



## **Guidance for Employers**

# **Employing School Teachers and School Learning Support Workers**

**April 2016**

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## 1.0 Introduction

The Education Wales Act 2014 and the Education Workforce Council (Main Functions) (Wales) Regulations 2015 as amended, set out the requirements for practitioners to be registered in the category or categories of registration for the work they undertake.

You may, for example, have a member of staff who is a qualified school teacher and they have a part-time contract of employment for that role. In addition, they may also have a part-time contract as a school learning support worker. In such cases the practitioner must be registered in **both** the 'school teacher' and 'school learning support worker' categories. They would however, only pay one registration fee.

A key consideration for employers in determining whether registration is a requirement is the role the individual is actually undertaking rather than their job title.

**The legal responsibility for ensuring that only registered practitioners are employed to undertake the work specific to their category of registration lies with the employer, namely the school, Local Authority and if applicable, private supply teaching agency or other contractor (eg sports or music) as well as the practitioner themselves.**

This document provides information to assist employers, agencies and prospective employers in complying with this legal requirement.

## 2.0 Who needs to be registered with Education Workforce Council (EWC) and how do they register?

### 2.1 Who needs to be registered?

#### School Teachers

The Functions Regulations set out who can undertake the "specified work" of a school teacher in maintained schools and non-maintained special schools in Wales as well as the requirement for those individuals to be registered with the EWC **before** they commence work. "Specified work" is defined as:

- planning and preparing lessons and courses for pupils;
- delivering lessons to pupils;
- assessing the development, progress and attainment of pupils;
- reporting on the development, progress and attainment of pupils.

No person may carry out the specified work above unless they are a qualified school teacher (holder of qualified teacher status (QTS)) **and** registered with us in the category of 'school teacher' or, in certain limited circumstances, the Regulations allow for others to undertake this work (eg overseas trained teachers). In such circumstances, unqualified staff (no QTS) should be registered with the Council in the 'school learning support worker' category.

Employers need to ensure that any unqualified person undertaking the specified work outlined above is doing so in full compliance with Regulations.

As there is cross border working between Wales and England, employers should note:

- school teachers who trained in Australia, Canada, New Zealand or the USA and who have been awarded QTS by the National College for Teaching and Leadership (NCTL) in England are NOT recognised as qualified school teachers under legislation in Wales;
- FE qualified teachers who are recognised as qualified school teachers by NCTL and are therefore eligible to work as qualified teachers **in England only**. This recognition is **NOT** recognised under legislation in Wales.

Those who need to be registered in the school teacher category include but are not limited to:

- full-time, part-time and supply school teachers with Qualified Teacher Status (QTS);
- peripatetic school teachers;
- advisory school teachers who are qualified school teachers and who spend a proportion of their time in a teaching capacity, involving direct unsupervised pupil contact;
- home tutors – employed by a LA to teach children unable to attend school on a regular basis.

### **School learning support workers**

A school learning support worker means a person who is not employed as a qualified school teacher but who provides or supports the provision of any of the following services by a school teacher:

- planning and preparing lessons and courses of study for pupils;
- delivering lessons to pupils (includes delivery via distance learning or computer aided techniques);
- assessing the development, progress and attainment of pupils; and
- reporting on the development, progress and attainment of pupils.

A person can only be employed as a school learning support worker to provide the above services if **all** of the following requirements are met:

- they are registered with the EWC in the category of school learning support worker;
- they provide the above services with direct interaction with learners to assist or support the work of school teachers or nominated teachers in the school;
- they provide the services under the direction and supervision of such school teachers or nominated teachers in accordance with arrangements made by the head teacher of the school; and
- the head teacher is satisfied that they have the skills, expertise and experience to provide the services.

Examples of who needs to register in the category of school learning support worker.

**The lists below are not exhaustive and employers should bear in mind that the requirement for registration relates to the role actually being undertaken and not the employment description.**

<b>Yes</b>	<b>No</b>
Teaching assistant	Caretakers
Classroom assistant	Career advisor
Learning support assistant / HLTA	Educational psychologist
Special / Additional needs assistant	School nurse
Pastoral / welfare assistant	Administrative staff
Bilingual support assistant	Catering staff
Support assistant	Attendance and inclusion officer
Instructor	Lunchtime supervisors
Cover supervisor	Breakfast club supervisors
Foundation stage assistant	Finance controller
Technician	Data Manager
Learning coaches	Voluntary helpers e.g. reading, after school clubs
Private sports and music contractors	Trainee teachers
GTP / Teach First (first year)	
Overseas Trained Teacher	

It should be noted that the Welsh Government's expectation is that anybody in the "No" list should not be engaged in learning support activities, as defined under the relevant subordinate legislation.

