

Ymgynghoriad ar Weithdrefnau a Rheolau Disgyblu drafft Cyngor y Gweithlu Addysg (CGA): Gorchmynion Atal Dros Dro Interim

Adroddiad Ymgynghori

Cynnwys

1.0	Cyflwyniad	3
2.0	Y broses ymgynghori â'r cyhoedd.....	3
3.0	Ymatebion i'r ymgynghoriad – sefydliadau ac unigolion.....	4
4.0	Ymatebion wedi eu derbyn	8

1.0 Cyflwyniad

Yn 2018, gofynnodd Ysgrifennydd y Cabinet dros Addysg i Gyngor y Gweithlu Addysg (CGA) gynnal ei ymgynghoriad ei hun gydag ymarferwyr a rhanddeiliaid allweddol ynglŷn â'r angen am bwerau gorchymyn atal dros dro interim, a'r defnydd ohonynt.

Cynhaliwyd ymgynghoriad canlyniadol CGA rhwng 21 Tachwedd a 21 Rhagfyr 2018 ac roedd 95% o'r ymatebwyr o blaid rhoi pwerau gorchymyn atal dros dro interim i CGA. Gellir [gweld yr adroddiad ymgynghori ar ein gwefan](#).

O ganlyniad i ymgynghoriad CGA, cynhaliodd Llywodraeth Cymru [ymgynghoriad yn 2020 ar Orchymyn Cyngor y Gweithlu Addysg \(Gorchmynion Atal Dros Dro Interim\) \(Swyddogaethau Ychwanegol\) \(Cymru\) 2021](#).

Wedi hynny, cytunodd y Senedd ar Orchymyn Cyngor y Gweithlu Addysg (Gorchmynion Atal Dros Dro Interim) (Swyddogaethau Ychwanegol) (Cymru) 2021 ym mis Mawrth 2021 ac fe ddaeth i rym ar 1 Ebrill 2021.

Ym mis Ebrill 2021, ceisiodd CGA safbwyntiau ar ei ddogfen ddrafft, Gweithdrefnau a Rheolau Disgyblu: Gorchmynion Atal Dros Dro Interim, a amlinellodd sut mae CGA yn bwriadu rhoi gofynion y Gorchymyn ar waith yn weithdrefnol. Cynhaliwyd yr ymgynghoriad hwn rhwng 7 Ebrill a 5 Mai 2021.

2.0 Y broses ymgynghori â'r cyhoedd

Lansiwyd yr ymgynghoriad ar 7 Ebrill 2021 gyda doleri'r dogfennau ymgynghori ar gael a oedd ar wefan CGA. Gallai ymatebion gael eu cyflwyno'n syth o'r wefan neu drwy e-bost. Anfonwyd neges e-bost at yr holl randdeiliaid perthnasol i gyhoeddi dechrau'r ymgynghoriad a rhoddwyd doleri iddynt i dudalen yr ymgynghoriad.

3.0 Ymatebion i'r ymgynghoriad – sefydliadau ac unigolion

Cafwyd cyfanswm o 40 o ymatebion, fel a ganlyn. Penderfynodd un ymatebwr beidio â defnyddio'r holiadur safonol, gan roi ymateb personol yn lle hynny.

Sefydliadau ac unigolion wnaeth ymateb
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Y Gymdeithas Arweinwyr Ysgolion a Cholegau (ASCL)
Awdurdod Lleol Blaenau Gwent
Cyngor Bwrdeistref Sirol Pen-y-bont ar Ogwr
Ysgol Cas-gwent
Comisiynydd Plant Cymru
Colegau Cymru
Cyngor Bwrdeistref Sirol Conwy
Estyn
Llywodraethwr
Cyngor Addysgu Cyffredinol Gogledd Iwerddon (GTCNI)
Aelod o'r Cyhoedd (5)
Cymdeithas Genedlaethol y Prifathrawon (NAHT)
Cymdeithasol Genedlaethol yr Ysgolfeistri ac Undeb yr Athrawesau (NASUWT)
Bwrdd Diogelu Annibynnol Cenedlaethol Cymru
Ffederasiwn Hyfforddiant Cenedlaethol Cymru
Yr Undeb Addysg Cenedlaethol (NEU)
Cyngor Sir Powys
Unigolyn Cofrestredig (6)
Rhanddeiliad (4)
Cyngor Addysgu Iwerddon
Undeb Cenedlaethol Athrawon Cymru (UCAC)
Yr Undeb Prifysgolion a Cholegau (UCU)
UNSAIN Cymru
Cyngor Bro Morgannwg
Anhysbys (4)

Y prif ganfyddiadau

Cwestiwn 1 – Ydych chi'n cytuno bod adran 5 o'r Gweithdrefnau a Rheolau Disgyblu diwygiedig, fel y'u lluniwyd, yn adlewyrchu'n gywir y pwerau y darperir ar eu cyfer yng *Ngorchymyn Cyngor y Gweithlu Addysg (Gorchmynion Atal Dros Dro Interim) (Swyddogaethau Ychwanegol) (Cymru) 2021?*

Roedd 62.5% o'r ymatebwyr yn cytuno bod Adran 5 yn adlewyrchiad cywir o'r pwerau y darperir ar eu cyfer yn y Gorchymyn. Nid oedd 10% yn cytuno nac yn anghytuno.

Roedd nifer fach o'r ymatebion, gan yr undebau llafur yn arbennig, yn mynegi pryder ynglŷn â Rheol 44 'Cyhoeddi'. Soniodd yr ymatebwyr hynny nad yw'r Gorchymyn ei hun yn nodi'n benodol y dylai Gorchymyn Atal Dros Dro Interim fod yn wybodaeth gyhoeddus.

Cwestiwn 2 - Mae *Gorchymyn Cyngor y Gweithlu Addysg (Gorchmynion Atal Dros Dro Interim) (Swyddogaethau Ychwanegol) (Cymru) 2021* yn caniatáu i CGA ystyried a ddylid gosod Gorchymyn Atal Dros Dro Interim ar gofrestrriad un o unigolion cofrestredig CGA. Ydych chi'n cytuno â'r Gweithdrefnau a'r Rheolau Gorchymyn Atal Dros Dro Interim fel y'u hamlinellir yn Adran 5 Gweithdrefnau a Rheolau Disgyblu drafft 2021?

