EXPLANATORY MEMORANDUM TO

THE EDUCATION ACT 2011 (ABOLITION OF THE GTCE CONSEQUENTIAL AMENDMENTS AND REVOCATIONS) ORDER 2012

2012 No. 1153

1. This explanatory memorandum has been prepared by the Department for Education and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This Order amends the Safeguarding Vulnerable Groups Act 2006 (Regulated Activity, Miscellaneous and Transitional Provisions and Commencement No 5) Order 2009 and revokes a number of statutory instruments relating to the General Teaching Council for England (to the extent set out in the Schedule) consequential upon the abolition of the Council with effect from 1 April 2012.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Context

4.1 This Order amends one statutory instrument and revokes 24 others to the extent indicated in the Schedule to the Order. These changes are consequential upon the abolition of the General Teaching Council for England (GTCE) which was effected from 1 April 2012, by the commencement of sections 7 to 12 of the Education Act 2011.

5. Territorial Extent and Application

5.1 This instrument applies to England and Wales.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 The Education Act 2011 provided for the abolition of the GTCE and the transferring of its key functions to the Secretary of State. These functions will be carried out on behalf of the Secretary of State by a new executive agency, the Teaching Agency. This change took effect from 1 April 2012.

The abolition of the GTCE is consistent with the Government's plans to reform Arm's Length Bodies to achieve greater efficiency and provide appropriate accountability for ongoing activities.

7.2 The amendment to the Safeguarding Vulnerable Groups Act 2006 (Regulated Activity, Miscellaneous and Transitional Provisions and Commencement No. 5) Order 2009 is required in order to provide the Independent Safeguarding Authority (ISA previously known as the Independent Barring Board / IBB) with the power to pass information about teachers relevant to their regulation to the Secretary of State, instead of to the GTCE. Following the abolition of the GTCE, this will enable the transfer of information about teachers by the ISA to the Teaching Agency. This is necessary because even if the ISA decides that a teacher does not pose a safeguarding risk to children there may still be a case for the Teaching Agency to investigate the teacher's conduct. The ISA will continue to provide information about teachers in the register of teachers maintained by the General Teaching Council for Wales to that Council.

7.3 Following the GTCE's abolition on 1 April 2012, a number of its functions have either been transferred to the Teaching Agency or have been discontinued. Accordingly there are a number of statutory instruments which relate to the GTCE, either wholly or in part, that are no longer necessary following its abolition. We are taking this opportunity to revoke these statutory instruments to the extent that they apply to the GTCE. A brief explanation of the purpose of each statutory instrument (and its amending regulations) in relation to the GTCE is set out below. Where appropriate, reference is also made to whether and how that function will be carried out by the Teaching Agency.

7.4 The General Teaching Council for England (Constitution) Regulations 1999 provided for the composition of the membership of the Council and how members should be elected. The Equality Act 2006 (Dissolution of Commissions and Consequential and Transitional Provisions) Order 2007 amended these Regulations to reflect the dissolution of the Commission for Racial Equality, the Disability Rights Commission and the Equal Opportunities Commission and the establishment of the Commission for Equality and Human Rights. The Education (Miscellaneous Amendments relating to Safeguarding Children) (England) Regulations 2009 also amended these Regulations in order to exclude anyone who was barred from regulated activity relating to children from being eligible for election and appointment to the Council and to vote in elections, and from holding office as a Council member.

7.5 The General Teaching Council for England (Registration of Teachers) Regulations 2000 and The General Teaching Council for England (Additional Functions) Order 2000 made provisions for the GTCE to maintain a register of teachers and records of teachers who were not registered. The General Teaching Council for England (Eligibility for Provisional Registration) Regulations 2008 prescribed who was eligible for provisional registration with the GTCE. In order to maintain their registration, teachers paid an annual fee

to the GTCE and The General Teaching Council for England (Deduction of Fees) Regulations 2001 required employers of teachers to deduct fees payable to GTCE from the salaries of teachers. Following the abolition of the GTCE there is no longer any requirement for teachers in England to register, or to pay a registration fee.

7.6 The General Teaching Council for England (Disciplinary Functions) Regulations 2001 made provision in relation to disciplinary matters. The Teaching Agency, on behalf of the Secretary of State, has taken on the role of regulating the teaching profession and the process that the Teaching Agency will follow is instead set out in the Teachers' Disciplinary (England) Regulations 2012. The transfer of functions from the GTCE to the Secretary of State is effected by section 8 of the Education Act 2011 which inserts the new statutory regime in sections 141A to 141E of the Education Act 2002.

7.7 As there is no longer a register of teachers, there is also no need for teachers from EEA States and Switzerland who come to work in England on a temporary and occasional basis to be temporarily registered, which the General Teaching Council (Registration of Temporary Teachers from Relevant European States) (England and Wales) Regulations 2009 provided for. These Regulations previously ensured that these temporary teachers were subject to the same disciplinary provisions as other registered teachers in England. These temporary teachers will now be subject to the new disciplinary provisions described in the previous paragraph, which apply to all teachers working in relevant settings in England, as they will be caught by the definition in section 141A Education Act 2002. These Regulations are therefore revoked in relation to England.

7.8 The General Teaching Council for England (Additional Functions) Order 2004 required the GTCE to assist the Secretary of State with his function of designated authority for the purposes of the European Communities (Recognition of Professional Qualifications) Regulations 1991, which related to the recognition of qualifications of teachers from relevant states in Europe.