## **2.2 Applying to register with EWC**

Registration is subject to compliance with the Education Workforce Council Registration Rules and a registration application pack is available to download from the Council's website ([www.ewc.wales](http://www.ewc.wales)).

Included within the application pack is a guidance document which sets out clearly the eligibility criteria for registration in each category or categories of registration required. The guidance is annexed to this document for information.

### **Note**

School teachers with QTS gained after 1<sup>st</sup> April 2003 are required to complete a period of Induction in Wales or in England. If an applicant for registration in the category of school teacher has not yet met the Practising Teacher Standards they will be given 'Provisional' registration status only (subject to meeting the eligibility criteria).

Full registration will be granted once the registrant has met the Practising Teacher Standards.

If an applicant for registration makes a declaration on their application form, his or her suitability for registration will be formally considered under the Council's Fitness to Practise responsibility.

Where the Council is not satisfied as to the applicant's suitability for registration and they cannot be registered, the Council will notify him / her accordingly.

### 3.0 Implications of EWC registration for employers and agencies

#### 3.1 What does an employer and agency need to do?

In complying with the legal requirement for ensuring practitioners are registered in the category or categories of registration for the work they undertake employers and agencies should:

- make **pre-employment checks** to ensure that the practitioner is registered in the relevant category of registration **prior** to commencing work. This can be done via online employer access to the Register. Where a practitioner's registration status cannot be verified from the employer access, the Registration Team should be contacted directly;
- **check annually** that all practitioners in their employment continue to be registered, as continued registration is dependent upon the payment of an annual registration fee.

Where employers and agencies or other supply organisations consistently breach their statutory duty by employing unregistered practitioners, the Council is obliged to inform the Welsh Government.

We are often asked whose responsibility it is to ensure that a practitioner is registered, namely the school, the LA, a private supply agency (where relevant) or the practitioner themselves.

The legal requirement applies to all those listed above. However, more importantly, it is essential that all employers involved are clear who is actually making the checks to ensure that a person is registered with the Council. A school should not assume that a LA or supply agency is automatically making this check or vice-versa.

In the Council's experience, it is usually the LA or where relevant, the private supply agency that checks with EWC that a school teacher is registered. However, schools are also advised to use their online access to the Council's Register of Education Practitioners to check the registration, qualifications and restriction status of those practitioners working within their school.

#### 3.2 What action should be undertaken by employers and agencies (maintained sector) if a practitioner is not registered with the Council?

It is possible, that an employer or agency will find, following contact with the EWC, that an employee or prospective employee is not registered. This may be for two reasons:

- **school teachers who are eligible for registration but are not currently registered.** These school teachers need to be registered before they can be employed as qualified school teachers in the maintained sector. In such cases, at the request of the employer / prospective employer, a registration application pack will be e-mailed to the school teacher.

If an employer or agency employs an unregistered qualified school teacher to undertake the specified work of a teacher they are in breach of the law. Reducing a school teacher's salary to an unqualified rate does not negate an employer or agency's statutory responsibility to comply with their legislative responsibility

- **school learning support workers who are eligible for registration but are not currently registered** cannot commence work until they are registered. In such cases, at the request of the employer / prospective employer, a registration application pack will be e-mailed to the learning support worker
- **practitioners who cannot be registered due to restrictions.** Any practitioner who is ineligible for registration in the category or categories of registration for the work they wish to undertake

**should not** be employed. If the practitioner believes that he / she is eligible for registration and disagrees with the record held by the Council we will investigate the matter. Once the case has been investigated, the employer or agency and individual teacher will be notified accordingly.