Roedd 57.5% o'r ymatebwyr yn cytuno â'r Rheolau Gorchymyn Atal Dros Dro Interim drafft, fel y'u hamlinellir yn Adran 5 y Gweithdrefnau a Rheolau Disgyblu, ac nid oedd 15% yn cytuno nac yn anghytuno â nhw. Gwnaed nifer o sylwadau cadarnhaol am y dull cymesur / teg a gynigiwyd.

Awgrymodd rhai ymatebwyr fod angen mwy o fanylion i wneud rhai rhannau o'r broses yn gliriach – yn enwedig y meini prawf ar gyfer gwneud asesiadau risg gan y swyddog a awdurdodwyd yn briodol a/neu'r Pwyllgor Addasrwydd i Ymarfer. Awgrymodd ymatebwyr eraill leihau nifer y diwrnodau ar gyfer hysbysu'r unigolyn cofrestredig o wrandawriad Gorchymyn Atal Dros Dro Interim mewn achosion risg uchel.

Cwestiwn 3 - Hoffem glywed eich barn am yr effeithiau y byddai'r Gweithdrefnau a Rheolau Gorchymyn Atal Dros Dro Interim drafft yn eu cael ar y Gymraeg, yn benodol ynghylch:

- i. cyfleoedd i bobl ddefnyddio'r Gymraeg; a**
- ii. pheidio â thrin y Gymraeg yn llai ffafriol na'r Saesneg**

Ni amlygwyd unrhyw effeithiau niweidiol o ystyried bod CGA yn cydymffurfio â Safonau'r Gymraeg gan ddarparu gwasanaeth cwbl ddwyieithog. Fodd bynnag, nododd ymatebwyr

bwysigrwydd sicrhau bod yr unigolyn cofrestredig yn cael ei wahodd i gadarnhau ym mha iaith yr hoffai i'r gwrandawriad Gorchymyn Atal Dros Dro Interim / adolygu gael ei gynnal.

Cwestiwn 4 – A oes gennych unrhyw sylwadau eraill?

Cafwyd amrywiaeth o “sylwadau eraill” gan ymatebwyr a oedd, yn gyffredinol, yn ailadrodd y pwyntiau hynny a roddwyd o dan gwestiynau 1 a 2 – yr oedd y mwyafrif ohonynt yn cefnogi'r Rheolau Gorchymyn Atal Dros Dro Interim drafft yn Adran 5.

Ymatebion i'r ymgynghoriad

4.0 Ymatebion wedi eu derbyn

Cwestiwn 1 - Ydych chi'n cytuno bod adran 5 o'r Gweithdrefnau a Rheolau Disgyblu diwygiedig fel y mae wedi'i ddrafftio yn adlewyrchu'n gywir y pwerau y darperir ar eu cyfer yng Ngorchymyn Cyngor y Gweithlu Addysg (Gorchmynion Atal Dros Dro Interim) (Swyddogaethau Ychwanegol) (Cymru) 2021?

Ymateb	Nifer yr ymatebion	Canran
Cytuno	25	62.5%
Anghytuno	10	25.0%
Ddim yn cytuno nac yn anghytuno	4	10.0%
Heb ei gadarnhau / farcio	1	2.5%
Cyfanswm	40	100.0%

It is clear that these powers are to be exercised in extreme circumstances and it is clear that such a decision is not taken lightly.

We agree that section 5 of the revised disciplinary procedures and rules accurately reflect the powers provided for in the EWC document. The proposed disciplinary procedures and rules outline clearly and accurately how any hearing, or review hearing, should be scheduled and both how the registered person should be contacted, and the information shared with them.

Having read through the revised Procedures and Rules, section 5 of these revised Procedures and Rules accurately reflects the powers provided for in the 2021 Order in terms of the EWC's imposition, review, extension and revocation of interim suspension Orders. In paragraph 45(1)(a) and (b) of the Rules, I would think 6 months is a very short period after which a review would be considered but I see that this set out in the Order.

The University and College Union (UCU Wales) represents almost 7,000 academics, lecturers, trainers, instructors, researchers, managers, administrators, computer staff, librarians, and postgraduates in universities, colleges, adult education and training organisations across Wales. UCU Wales is a politically autonomous but integral part of UCU, the largest post-school union in the world. Whilst UCU Wales is satisfied with the bulk of the recommendations, we feel that the 'Publishing Section' (para 44) is entirely at

odds with an otherwise balanced and proportionate approach. There is no good reason why the details of a suspended registrant should be published on the EWC website prior to adjudication. Indeed, when considering the excellent safeguards already in place (employer notification and temporary cancellation of license), UCU considers it bizarre that the regulator would risk subjecting a professional to severe reputational detriment before the facts of the case can be determined. Noting the potential for injustice and vexatious complaints, UCU feels that this measure serves neither the interests of learners nor the profession at large. Publication cannot be reconciled with statement that 'imposing such an order is a protection rather than a sanction'. Consequently, UCU Wales strongly advises the EWC to drop this specific stipulation.

Section 5 sets out clear rules and guidance that the Education Workforce Council must follow in exercising the powers provided for in the 2021 Order. The proposed procedures enable the suspension of all categories of Registered Persons on an interim basis, whilst investigations into significantly serious misconduct are underway. The principles of these procedures as outlined are proportionate and appropriate, and in line with other professional regulatory bodies. This reflects the powers provided for in the 2021 Order and importantly this enables the EWC to take swift action where needed, and in instances where this is necessary to safeguard children and young people. Duties to safeguard are not optional but are in line with obligations under the Education Act 2002, the Children Act 2004; the Rights of Children and Young People (Wales) Measure 2011, the Social Services and Well-being (Wales) Act 2014; and the United Nations Convention on the Rights of the Child (UNCRC). Indeed, the Children's Rights Impact Assessment that accompanied the proposals for the 2021 Order made clear that this order is paramount in upholding Articles 3 and 36 of the UNCRC.

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.