7.9 The Education Act 2002 (School Teachers) (Consequential Amendments, etc) (England) Regulations 2003 revoked The General Teaching Council for England (Additional Functions) Order 2001, which required the GTCE to assist the Secretary of State with his function of determining whether a person is a qualified teacher under section 218(2) of the Education Reform Act 1988.

7.10 The Secretaries of State for Children, Schools and Families, for Innovation, Universities and Skills, and for Business, Enterprise and Regulatory Reform Order 2007 amended the General Teaching Council for England (Deduction of Fees) Regulations 2001 to replace references to "the Department for Education and Skills" with "the Department for Children, Schools and Families". The Secretary of State for Education Order 2010 amended the same Regulations to replace references to "Department for Children, Schools and Families" with "Department for Education".

8. Consultation outcome

8.1 The intention to abolish the GTCE and bring its key functions into the Department was set out in the Schools White Paper "The Importance of Teaching" in November 2010. The Department provided an opportunity for a range of interested groups, including the teacher and head teacher unions, to discuss and comment on the issues. A range of representations on the decision to abolish the GTCE were received, of which the majority were broadly positive. The abolition of the GTCE and the new arrangements for the regulation of teachers were subject to Parliamentary debate and scrutiny during the passage of the Education Act 2011.

9. Guidance

9.1 The Department has published advice which informs teachers, employers and the public of the role of the new Teaching Agency.

10. Impact

10.1 This instrument has no impact on business, charities or voluntary bodies.

10.2 This instrument has no impact on the public sector.

10.3 An extract from the Impact Assessment for the Education Act 2011 is attached to this memorandum and will be published alongside the Explanatory Memorandum on www.legislation.gov.uk.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 These changes are consequential upon the abolition of the General Teaching Council for England (GTCE) which was effected by the commencement of sections 7 to 12 of the Education Act 2011, and no requirement for monitoring or review arises.

13. Contact

13.1 Helen Noakes at the Department for Education (tel: 020 7340 8238; or email: helen.noakes@education.gsi.gov.uk) can answer any queries regarding the instrument.

Extract from the overarching Impact Assessment for the Education Act 2011 - Abolition of the General Teaching Council for England:

Abolish the General Teaching Council for England (GTCE) and enable the Secretary of State to carry out its functions relating to serious professional misconduct and barring in a more efficient and effective way

Rationale for Intervention

The GTCE has been the body responsible for regulating the teaching profession in England. As an arm's length body, the GTCE has not been directly accountable to ministers, so there has been less effective scrutiny of the efficiency and effectiveness with which it has performed its functions than there would otherwise have been.

In addition, the arrangements for registering and regulating teachers, and barring them where necessary, have been too complex and bureaucratic, and they have made it difficult for head teachers to deal swiftly and effectively with teacher misconduct and incompetence.

The Education Act therefore makes the regulation of teachers directly accountable to Ministers and Parliament by abolishing the GTCE, and scales back the former level of government intervention. Only the most serious cases of misconduct will be a matter for the national regulator and employers will be able to exercise their own judgement about which cases they refer. We will no longer maintain an extensive and frequently updated teacher register. Instead we will maintain a list only of those teachers who have been barred from the profession, and a database with information about who has qualified teacher status and who has passed a statutory induction period.

Costs

The GTCE will continue until 31 March 2012. The direct costs associated with closure are estimated by the GTCE to be £15m in 2011-2012, of which the Department will cover £8m and the GTCE £7m.

There may be some additional, albeit minimal costs, to maintained and independent schools and sixth forms in complying with the new arrangements. Schools will need to (i) understand the new arrangements, (ii) check the barred list and (iii) consider whether to refer a case to the Secretary of State. The time taken for (i) and (ii) is expected to be negligible. Some Independent Schools and sixth forms may need to spend additional time considering whether to refer cases to the Secretary of State, if previously they did not operate under GTCE arrangements, but now they will be required to do so.

If we assume referral rates are similar in the maintained and independent sectors, we can expect the maintained sector to make approximately 84 referrals per year. If we assume that half of independent schools participate in the existing arrangements, there will be an additional cost associated with

approximately 42 referrals. Using salary costs from the maintained sector, and assuming consideration of a referral takes half a day of senior staff time, total discounted costs between 2012 and 2021 for the independent sector are £85k.

Similarly, some sixth form colleges will be affected by the new arrangements, if they were not previously operating under GTCE arrangements. Equivalent assumptions suggest the number of additional referrals would be ten, at a discounted cost between 2012 and 2021 of £13k.

The total discounted costs associated with the abolition of the GTCE are therefore £15m.

Benefits

The GTCE has been funded indirectly by the Department, in that it has refunded the approximately 500,000 teachers who have registered with the GTCE each year. These refunds were projected to amount to £19m per year after 2011-2012. Taking over residual GTCE functions, primarily teacher regulation, will require approximately £8m per year. This is £11m less than the estimated level of Departmental expenditure on the GTCE from 2012-2013. Between 2012-2013 and 2019-2020, we estimate the total discounted benefits to be £74m. The additional cost to the Department of producing a list of those barred from the profession is expected to be negligible.

As far as it can be monetised, the net present value is therefore estimated to be £59m.

Further benefits derive from the associated changes to the arrangements for the regulation of teachers. For example, head teachers will save some of the time taken up by the previous regulatory regime; and there will no longer be a need for every teacher to be registered with the GTCE and for that information to be regularly updated.

Risks

There is a risk that schools may take time to get used to the new mechanisms for accessing information about teachers once the GTCE ‘catch-all’ registration system has gone. Careful management and effective communication of changes to the functions performed by the GTCE will mitigate this risk.