



Consultation on Education Workforce Council (EWC) draft Disciplinary Procedures and Rules: Interim Suspension Orders

Consultation opens: 07 April 2021

Consultation closes: Midday on 05 May 2021

Proposals for a new section (Section 5) to be added to the current Education Workforce Council (EWC) Disciplinary Procedures and Rules in order to implement *The Education Workforce Council (Interim Suspension Orders) (Additional Functions) (Wales) Order 2021*

OVERVIEW

In 2018, the Cabinet Secretary for Education requested that the EWC undertake its own consultation with practitioners and key stakeholders on the need for, and use of interim suspension order powers.

The resulting EWC consultation ran between 21 November and 21 December 2018 with 95% of respondents in favour of the EWC having ISO powers. The consultation report can be viewed here <https://www.ewc.wales/iso-consultation-report>

Consequent to the EWC consultation, a legislative Order - the Education Workforce Council (Interim Suspension Orders) (Additional Functions) (Wales) Order 2021 - was consulted on by the Welsh Government in 2020. <https://gov.wales/education-workforce-council-interim-suspension-orders>

The Education Workforce Council (Interim Suspension Orders) (Additional Functions) (Wales) Order 2021 was subsequently agreed by the Senedd in March 2021 and came into force on 1 April 2021.

This document seeks feedback on the draft Education Workforce Council (EWC) Disciplinary Procedures and Rules: Interim Suspension Orders which set out procedurally, how the EWC intends to implement the requirements of the Order.

How to respond: Submit your response online using the link <https://www.ewc.wales/iso>

Email responses to FTPConsultation@ewc.wales
by **Midday on Wednesday 5 May 2021**

Contact details: For further information:

Mrs Susan Street
Fitness to Practise Manager
Education Workforce Council
e-mail: Susan.street@ewc.wales
Tel: 029 2046 0099

Data protection: How the views and information you provide to us will be used

Any response received will be seen in full by EWC staff dealing with this consultation. It may also be seen by other EWC staff to help them plan further consultations.

The EWC intends to publish a summary of responses which will include the name of the person or organisation that sent the response. If you do not wish your name or organisation name to be published you can opt out when you submit your response either online or by email.

THE DRAFT DISCIPLINARY PROCEDURES AND RULES: INTERIM SUSPENSION ORDERS (ISO)

1. The changes to the current Disciplinary Procedures and Rules are to extend them in order to implement *The Education Workforce Council (Interim Suspension Orders) (Additional Functions) (Wales) Order 2021*.
2. The ISO Disciplinary Procedures and Rules will be added as Section 5 to the existing Disciplinary Procedures and Rules.
3. The ISO powers enable the EWC to act quickly on serious concerns disclosed to it, and temporarily remove a registrant from the Register where it is necessary and proportionate in the interests of the public, the protection of the public and learners, and in the interests of the registrant.
4. The EWC views the imposing of an ISO as ‘**an emergency measure.**’ As such, its ISO powers will be used in a very limited number of significantly serious cases. Imposing such an order is a protective step, rather than a punitive one.
5. Serious cases referred from the police / other authorities will typically include those relating to:
 - serious sexual misconduct
 - causing serious physical, emotional, mental harm
 - serious criminal investigations of a safeguarding concern

Should the EWC receive information of this nature from any other source, such as an employer, officers will contact the police in the first instance for further information and clarification about whether it deems there to be a ‘pressing social need’ for the EWC to take action.

6. The EWC will not use this power where it receives information involving lesser misconduct - not related to significant safeguarding concerns - and where the EWC is of the view it does not meet the threshold.
7. In assessing the seriousness of information disclosed, the EWC will consider the following:
 - The nature and severity of the alleged conduct
 - The risk of harm the registrant currently presents to learners, colleagues and the wider public
 - Likelihood of recurrence
 - Severity of potential harm if the conduct was repeated
 - The impact of an ISO on the registrant – financial and professional consequences; could it have a positive effect on the registrant and if so, what?
 - The individual circumstances of the registrant and whether they offset any risk of harm
 - Proportionality – the consequences of an ISO should not be disproportionate to the potential harm
 - The public interest, effect on public confidence or the interest of the registrant

CONSULTATION QUESTIONS

Specific questions are listed on the Consultation Response Form and you are invited to provide answers to these using the online link <https://www.ewc.wales/iso> or by using the response form below and emailing it to FTPConsultation@ewc.wales

Consultation response

We have included a number of questions about the EWC's draft ISO Procedures and Rules which we would like you to answer.

Please complete the online form via the EWC website <https://www.ewc.wales/iso>, or submit your response by email to FTPconsultation@ewc.wales

The deadline for submission is **Midday on Wednesday 5 May 2021**.

Your name: Amber Courtney

Organisation (if applicable): UNISON Cymru Wales

Email address: a.courtney@unison.co.uk

Which category of respondent best describes you?

Stakeholder – UNISON represents more education staff than any other trade union in the UK.

Questions

1. Do you agree that section 5 of the revised Disciplinary Procedures and Rules as drafted accurately reflects the powers provided for in *The Education Workforce Council (Interim Suspension Orders) (Additional Functions) (Wales) Order 2021*?

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

UNISON remains of the view that an option should be included for interim practice conditions within the procedure.

As referred to in our response to the Education Workforce Council (Interim Suspension Orders) (Additional Functions) (Wales) Order 2020, interim practice conditions are a crucial element to any interim process as it provides an option for risk management that will not have the devastating impact of suspension (probable immediate job loss due to fundamental breach of employment contract).

In discounting this potential option, this process is more likely to be successfully challenged, including under Human Rights legislation.

2. *The Education Workforce Council (Interim Suspension Orders) (Additional Functions) (Wales) Order 2021* provides for the EWC to consider whether to impose an ISO on the registration of a EWC registrant. Do you agree with the ISO Procedures and Rules as set out in Section 5 of the draft Disciplinary Procedures and Rules 2021?

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

UNISON would be keen for clarification on ‘the threshold’ and the system used to apply the threshold.

UNISON welcomes the statement that the use of such powers will be rare, as no finding of fact has been made. Indeed, case law has suggested that it is not in the public interest to effectively destroy someone’s career when no findings of fact have been made.

The EWC Order 2021 does not provide for interim Conditions of Practice although in the previous consultation UNISON highlighted that this would be beneficial and in keeping with other regulator’s practices.

39(4)(b)

It should be specified that any hearing notice must be accompanied by all documents / evidence relied on in support of the application.

41(1)

It is unwise to leave the procedure in the hands of the Chair s this will potentially breach the Human Rights Act and laws of natural justice. The procedure should be prescribed, as with other regulators.

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Any interim order should be automatically reviewed at least every 6 months, whether or not a registrant requests it.

The procedure for the review hearing should also be clearly set out.

3. We would like to know your views on the effects the draft ISO Procedures and Rules would have on the Welsh language, specifically on:
- I. opportunities for people to use the Welsh language; and
 - II. treating the Welsh language no less favourably than the English language

4. Do you have any other comments?

Please check the box if you wish for your response to remain confidential

Please check the box if you are happy for us to contact you about your submission

What happens next?

We will publish a consultation report on the EWC's website.