We 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 with the exception that section 44(1) of the draft ISO rules should be removed. Paragraph 3 (5) of The Education Workforce Council (Interim Suspension Orders) (Additional Functions) (Wales) Order 2021 only provides that the name of the registered person will be removed from the register. It does not provide that the EWC will publish the details of the ISO on the website that it maintains. We consider that this has the potential to have a prejudicial impact on any

future fitness to practise proceedings and will also have a serious impact on the reputation and future employability of the registered person. It also goes far beyond the purpose of the ISO.

Notwithstanding the overall objection that the NASUWT has in respect of the EWC obtaining these powers, the Union does not believe that the Procedures and Rules as drafted accurately reflect the powers provided for in The Education Workforce Council (Interim Suspension Orders) (Additional Functions) (Wales) Order 2021 . The Order has no provision for the publication of the name of the registered person, their category or the timescale of the suspension order on a website or elsewhere. The NASUWT is concerned that suspension from the register would, in any case, be a public act, whereas suspension by a governing body or employer would always be confidential. The potential to damage the relationship between the employee and the employer would be significant. The NASUWT therefore insists that section 44 of the draft Procedures and Rules is removed.

NAHT Cymru has previously made extensive representations as to why we disagree with plans to impose ISOs by EWC and we still have concerns about the potential use of ISOs.

The proposed Disciplinary Powers and Rules give effect to the legislation. They are clear and unambiguous.

I replied to the consultation that issued by the government on this and I support it. It is strange that this is not the same as in other professions. I think the Rules reflect the government legislation.

There is not opportunity to respond to individual points. It would be useful to see the outcomes and response to the original consultation. The whole proposal is draconian and rides roughshod over Human Rights, GDPR and natural justice.

This is a loaded and closed question, that appears to miss the point and somewhat sidestep what should be the fundamental point of the consultation. Surely, it would be sound in such a consultation to make each of the key points on the proposal accessible to all and then gauge their responses, building on the prior consultation.

Ar y cyfan mae adran 5 o'r Gweithdrefnau a Rheolau Disgyblu'n adlewyrchiad agos a chywir o'r Gorchymyn.

Fodd bynnag rhaid inni fynegi pryder mawr a gwrthwynebiad i un adran, sef yr adran 'Cyhoeddi' (paragraff 44).Mewn gwrthgyferbyniad â gweddill y ddogfen ddrafft, nid yw'r

adran hon yn seiliedig mewn unrhyw ffordd ar gynnwys 'Gorchymyn Cyngor y Gweithlu Addysg (Gorchmynion Atal Dros Dro Interim) (Swyddogaethau Ychwanegol) (Cymru) 2021'. Mae'n ymddangos yn fypwyl ac yn oportiwnistaidd. Rydym yn gwrthwynebu cyhoeddi'r wybodaeth mewn perthynas â gorchymyn atal dros dro interim ar wefan Cyngor y Gweithlu Addysg (neu unrhyw wefan arall). Mae'n ofyniad bod cyflogwr neu asiant(au) presennol neu ddiwethaf y person cofrestredig yn cael eu hysbysu o'r gorchymyn atal dros dro; yn ogystal, caiff cofrestriad y person ei ddileu dros dro. Gan fod hynny'n sicrhau na all y cyn-berson cofrestredig gael ei gyflogi mewn unrhyw rôl a reoleiddir, rydym o'r farn bod y darpariaethau hynny'n ddigonol ac yn gymesur â bwriad y gorchymyn, sef i warchod y cyhoedd a dysgwyr. Rydym yn glir iawn ein barn y byddai cyhoeddi enw'r cyn-berson cofrestredig ar wefan yn mynd y tu hwnt i'r hyn fyddai modd ei ystyried yn gymesur i'r bwriad o warchod dysgwyr a'r cyhoedd. Yn wir, mi fyddai'n mynd yn groes i'r datganiad yn y ddogfen ymgynghorol y bydd y CGA yn ystyried 'Cymesuredd – ni ddylai canlyniadau Gorchymyn Atal Dros Dro interim fod yn anghymesur â'r niwed posibl'. Mi fyddai cyhoeddi enw cyn-berson cofrestredig yn y modd hwn, heb unrhyw amheuaeth, yn effeithio'n negyddol ar enw da y person hwnnw, mwy na thebyg yn y tymor hir, a hynny cyn i'r person wynebu unrhyw fath o broses na chael dyfarniad naill ffordd neu'r llall. Pe byddai'r mater dan sylw yn un troseddol mi allai cyhoeddi enw'r unigolyn fynd yn erbyn y broses gyfiawnder (fel y nodir yn is-baragraff 3a). Ond gan na fydd o reidrwydd yn amlwg o'r cychwyn cyntaf pa achosion fydd yn faterion troseddol ai peidio, onid yw hyn yn rheswm pellach dros osgoi cyhoeddi enwau o gwbl? Mae'r CGA yn glir iawn bod 'gosod gorchymyn o'r fath yn gam gwarchod yn hytrach na cham cosbi', ond mae cyhoeddi enw'r cyn-berson cofrestredig yn sicr yn ymddangos fel cam sydd â'r bwriad o gosbi, gan fod darpariaethau rhesymol (sydd wedi'u rhagnodi yng Ngorchymyn 2021) eisoes yn eu lle i sicrhau gwarchod.

It is clear when an ISO will be used.

Paragraphs 39 (1) and (2) make it clear in what circumstances the EWC would seek an interim order.

Yes, section 5 accurately reflects the powers.

Not before time!

Mae hwn yn gam pwysig ymlaen. Hyd y gallaf weld, mae Adran 5 yn cyflawni ei nod yn briodol.

I don't know if it is absolutely necessary but 39 (3) does not appear to allow the EWC to request documents be submitted by e-mail. It merely says "... electronic e-mail, where the

person so requests it". I understand currently, if the EWC wishes to use e-mail, it seeks agreement from the registrant first. That does not seem to fit with the wording here.

It appears to be a clear process, with consistency with the current FtP procedures.

