learners and young people.

Privacy

39. The Welsh Government will not be processing any additional data because of the 2023 Order. The EWC is the data controller and is aware of the requirement to be fully compliant with all data protection legislation.

Justice Impact Assessment

40. No formal Justice Impact Assessment has been undertaken as no relevant impacts were identified when considering the 2024 Order.

Summary

41. The Welsh Ministers have agreed to take forward Option 2 and have made the legislation.

Competition assessment

42. There are no market implications associated with the making of the 2024 Order.

Post implementation review

43. The Welsh Government will work with the EWC to monitor the registration of the new categories following the coming into force date of the 2024 Order.

44. Part of the monitoring will include a review of the fees structure to ensure it remains appropriate to the needs of the sector and the EWC. If it is considered appropriate to adjust the fee, a full consultation will be undertaken to make further changes to the legislation.
45. A full integrated impact assessment has been prepared and is at Annex A. Officials will keep this under review throughout implementation and for the coming years to ensure any negative impacts on specific groups are mitigated.