



Northern Ireland
Assembly

Committee for Education

OFFICIAL REPORT (Hansard)

General Teaching Council for Northern
Ireland — Statutory Rules:
Department of Education Briefing

2 July 2014

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Members present for all or part of the proceedings:

Mr Mervyn Storey (Chairperson)
Mr Danny Kinahan (Deputy Chairperson)
Mr Jonathan Craig
Mrs Jo-Anne Dobson
Ms Maeve McLaughlin
Mr Stephen Moutray
Mr Robin Newton
Mr Seán Rogers

Witnesses:

Mr Sam Dempster	Department of Education
Mrs Faustina Graham	Department of Education
Mrs Miriam Miskelly	Department of Education

The Chairperson: I welcome Faustina Graham, director of collaborative education and practice; Miriam Miskelly, head of teacher education; and Sam Dempster of the teacher education team. You are very welcome. Thank you for being here and our apologies for the slight delay. Faustina, will you speak to these two SL1s and then take members' questions?

Mrs Faustina Graham (Department of Education): Thank you, Chair, and good morning everyone. Thank you for the opportunity to brief the Committee on this issue relating to the regulation of the teaching profession. I am accompanied by Miriam Miskelly and Sam Dempster from the Department's teacher education team. If you are content, Chair, I will keep my remarks brief because I appreciate that members will have questions on this matter.

From the Department's letter of 26 June, the Committee will know that an issue around the regulation of the teaching profession has arisen as a result of the repeal of the Department's powers in article 70 of the Education and Libraries (Northern Ireland) Order 1986. Those powers enabled the Department to make regulations relating to the consideration and potential removal of a person's eligibility to teach, on the grounds of misconduct. Consequently, since the repeal in 2009, the regulations have had not had any legal effect. It was always the Department's intention to repeal article 70, but to do so once the General Teaching Council (GTC) had assumed responsibility for the regulation of the teaching profession. However, when that repeal happened in 2009, its consequences were not adequately assessed in the Department. Therefore, regrettably, those consequences were not communicated to Ministers or the Committee. Consequently, also, officials continued to rely on the regulations made under the 1986 Order when considering individual cases of teacher eligibility.

While not for one moment underestimating the gravity of this matter, I want to outline the context in which these powers, albeit erroneously, have been exercised since 2009. In all the cases that were considered, the misconduct issue had already been fully investigated by employers and the individual teachers concerned had been dismissed from their positions. In almost all cases considered, the teachers had already been barred from working with children under the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007 and would no longer have been able to work in a range of settings, including schools.

That leaves us with a small number of less clear-cut cases. In those instances, eligibility was removed for an initial period that has since expired in those individual cases. Therefore, the teachers concerned were no longer in schools when the Department took action. I say that to assure you that those teachers were not working in schools. In doing what it did regarding the regulation, the Department intended to provide an additional safeguard for schools, and the decisions were taken only after careful consideration. Nevertheless, the Department does not have the legal power to provide that additional safeguard.

Taking that into consideration, I will outline briefly the action that the Department now proposes to take to address this situation. The original powers were in the Education Order 1986, but the Education (Northern Ireland) Order 1998 provided the Department with a limited power to make regulations that would put in place procedures by which the General Teaching Council could consider cases of misconduct and remove individuals from the register of teachers. As regards the chronology of the General Teaching Council, its constitution was created in 2002 and its registration functions began in 2004. Moving forward to 2006, when proposals for regulations were being developed, the Department was advised that they would not enable the council to exercise the full range of powers that had been intended. In particular, the legislation would not enable the GTC to take action short of removing a teacher from the register. For example, it could not issue a reprimand or require an individual to undertake further training. In essence, the Department had been trying to mirror the powers that exist in all other jurisdictions or GTCs — Scotland, Wales and, at that time, England. The advice was that those powers would not allow the Department to do that.

The legal advice that the Department took in 2006 was that it should seek the wider powers for the General Teaching Council in primary legislation. It was then intended that those powers would be included in the Education Bill in 2008, which, as the Committee knows, did not progress. Subsequent to all of that, the decision to extend the scope of the council's proposed powers to include further education (FE) lecturers meant that, in 2011, a separate Bill became the proposed way forward. As you know, that continues to be the overall aim of the Department. However, as an interim measure to rectify the current gap in the regulation of the teaching profession until we get to the GTC Bill, the Department proposes to revert to using the limited power in the 1998 Order. We are confident that we could have regulations in place before the beginning of the new school term that will put procedures in place for the General Teaching Council to investigate and adjudicate on cases of teacher professional misconduct. Those powers would enable the council to remove teachers from the register, usually for a time-bound period following an investigation. However, it would be to remove teachers from the register. As I said, the GTC would not have the powers, as yet, to take action short of removal. As previously, the procedures will also allow teachers to make representations in their defence and for any decision taken to be reviewed. It is envisaged that these procedures will remain in place until the issue can be addressed more comprehensively in the proposed General Teaching Council Bill.

To sum up, the Department is acting to address an issue that arose as a result of not assessing the implications comprehensively nor communicating the impact of changes to legislation a number of years ago, which, regrettably, did not come to light until recently. Thank you, Chair. We are very willing to take any questions or queries.

The Chairperson: Faustina, I am not going to ask you to comment on this, but I made the comment earlier, which you may have heard outside, that I am extremely disappointed that the permanent secretary is spending his time on other functions today when here we have, in his own Department, an issue that has been running since 2009 and has only come to light. We have flowery language that, basically, tries to cover up another crisis. It is a crisis in the sense that this is a very important issue. This is not just some minor issue in our education system.