Cwestiwn 2 - Mae Gorchymyn Cyngor y Gweithlu Addysg (Gorchmynion Atal Dros Dro Interim) (Swyddogaethau Ychwanegol) (Cymru) 2021 yn darparu i CGA ystyried a ddylid gosod Gorchymyn Atal Dros Dro Interim ar gofrestrriad un o gofrestreion CGA. Ydych chi'n cytuno â Gweithdrefnau a Rheolau'r Gorchymyn Atal Dros Dro Interim fel y'u nodir yn Adran 5 o'r Gweithdrefnau a Rheolau Disgyblu drafft 2021?

Ymateb	Nifer yr ymatebion	Canran
Cytuno	23	57.5%
Anghytuno	10	25.0%
Ddim yn cytuno nac yn anghytuno	6	15.0%
Heb ei gadarnhau / farcio	1	2.5%
Cyfanswm	40	100.0%

The document offers clarity on the role taken by the EWC in this matter. It reflects the formality and aligns to the current function of similar procedures and rules such as Suitability and Fitness to Practice which the EWC currently deliver.

Par39 (1) b – what is the threshold for defining serious.....(3) – at what point will the employer of the registrant be informed? We feel that it needs to be before the decision is taken by the panel as suspension / restrictions may need to be put in place Par 41 (5) – who is the presenting officer? Par 44 – has consideration been given to the registrant's right to privacy pending the outcome of proper processes? Also will any details of the registrant's current employment be made public? Par 45/46 – will the employer be informed of any review? It will help to be aware of the review before any decision is taken. Par 47 (1) – we believe that the employer should also be informed. Par 49 – again the employer will need to be informed of any changes to the ISO in relation to their employee.

We agree with the ISO procedures and rules as set out in the proposed Section 5 of the draft disciplinary procedures and rules 2021. However, we have outlined a few points for the Council to consider: 39 (2) (a) The document outlines consideration may in significantly serious cases be made for the protection of the public. Could this be made clearer to explain that it is for the protection of children in particular? 39 (3) If the registered person chooses to receive a notice of hearing by email, the duty authorised officer should request a 'read receipt' as proof that the notice of hearing has been received by the registered person. This is in line with the alternative method of using special delivery through the registered person's address. 39(4) (d) There is no mention that the registered person should be asked to confirm whether they wish the hearing to be conducted through the medium of English or Welsh. 39 (5) The draft document states that the registered person shall, prior to the hearing, provide the Education Workforce Council (EWC) with any relevant written submission or documents. However, it does not state how far in advance of the hearing that these documents should be received to enable the committee to consider them prior to any meeting. 40 (1) The document clearly outlines the right for the committee to exclude the public from the hearing or any part of a hearing. This right should be made clear when the registered person initially requests that the hearing be held in public rather than in private [4(d) (ii)] 42 (3) (b) Should the committee be satisfied that rule 39 has been complied with, and in the absence of the registered person, it is unclear why the committee might choose to adjourn the hearing. 43 (1) (b) This does not take into account when the registered person is selfemployed and does not have a current, last employer or agent. 44(1) It is not clear whether the reference to publishing information on a website is relating to an inward or outward-facing website. 44(3) It is not clear who makes the decision whether or not publishing the ISO's information on the EWC's maintained website appears necessary. 45 (1) Is there a limit to the number of times that a former registered person against whom an Interim Suspension Order (ISO) has been made may request that the EWC reviews it? if so, this should be noted in this section. 45 (6) Can the members of the review hearing committee be the same people as the original committee who undertook the initial hearing? 47(1) If, following a review, the ISO is revoked, should the authorised officer inform the former registered person's previous employer of the decision as well as the former registered person themselves?

While section 5 accurately reflects the powers provided for in The Education Workforce Council (Interim Suspension Orders) (Additional Functions) (Wales) Order 2021, there are a number of areas where amendments could have been considered if the Order had allowed for same, these would have facilitated EWC in carrying out this vital public protection role. These could have included: At 39 (3), reducing the 10-day notice period to teachers of the consideration of an ISO. There will be circumstances where the public interest dictates that action is taken in a shorter timeframe; 39(4)(d)(ii) – In Ireland, all hearings in relation to ISOs are conducted in private on the basis that it is often the case that, as yet, unproven allegations are being considered, but under EWC Revised Rules it is the Registrant who has the right to apply for a public hearing so EWC are probably protected against challenge. I think it is useful that under parag. 40(1), it is the Committee

who have the final say as to whether it is in public or private as I completely agree from a regulator's point of view that it is necessary to protect the interests of children and vulnerable persons; Parag 43(1) is clear as to the parties to be notified of the ISO. In an Irish context, the High Court confirms our section 47 (ISO) Orders in the first instance and thereafter the regulator must formally notify the teacher in question, the Minister for Education and, where the teacher is employed, his/her employer, in writing as soon as practicable. When Court orders are made, we additionally seek to have regulators in the EU notified and beyond that where we have reason to believe a teacher is registered elsewhere. The 3 day turnaround set out in paragraph 43(1) is tight but probably achievable and reflects section 8 of the Order; At 41 (7) again, it reflects the provisions of the Order but if EWC had the choice, considering extending beyond a maximum timeframe of 18 months to 24 months for example would have been useful (given that suspensions can be required to remain in place pending Court proceedings or to allow time for a regulator's inquiry process to be completed). Do not think EWC deal with medical unfitness cases, I may be incorrect about that...In relation to Publication referenced at parag. 44 of the Revised Rules, if EWC consider medical fitness issues, EWC could have considered extending the list of reasons for not publishing to encompass cases where an ISO might arise as a result of medical unfitness issues.

