


# How will the new Schools Bill address teacher misconduct?

17 January 2025  Ben Bentley and Ian Perkins

*This article is part of our series of briefings on [The Children's Wellbeing and Schools Bill](#)*

Paragraph 39 of the Children's Wellbeing and Schools Bill extends the powers that the Secretary of State for Education has to investigate and refer matters to a Professional Conduct Panel. These matters will involve the conduct of those engaged in teaching work, to be subject to a prohibition order.

The Secretary of State has had the power to investigate, and potentially prohibit, individuals involved in teaching work across England for many years under the Education Act 2002. This power operates separately to the jurisdiction of the Disclosure and Barring Service to disqualify individuals from working with children and vulnerable adults. However, the regulation of those involved in teaching work does not rely on a centrally held register of teachers.

## When is a teacher, not a teacher?

Until the introduction of this Bill, an individual employed in a sixth form setting within a school teaching post 16 students could be guilty of Unacceptable Professional Conduct and / or conduct that may bring the profession into disrepute. However, a similarly engaged professional delivering similar lessons to similar aged students in a further education college, or as a tutor via an online remote learning provider, could not be subject the jurisdiction of the Teaching Regulation Agency (TRA).

This clear lacuna in the [safeguarding of children](#) is now improved by the extension of powers by the Secretary of State to investigate, and potentially prohibit, individuals from working as teachers in institutions such as further education colleges. Arguably this corrects a position whereby pupils potentially susceptible to being at greater risk or vulnerability will now benefit from the extended safeguards in place.

## When should schools make a referral to the Teaching Regulation Agency?

In short, if an individual is employed (or, going forward, in circumstances where they may be engaged as a contractor for the supply of services) in teaching pupils on an unsupervised basis, at an institution or organisation which teaches pupils of compulsory school age of the type listed under Section 141A, then you should make a referral to the TRA.

This should be done in any circumstance where the teaching professional has either been dismissed, or where their employment has ended (for example, through resignation) in which the employer might have otherwise concluded investigation proceedings which could have led to dismissal. Crucially now, this includes colleges in the further education sector, and independent educational institutions, within England, including online education providers.

## Back to the future?

An otherwise seemingly inconsequential amendment to the Education Act 2002 proposed under this Bill, that could have significant implications on the regulation of those engaged in the teaching profession, is the addition of the words "or has (at any time) been" to Section 141A, subsection (1)(a).

Teachers currently engaged in teaching work have always been subject to the retrospective consideration of historical criminal offences which might, in the present, deem such individuals unsuitable for working as teachers and therefore be subject to prohibition order. This is the case even if the relevant conviction was incurred prior to the person commencing work in a teaching role.

However, under the proposed extended powers to be granted to the Secretary of State, Professional Conduct Panels convened by the Teaching Regulation Agency will also be entitled to consider the referral of allegations of non-criminal conduct that are so serious as to warrant potential prohibition, even if such conduct occurred before a person began teaching.

# Things to be thinking about

Since the teaching regulatory regime is established upon evidence being proven only to the civil standard (that is, on the balance of probabilities), this important amendment should allow potential victims of inappropriate behaviour not resulting in criminal prosecution or conviction, to still come forward with concerns via referral to the Teaching Regulation Agency if a person is now in a teaching role – even if the alleged serious misconduct predates their employment as a teacher.

As lead legal provider to the Teaching Regulation Agency and the Department for Education through the provision of in-house barristers, Browne Jacobson is able to advise Education providers in relation to their statutory duties to refer teaching professionals to the professional discipline regulator.

[Find out more about The Children’s Wellbeing and Schools Bill](#) →

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