**If an employer knowingly continues to employ a practitioner who is unregistered in a post which requires registration the Welsh Government has powers to issue a direction to an employer to comply with its statutory duty.**

### **3.3 The responsibility to refer practitioners to the EWC**

In line with *The Education Workforce Council (Main Functions) (Wales) Regulations 2015*, as amended, all employers of registered persons in Wales are responsible for referring cases of alleged **unacceptable professional conduct, serious professional incompetence and / or conviction of a relevant offence** to the Council.

**An employer (LA, School, Governing body)** must refer any practitioner to the Council where:

- it has ceased to use the services of a practitioner or might have ceased to use their services had he or she not ceased to provide them.

**An agent (private supply agency or other private organisation)** must refer any practitioner to the Council where

- it terminated arrangements with a registered person; or
- may have terminated arrangements if the registered person had not terminated them; or
- may have refrained from making new arrangements for a registered person if the registered person had not ceased to make themselves available for work.

**The following do not override an employer's statutory duty to make a referral:**

- **Settlement or mutual agreements** where there was any possibility that the person may have been dismissed had the agreement not been entered into.
- **Dismissal for 'Some Other Substantial Reason' (SOSR)** where the termination of employment was as a result of a disciplinary issue (conduct and/or competence).

All employers are reminded that making a referral in the circumstances set out above is a statutory requirement and relates to allegations of **unacceptable professional conduct, serious professional incompetence and / or conviction of a relevant offence**

If the Council becomes aware that an employer has not or is not referring cases to it in line the statutory requirements it may refer that employer to the Welsh Government who can issue the employer with a Directive to comply.

If you have any queries at all about the referral of practitioners to the Council please contact the Fitness to Practise Team (e-mail [fitnesstopractise@ewc.wales](mailto:fitnesstopractise@ewc.wales))

### **4.0 Access to information on the Register by employers and supply agencies**

Under *The Education Workforce Council (Main Functions) (Wales) Regulations 2015* as amended, the Council is required to supply a subset of information on a particular practitioner, if requested by an employer or prospective employer. This applies to registered or unregistered persons for whom records are held on the database.

The Council's Register only holds information on practitioners in Wales. Therefore, should an employer or agency require information relating to a person who is employed in Scotland or Northern Ireland they should contact the respective GTC. For queries relating to teachers in England, the National College for Teaching & Leadership should be contacted.

#### **4.1 What information from the Register of Education Practitioners may be supplied to employers and agencies?**

The information which can be provided to employers and agencies is set out in part 8 of the EWC Functions Regulations.

If an employer / prospective employer or agency wants to check whether a practitioner is registered, confirmation of the registration status should be obtained using the employer access to the Register via the secure link from our website. If an employer has difficulty in identifying a practitioner they should contact the Registration Team directly (registration@ewc.wales).

The legislation is specific as to the purposes for which employers or agencies may request information. The EWC provide responses to employers and agencies on the understanding that the information is being released for the specific purpose and subject to the rules about disclosure set out below:

- the information supplied should not be disclosed to any person other than the practitioner to whom the information relates;
- the supply of information is subject to the condition that it is used for the purposes of ascertaining the suitability of the person for employment or continued employment.

If any of these areas appear to be potentially a concern, the Deputy Chief Executive will be notified before any information is released.

Only members of the Qualifications and Registration Team at the Education Workforce Council will give information about teachers' records in response to requests and appropriate checks on identity will be made before any information is released to school teachers, employers, agencies, prospective employers or others.

#### **4.2 Web Access for employers and agencies**

The Council has a facility for electronic access to the Register for employers and agencies in order that they can carry out their own registration checks. For further information or guidance on using the access contact the Qualifications and Registration Team.

#### **5.0 How will practitioner records be kept up to date?**

The information held in a practitioner's record may change from time to time and registration is subject to compliance with the Education Workforce Council Registration Rules. As such there is a requirement for practitioners to notify the Council, within a month, of a change to any of their particulars recorded on the Register.

However, the Council is also keen to receive such details from employers and agencies on an ongoing basis, preferably by using the online employer access facility provided to them.

## **6.0 How to contact the Council**

Any queries should be directed to the following:

Contact : The Qualifications and Registration Team

Address : 9<sup>th</sup> Floor, Eastgate House, 35-43 Newport Road, Cardiff, CF24 0AB

Telephone : 029 2046 0099

Fax number : 029 2047 5850

E-mail : [registration@ewc.wales](mailto:registration@ewc.wales)