As set out in the consultation documents, the imposition of an ISO should be understood as a protective step rather than punitive one. Previously expressed concerns around ISO powers are that they may be imposed inappropriately with serious consequences for the practitioner involved¹, but this risk does not and must not outweigh the risk of not taking such a measure. Under Common Law Police Disclosure, there must be a 'pressing social need' for police to report information to regulatory bodies. This disclosure must be compliant with the Human Rights Act and the Data Protection Act. Therefore, in the decision to make this disclosure police will first need to consider the need to safeguard against the rights of the registrant. Subsequent to this consideration by the police, Section 5 sets out the considerations that must be taken by the regulatory body to determine whether an ISO is to be issued on the basis of the information that has been reported to them. An EWC officer may recommend that an ISO is considered, and that this recommendation will then be considered at a hearing. It is important to note that the procedures around the hearing in Section 5 include several steps, in line with the 2021 order, to ensure this is an appropriate and proportionate decision, these include:

- That the decision is considered at a hearing at which the registrant is present;
- That the registrant can present oral or written representations at or before the hearing, including witness statements;
- That this hearing can be public if requested by the registrant and agreed by the Committee (noting that the Committee must ensure privacy if this is necessary to protect the interests of children); - That this hearing will be held by a Committee, advised by a legal adviser, and therefore that this decision will not be taken by an individual officer;

- That if the Committee approve the recommendation for ISO this will be in place for a maximum of 18 months, and for an extension to this the EWC must apply to the High Court;
- That the person to whom the ISO applies can request that this is reviewed;
- That the EWC can also review the ISO before it is due to end;
- That the person to whom the ISO applies can appeal against the order to the High Court.

It is my view that this process offers sufficient and considered mitigation against the risk that ISO is inappropriately or disproportionately applied. The process is transparent, timebound and accountable, and enables clear mechanisms for individuals to appeal decisions and to request that they are reviewed.

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 as this will potentially breach the Human Rights Act and laws of natural justice. The procedure should be prescribed, as with other regulators. 45 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.

We agree in principal and we welcome the comments that these will only be used in significant serious cases. We consider that section 39 (1) of the draft ISO rules needs to be clearer about the circumstances in which ISOs will be considered, to avoid them being overused. Rule 39 (1) should make it clear that ISOs should be imposed in very limited number of significantly serious cases and that imposing such an order is a protective step, rather than a punitive one. It should also make clear that should the EWC receive information of this nature from any other source, such as an employer, that its 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 and that only in very exceptional circumstances will a referral from a third party other than the police be investigated. Section 39 should also make it clear that 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 as is set out in the consultation document.

This will provided an additional safeguard.

The NASUWT highlighted in previous responses the potential damage that could be inflicted on a registered person by the inappropriate imposition of an Interim Suspension order. The Union questions what the consequences would be for the employee if they were to be suspended by the EWC having not been suspended by their employer, and how such a situation could be reconciled. Similarly, the Union questions what purpose would be served by the EWC suspending a registrant if the employer had already suspended them. The NASUWT cannot understand in what circumstances a situation would arise where a registrant accused of a serious allegation would need to be suspended by the Council, given all the protections already in place. The Union also does not believe that the public interests tests have been clear set out within the Rules to ensure that, potentially innocent, persons are not subjected to inappropriate suspension.

We would raise concerns as to the definition of a 'serious case'. In the supporting document "Consultation on Education Workforce Council (EWC) draft Disciplinary Procedures and Rules" the describes ISOs as "an emergency measure" and that 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". Further it states that "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." This implies that the EWC expects the majority of cases where they consider imposing an ISO to be referrals from the police, but will consult the police if they receive the referral from another source. The appears to imply that the EWC would expect to only consider ISOs where there is/has been a police investigation. The final paragraph then states what the EWC will consider when "assessing the seriousness of information disclosed". NAHT Cymru believes it would be helpful if the EWC could publish this as advice somewhere, possibly even in the rules Disciplinary Procedures and Rules document. This would serve to reassure the public of the use of ISOs. It would also help teachers and their representatives respond to the consideration of an ISO and so facilitate the smooth running of ISO hearings. In addition we have concerns about some draft rules, as explained below. Draft rule 39(4)(b). This is deeply concerning, the draft rules state the Notice of Hearing will only "specify the nature of the allegations against the registered person" - see proposed rule 39(4)(b)- this potentially will leave the registered person unsure of why an ISO is being considered. In addition, the Notice of Hearing doesn't appear to include a bundle of all the documents to be considered by the Committee. This means the registered person may not fully understand why an ISO is being considered and therefore respond fully to the consideration of the ISO. It is a fundamental principle that a defendant should have the opportunity to see the case against them and what evidence a Committee is making their decision on. Draft rule 39(4)(d)(i). The Notice of Hearing asks if "the registered person to confirm whether or not they consent to the imposition of an Interim Suspension Order",

the EWC has the option for registered persons to opt for Voluntary Prohibition - could the EWC give them this option here? Draft rule 44. Again, this is deeply concerning. It is clear from The Education Workforce Council (Interim Suspension Orders) (Additional Functions) (Wales) Order 2021 and the draft rules an ISO hearing does not consider whether any allegations are found but simply whether it is appropriate to impose an ISO, this decision is made on limited evidence, where an investigation has not been undertaken by the EWC. Therefore at the point of an ISO being imposed the registered person has not had any allegations found against them by the EWC, and possibly even before any allegations have been drafted. If the ISO is considered due to an ongoing external investigation, the registered person may not yet have even had any allegations found against them by any authority. Whilst we accept, draft rule 44 (3) does allow for ISOs not to be published in some cases. There appears to be any purpose for ISOs to be published. As the person subject to an ISO “will not appear on the public Register of Education Practitioners as ‘a registered person’ in any category of registration for which they were registered” they are prevented from engaging in such employment and so the legitimate aim of ISOs to protect the public is achieved by this. The publication of the ISO appears to be a punitive step. It is NAHT Cymru’s strong contention that ISOs should not be published in any cases.

The power to impose an ISO fills an important gap in the current powers available to EWC and I’m sure they will be used only in circumstances when safeguarding risks are involved.

They seem balanced and fair.

There should be no such powers unless and until due process has been followed. Indeed after the suicide of a colleague following suspension we are now required to undertake detailed risk assessments. These powers are disproportional and exist for no other profession.

The intended legislative powers present a great deal of ill considered risk, for the profession. There appears to be little consideration given to professional wellbeing, the right of registrants to a fair hearing, the right of registrants to exist within a process of innocent until proven guilty and goes some considerable distance to undermining the very recruitment and retention work that the EWC have been engaged with over the past several years.

Publicly naming anybody before a hearing or verdict could be incredibly damaging to that person’s career, mental health and family. Having to reregister even after a favourable verdict is disgusting.