The papers that you have supplied seem to indicate that, in the period following the repeal of article 70, action may have been taken against a limited number of teachers —

Mrs Graham: Yes, that is correct.

The Chairperson: — without the necessary legal vires.

Mrs Graham: Yes.

The Chairperson: How many?

Mr Sam Dempster (Department of Education): There are 10 cases in which we removed eligibility.

The Chairperson: If the Department did take action without the necessary legal vires, what repercussions will that have for the Department and the teachers involved?

Mr Dempster: In almost all of the cases, the individuals had been barred under other legislation, so our action had no additional practical effect. We have removed eligibility in a very small number of cases, and there is potential, I suppose, for a judicial review of those decisions.

The Chairperson: How many of the 10 are those?

Mr Dempster: It is fewer than five.

The Chairperson: The papers also seem to indicate that the proposed regulations may have had unqualifiable financial implications. What is that in terms of —

Mr Dempster: That would largely depend on action that individuals may take against the Department. It could be for loss of earnings or something like that.

The Chairperson: Has there been anything like that to date?

Mr Dempster: No. We have yet to notify the individuals, but we will be doing that. It is in hand at the moment.

The Chairperson: OK, so we have a number of people who have not been notified that this is the case.

Mr Dempster: Yes.

The Chairperson: Is that the five or the 10?

Mr Dempster: It will be the fewer than five.

The Chairperson: Faustina, I have to say that I will be reluctant to move on an SL1 until we see the Bill. If the Department has mismanaged a situation since 2009 — we are now in 2014 — it will probably not make a lot of difference to wait another few weeks for the Bill to come to the Committee so that we can see exactly what is proposed. The Committee and I have been caught before: we approved an SL1 and then the Minister used it against us when a problem arose and said in the House, "Well, the Education Committee approved this". This is a risk that the Department is taking; it is not a risk that the Committee is taking. We are disappointed that we were not informed that this was the case and that it has only come to light. To be fair to the Minister, it seems as though he was not informed for whatever reason.

Mrs Dobson: I apologise for missing the start of your briefing. My questions may have already been covered. I know that the Chair touched on the fact that we were told, in the letter to the Committee, that there is a gap in provision where teachers cannot have eligibility to teach removed or restricted due to misconduct. You alluded to 10 cases. How often have the powers been used? We are told that, currently, the Department cannot obtain or share information with employers relating to individual cases. Can you explain that for us, if you have not done so already?

Mr Dempster: As we have already said, since 2009, we have used the powers to remove eligibility in 10 cases. In the vast majority of those cases, we were notified by other statutory authorities that action had already been taken. In two cases, we were notified by the individual's employer.

Mrs Dobson: I share the Chair's concerns about that. You also say that the Department has consulted with the General Teaching Council. Was that a wide enough consultation? Were there any other bodies that you could have consulted with?

Mr Dempster: The General Teaching Council has responsibility for the wider regulation of the teaching profession. In the 1998 Order, the original intention was that it would have the full range of powers to remove eligibility and take action short of that. So, the Department believes that the GTC is the body best placed to take forward action in respect of the teaching profession.

Mrs Dobson: So, you are confident that you have consulted widely enough.

Mr Dempster: Our initial meeting with the General Teaching Council's registrar was very positive.

Mrs Dobson: I am concerned that you propose to lay this rule during recess. The Chair has also touched on that. Can you let us know why it was not brought to the Committee earlier than today?

Mr Dempster: When the issue first came to light, we had to make a number of assessments regarding other matters in the regulations around qualifications and health issues related to teachers. We had to seek legal advice. We had to look to see if there were other powers available to the Department to take other action. All of those things had to be assessed and addressed before we could bring forward proposals.

Mrs Dobson: This is our last Committee meeting. It is my very last meeting, so I will watch with interest. It is concerning that it was brought to just the last Committee meeting before recess.

Mr Dempster: I appreciate that, and I appreciate that it is unusual to lay statutory rules during recess. However, we were keen to get these in before the new school term.

Mrs Dobson: It is concerning.

The Chairperson: When did it actually come to light, Sam?

Mr Dempster: It first came to light in February, when we were making preparations for the Bill. We were looking at the sorts of repeals that we might make in the Bill.

The Chairperson: Do any other Members have any other questions? Faustina, there were two SL1s. Do you want to speak to the other one as well?

Mr Dempster: Sorry, Chair, I will very briefly address that second issue as well. What we propose to do in the other statutory rule is extend the term of office of the current membership of the General Teaching Council by one year to facilitate the passage of the Bill. This will provide for the smooth transition from the old council to the new council. That is essentially what that is doing.

The Chairperson: OK. There are no other questions, members. Sam, Faustina and Miriam, you did not have long in front of us on the issue. The fact is that it came to us just today. To clarify, this may not be the last Committee meeting. We may meet over the summer because of issues in relation to teacher redundancies. We are keeping that under review, and it will depend on what information we get back from the Department.

We are happy enough with the second SL1, which allows for the continuation of the existing GTC. I am more reluctant about the first one because of the way in which this issue has been brought to light and the fact that we will have a Bill. We may wait until we see that Bill before we make any judgement. However, the Department still has power to lay the SL1; it is not a power that the Committee has. However, it is an issue that is caveated by the concerns we have raised in Committee today. Thank you very much for your time.