Gweler uchod ein gwrthwynebiad cryf i Adran 44. Fel arall, cytunwn â gweddill y geiriad. Nodwn fod adran ddefnyddiol o'r ddogfen ymgynghori nad yw'n cael ei hadlewyrchu yn y Gweithdrefnau a Rheolau, sef paragraff 7 sy'n disgrifio'r trothwy difrifoldeb ar gyfer ystyried Gorchymyn Atal Dros Dro, a'r cydbwysedd rhwng y risg o niwed ac effaith y Gorchymyn ar y cofrestrai. Rydym yn gofyn, os nad yw'r cymalau hyn yn rhan o'r Gweithdrefnau a Rheolau, ble fyddant yn cael eu nodi er mwyn sicrhau bod pwyso a mesur priodol yn digwydd cyn penderfynu p'un ai symud ymlaen i Orchymyn Atal Dros Dro ai peidio? Pwyswn am gael ymgorffori'r rhain mewn dogfennaeth swyddogol sy'n llywio'r broses.

The procedures and rules are drafted in a way that is proportionate to relevant risks; they are in keeping with similar provisions affecting other settings and professions; and they reflect an appropriate balance between the need to act to protect individuals from harm on the one hand and equity and fairness of treatment for those who would be made subject to their provisions, on the other.

I agree in principal, however there are some omissions to the rules. 39- (1) In accordance with the 2021 Order, where the EWC is informed, at any time, of allegations against a registered person involving, but not limited to:

- (a) serious sexual misconduct; and/or
- (b) causing serious physical, emotional, mental harm; and/or
- (c) serious criminal investigations of a safeguarding concern,

a duly authorised officer of the EWC may consider that an ISO should be imposed upon the registration of the practitioner. I think that this does not demonstrate the initial risk assessment undertaken by the EWC's officer. Think this sentence should be reworded to:

a duly authorised officer of the EWC, having undertaken an initial risk assessment of the Registered Person's case may APPLY to an Interim Order Committee that an ISO should be imposed upon the registration of the practitioner. (5) The registered person shall, prior to the hearing, provide the EWC with any written submission or such documents as they consider relevant, including any witness statements. This is clear that the Registered Person can provide documentation. The rules are not clear on what the EWC should be providing to the Registered Person. I believe that 4(b) which reads '(b) specify the nature of the allegations against the registered person;', this should be amended to also state that the EWC will provide all documentation that it seeks to rely on as part of their application to the Interim Order Committee. (3) The duly authorised officer shall schedule a hearing, and send a Notice of Hearing in accordance with paragraph (4) by email, where the registered person requests it, or by special delivery to the registered person's last known address as recorded on the Register, or such other latest address known to the EWC, giving them not less than 10 working days' notice of the intention to make such an

order. I think this should be amended to state that this could be 5 working days, for an extremely urgent application, with significant public interest considerations. I think 4 (d) 1 Should also annex to it that the Registered Person acknowledges that they understand the implications of accepting an interim order. Paragraph 41 - Think the heading of 'Hearing of the Fitness to Practise Committee' is incorrect. It should be hearing of the 'Interim Order Hearing or Interim order review hearing'. It is very important to distinguish the difference from an FTP and an ISO hearing. An FTP hearing will look at a final determination of the facts where essential an ISO hearing is a risk management process only. 46 (1) is very confusing- 46-(1) The EWC shall, in addition to the review schedule determined by a Committee under Rule 41(9), review the ISO at any time if new evidence becomes available that is relevant to the case, or there is a material change of circumstances since the ISO was made. This reads that when any new evidence comes to the EWC then they must review the interim order. In an ongoing investigation, new evidence you hope will be provided at regular intervals such as for example- an outcome of a safeguarding procedure or a Police charging decision. This does not strike me as a reason to review the order. I think that the paragraph should read 'review the ISO at any time if new evidence becomes available that is relevant to the case AND in the view of the suitably authorised officer, may change the level of risk in the case'..... This would only mean a review would be needed if the case moves from high to medium risk. Also at paragraph 46 (4) - Following a review of the order under this Rule, or under Rule 41(9), the EWC may. Think this sentence makes it sound like the EWC are the ones making the decision and not the independent committee. It should read (4) Following a review of the order under this Rule, or under Rule 41(9), the Interim order review committee may...' However it seems to me that in (c) in the event that there is a requirement to do so, make an application to the High Court to extend, or further extend the ISO beyond 18 months in accordance with Rule 48(2). This is the responsibility of the EWC and not the committee. 49-(1) An ISO shall cease to have effect if: (a) prior to an investigation under these Rules, the EWC determines that there is no case to answer in relation to the proposed ISO; (b) the EWC discontinues an investigation into the conduct that is the subject of the ISO; (c) the EWC has made a decision as to whether or not to impose a disciplinary order under Rule 29; This is confusing. Does this mean the order does not need to be revoked by a committee? Also C- is not quite right as it should also read or a final determination is made by a Fitness to Practise hearing.

Finally the rules do not expressly state that primary objective of the ISO/ISO review hearing is to assess risk and not make any final determinations of fact, which would be the domain of a Fitness to Practise hearing if one was required.

The ISO Procedures and Rules are fair to the registrant, who is able to make written or oral representations and be represented by a person of their choice but, most importantly, is also safeguarding our learners.

Agree as this order protects the profession, helps to maintain relationships in the workplace and ensures the lasting integrity of expected standards.

Ydw, yn gytbwys ac yn briodol.

Procedures and rules seem fair and clear.

Cwestiwn 3 - Hoffem glywed eich barn am yr effeithiau y byddai'r Gweithdrefnau a Rheolau Gorchymyn Atal Dros Dro Interim drafft yn eu cael ar y Gymraeg, yn benodol ynghylch:

- i. cyfleoedd i bobl ddefnyddio'r Gymraeg; a**
- ii. pheidio â thrin y Gymraeg yn llai ffafriol na'r Saesneg**

The work of the EWC is bound by its commitment to its own Welsh Language policies which comply with Welsh Government expectations. The delivery of the procedures and rules will be delivered in the language of choice of the registrant. Thus allowing the free use of the language as requested and ensuring the equity between those who wish any proceedings in either Welsh or English.

It is important to ensure sufficient numbers of staff have the requisite Welsh language skills to be able to conduct all aspects of the ISO Procedures through Welsh and for those impacted to be made aware of the opportunity to use Welsh.

Within the draft initial revised interim suspension orders, it clearly states that the registered person has the opportunity to decide whether the hearing takes place through the medium of English or Welsh. However, in 39(4) (d) there is no mention that the registered person should be asked to confirm the language at the registered person wishes to be used to conduct the hearing. To enable all language requests to be satisfied, the EWC would need to ensure that they have sufficient panel members available for both an initial hearing and any review to enable them to conduct all meetings through the medium of Welsh. As long as all requests by the Registered Person to conduct meetings through the medium of Welsh were met, the proposals would not have any negative impact on opportunities for people to use Welsh and therefore would not treat the Welsh language less favourably than the English language.

In Ireland a teacher has a constitutional right to have his /her case heard and conducted in either Irish or English and I would assume similar accommodation would be made in Wales for teachers to have their ISO Hearing conducted through the medium of Welsh. In doing so the Welsh language would be treated no less favourably than the English language. Even beyond the rights of Welsh or Irish speakers, in deference to fair procedures and natural justice, one would assume that reasonable accommodation would be made for a teachers, whose first language is neither English nor Welsh, to enable them participate in an ISO Hearing e.g. simultaneous translation of proceedings.

Providing that hearings can be conducted in both Welsh and English, I do not think there are any effects on opportunities to use the Welsh language, nor for less favourable treatment with the possible exception of the availability of Welsh language proceedings at the High Court.

We would expect that there is equal opportunity for those affected to have access to the process in both Welsh and English and would highlight that any delay would have a potential detriment. We would expect the EWC to take all action to mitigate this.

Can't see how this would affect the Welsh Language. Bilingual service provided by EWC.

The NASUWT maintains that there should be no barrier to opportunities for people to use the Welsh language from any procedures adopted and implemented by the EWC. To avoid treating the Welsh language no less favourably than the English language then the documentations produced have to be available bilingually simultaneously.

NAHT Cymru expects that all literature/publicity material in relation to ISOs are freely available in Welsh as well as English. We would also expect the ability for hearing to be held in the Welsh language or with the support of simultaneous translation. Any inability to do this could severely undermine not only the Welsh language, but also the registrant's ability to defend themselves in their preferred first language. i) positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language. ii) no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

The Welsh Language is an important element of Welsh identity and it's important that the rights of Welsh Speakers are protected and that such individuals experience no disadvantages with respect to any EWC process.

I do not believe that the draft ISO Procedures and Rules will have a disproportionate impact upon opportunities to use the Welsh language nor do I believe that the Welsh language would be treated any less favourably than the English language.

No issues

I don't believe there to be a detrimental effect.

This is absolutely irrelevant given the flaws that exist in these proposals.

Whilst hugely important in our national context, this is not a relevant current consideration in light of the fundamental flaws of intent, contained within the proposal.

Process will have to ensure Welsh available as requested/needed.

Nodwn fod y Gweithdrefnau a Rheolau Disgyblu yn datgan bod angen i gofrestrai neu dyst roi o leiaf 21 diwrnod o rybudd os yw'n dymuno rhoi tystiolaeth yn Gymraeg (Adran 20(2)). Yng nghyd-destun gwrandawriad ynghylch Gorchymyn Atal Dros Dro, dim ond 10 diwrnod o rybudd caiff ei roi o'r bwriad i gynnal gwrandawriad. Byddem am gael sicrwydd ysgrifenedig yn y Gweithdrefnau a Rheolau Disgyblu bod modd cynnal gwrandawriad Gorchymyn Atal Dros Dro, a'r holl brosesau cysylltiedig, yn y Gymraeg.

No detrimental affect, if any affect at all.

We are unable to identify an impact that is unique to people using the Welsh language and expect the rules and procedures to support equity of treatment for users of the Welsh language.

None- The Registered Person has the full right to the full process in Welsh and this will not change the timescales identified in these rules (e.g. not lead to a delay for a review).

As far as I can see, there would be opportunities for people to use the Welsh language, everything appears to be bilingual.

This procedure and rule appears equitable and provided any language does not create a barrier I cannot see how an opportunity and less favourable the effect the policy would have on registrants.

Can't think how this new legislation would impact negatively upon use of the Welsh language or would treat the Welsh language less favourably than the English language.

Dan bob amgylchiad mae angen sicrhau tegwch ac, os yn briodol, anogaeth i ddefnyddio'r Gymraeg er mwyn i'r cofrestredig fod yn gyfforddus ei bod yn gallu gosod ei ddadl.

I believe that the draft orders provide equity and parity for speakers in both languages.

There is no barrier to the use of the Welsh language.

The timescale for the implementation of an ISO could be an issue if there is meant to be a quick turnaround, essentially putting pressure on translation services either from the EWC to the registrant or from the registrant to the EWC.

Cwestiwn 4 - A oes gennych unrhyw sylwadau eraill?

Should there be greater clarity on the employment status and rights of any registrant who may be issued an ISO? If the ISO is revoked for any reason what impact does this have on the employment status? Can employers continue with any internal investigations and disciplinary processes whilst a registrant is under an ISO ?

Suggested other areas for consideration in the rules of procedure First, there could be consideration (at 39) around a maximum timeframe between the initial referral to the EWC and the subsequent decision by the EWC to inform the registrant that they will proceed with an ISO hearing. There could also be a consideration of a maximum timeframe between notification and the ISO hearing taking place – a minimum timeframe of 10 working days is specified but not a maximum. I would also recommend that it is stipulated clearly within these rules that the registrant must not have any professional contact with children or young people during the period between the notification of an ISO hearing and the hearing taking place. There is a potential safeguarding risk during this period and I would also consider that a registrant in this situation would have significant distractions from a focus of high quality educational provision for children and young

people, and therefore other professionals would be more able to meet the needs of children during these 10 days. I also think that the rules of procedure should reflect a duty of the Education Workforce Council to inform the employer if a registrant is informed they are to have an ISO hearing. I accept that this would be usual practice, but the current rules of procedure only include this step if the decision is made at the hearing to proceed. Clarity within the rules will ensure that this practice is consistent, and that employers are aware of this prior to the hearing. It is particularly important if the referral has not come from the police or Disclosure and Barring Service, as the referring individual / organisation may not have referred the case beyond the EWC. I also suggest that at 39 it could also be considered whether an individual registrant should be made aware of any instances when the EWC has decided that pursuing an ISO is not necessary. This step could help build professional confidence in the proportionality of the EWC's decision-making. It could also benefit professionals in some instances to know if their conduct or allegations concerning their conduct have been considered by the EWC; it may support their ongoing professional development, and help inform their future decision-making, both professionally and personally. This is in the interests of children as it may lead to more robust decision making by some professionals. Mitigating impacts on registered person and families Consideration could be given as to whether the rules of procedure can also specify further steps to mitigate the impact of the decision to impose an ISO on a person and their family. First, in cases where school teachers' pay and conditions do not apply (supply staff, teaching assistants, youth workers etc.) the continuity of pay during the period of suspension will be determined by the terms and conditions negotiated with their employer, which may have particular impacts on supply staff who are likely not receive an income in the same way as those who are employed to work in a school or other educational settings. This may have an impact on the families of the former Registered Person too, including children. It is important here to note that the ISO is not a disciplinary measure in itself but a safeguarding measure whilst investigations are underway. The individual should not experience this as a punitive measure. Whilst the rules of procedure may not be the most appropriate vehicle to stipulate this support I recommend that there is further consideration around any subsidies that can be made available to supply teachers or other education professionals that are not protected by school teachers' pay and conditions, and I note that these may be particularly important to prevent children in these families falling into poverty during the period when adult members of the household are unable to work. Second, I would like to see an offer of mental health support under consideration, and I recommend that there is discussion with relevant unions about the best way to ensure that former registrants have an active offer of preventative mental health support in this situation. It could also be considered whether this offer can be integrated into the rules of procedure, particularly to support those registrants (e.g. supply staff, youth workers in some settings) that may not receive support through an employer. This support would be beneficial both to the individual and to wider society, including children. This is because, should the suspension order be revoked, the individual will potentially be in better health and in a better position to return to their professional role and perform well in their ongoing work with children and young people. If the decision is to impose disciplinary action on the individual then an active offer of mental health support could be an important tool in supporting this individual to take personal responsibility for previous decisions or actions, and it could

mean they are more likely to make changes to behaviour and seek further help to ensure their conduct no longer poses a risk to children and young people. I would also like to see consideration of an active offer of support to all children in the family, who may need specific support to understand what is happening and a safe, facilitated environment where they can raise and discuss their own worries and priorities. It should be noted that some police forces in Wales (Gwent and South Wales) have been working on providing clear, child-oriented information for children and any parent not involved in the alleged crime when a parent is arrested for a sexual offence. My office has advised on this. It may be useful for EWC to make themselves aware of this initiative to see if there may be any benefit in replicating a similar initiative for children affected directly by a parent or carer being made subject to an ISO. Clear information for young people Another mitigating factor would be, in addition to providing bespoke information to families as above, the EWC could make publically available clear and accessible information for young people about what an interim suspension order is, and the different outcomes it can have. This information should seek to reassure any young person that has made an allegation that this is a due and proper process to make sure there is time for a thorough investigation. The information should also reassure any children or former learners of registrants that this is not a disciplinary measure, that the full facts are not yet known, but that this is a protective measure in place whilst investigations are underway.

We believe the rules should include more clarity on how practitioners are returned to the register once the ISO has been lifted.

We only have the following points to make: 1. We would recommend that the maximum length of an ISO should be revised to 12 months rather than the suggested 18. 2. The proposed system is fairer than the equivalent in England since there is a right of appeal. 3. We would challenge the publication of named individuals who have an ISO imposed.

I am reassured that the EWC will be able to take action in very serious cases to protect the public. Stakeholder confidence will improve over time as the EWC gains more experience in dealing with those cases which may meet the threshold for an Interim Suspension Order.

I am astonished that the EWC has only just been given these powers.

There needs to be far wider debate. And greater publicity. Public shaming of professionals with no evidence of guilt must be opposed by every registrant. Slipping this out in the middle of the second deadly wave and putting a closing date the day before elections is at worst cynically planned to make sure it goes under the radar and at best shows how poor your strategic planning is.

I think it is very positive that the ISO will be used only in emergencies, and as a protective measure rather than a punitive one so that there is no doubt that a person has been judged as guilty before all proof has been considered.

This is in need of a much wider public debate. The decision to push this through during the most challenging and stressful pandemic period for colleagues is hugely questionable. I would be more than happy to discuss my feedback further with a representative of the EWC, my own professional registration organisation.

A de registered person should not have to pay to re-register if the concerns raised against them turn out not to be serious enough to have warranted deregistration in the first place.

I am concerned that the general changes lead to a culture of intimidation and fear. Applying an ISO before a hearing seems to be contrary to the right to a fair hearing.

I believe this is a positive way forward, and protect children.

None, other than to welcome their introduction.

46-(1) The EWC shall, in addition to the review schedule determined by a Committee under Rule 41(9), review the ISO at any time if new evidence becomes available that is relevant to the case, or there is a material change of circumstances since the ISO was made.

Think this needs expert legal advice to safeguard the registered person's interests that the the EWC is not being slow with investigations and also to ensure unrealistic expectations on the EWC e.g., review monthly when you are awaiting a police investigation. Should a period of not more than six months be imposed by a committee? As a basic framework?

I am relieved that the EWC will finally have the powers available to them to impose an ISO on a Registrant, where necessary, in order to protect learners and maintain public confidence in the profession, and in the procedures the EWC undertake to ensure that learners are safe.

This legislation is long overdue. Interim Suspension Orders are essential in those very rare circumstances in which registrants pose an immediate risk to learners.

A fantastic new addition to the powers of the EWC which will further protect learners and the workforce.

Fully supportive of the necessary disciplinary procedures and rules alongside the ISO.