

*These notes relate to the Standards in Scotland's Schools etc.  
Act 2000 (asp 6) which received Royal Assent on 14 July 2000*

# **STANDARDS IN SCOTLAND'S SCHOOLS ETC. ACT 2000**

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## **EXPLANATORY NOTES**

## **ANNEX: SECTIONS 1 AND 66 OF THE EDUCATION (SCOTLAND) ACT 1980**

This annex shows sections 1 and 66 of the 1980 Act, sections 1 to 5 and 20 of the 1988 Act and the 1965 Act as amended by the Act.

### *“Sections 1 and 66 of the Education (Scotland) Act 1980*

#### **1 1 Duty of education authorities to secure provision of education**

- (1) Subject to subsections (1A) and (2A) below, it shall be the duty of every education authority to secure that there is made for their area adequate and efficient provision of school education and further education<sup>1</sup>.
- (1A) **The duty imposed on education authorities by subsection (1) above shall, in relation to children who are under school age, be exercisable only as respects children of such description or descriptions as may be prescribed by order.**
- (1B) **Where an order is made under subsection (1A) above, the amount of school education with which children of a description prescribed in that order are to be provided shall also be prescribed in the order.**
- (1C) **An education authority shall have power in relation to pre-school children to secure for their area the provision of such school education, other than that which they are required by subsection (1) above to secure, as they think fit<sup>2</sup>.**
- (2) .....<sup>3</sup>
- (2A) The duty imposed on an education authority by subsection (1) above shall not include the provision of further education within the meaning of Part I of the Further and Higher Education (Scotland) Act 1992, but an education authority shall have power to provide such further education for their area.
- (3) Every education authority shall for the purposes of their duty under subsection (1) above—
- (a) have power to secure for their area, and
  - (b) be under a duty to secure for pupils in attendance at schools in their area,
- The provision of adequate facilities for social, cultural and recreative activities and for physical education and training.
- (4) The facilities for further education that may be provided by an education authority shall include facilities for vocational and industrial training.
- (4A) **The power to make an order under this section shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of the Scottish Parliament.**
- (4B) **In this section “pre-school children” means—**
- (a) **children who are under school age and have not commenced attendance at a primary school (other than a nursery class in such a school); and**
  - (b) **children who have attained school age but have not commenced attendance at such a school<sup>4</sup>.**
- (5) In this Act—

<sup>1</sup> Reference to subsection (1A) substituted by section 32(2) of the Act from reference to subsection (2).

<sup>2</sup> **Inserted by section 32(3) of the Act.**

<sup>3</sup> Section 1(2) is repealed by section 32(4) of the Act.

<sup>4</sup> **Sections 1(4A) and (4B) inserted by section 32(5) of the Act.**

- (a) “school education” means progressive education appropriate to the requirements of pupils .....<sup>5</sup> regard being had to the age, ability and aptitude of such pupils, and includes—
  - (i) activities in schools and classes (hereinafter in this Act called “nursery schools” and “nursery classes”), being activities of a kind suitable in the ordinary case for pupils who are under school age;
  - (ii) provision for special educational needs;
- (b) further education includes—
  - (i) .....
  - (ii) voluntary part-time and full-time courses of instruction for persons over school age;
  - (iii) social, cultural and recreative activities and physical education and training, either as voluntary organised activities designed to promote the educational development of persons taking part therein or as part of a course of instruction;
  - (iv) the teaching of Gaelic in Gaelic-speaking areas;
- (c) “provision for special educational needs”, in relation to a child who has attained school age or to a young person receiving school education, means educational provision which is additional to, or otherwise different from, the educational provision made generally for children or, as the case may be, young persons of his age in schools under the management of the education authority for the area to which he belongs in accordance with section 23(3) of this Act; and in relation to any other child means such educational provision as is appropriate to those needs;
- (d) “special educational needs”, in relation to a child or young person, are needs caused by a learning difficulty which he has which calls for provision for special educational needs to be made for him, and a child or young person has a learning difficulty for the purposes of this paragraph if—
  - (i) he has significantly greater difficulty in learning than the majority of children or, as the case may be, young persons of his age; or
  - (ii) he suffers from a disability which either prevents or hinders him from making use of educational facilities of a kind generally provided for children or, as the case may be, young persons of his age in schools under the management of the education authority for the area to which he belongs in accordance with section 23(3) of this Act; or
  - (iii) he is under the age of five years and is, or would be if provision for special educational needs were not made for him, likely to fall within sub-paragraph (i) or (ii) above when over that age,

but a child or young person is not to be taken as having a learning difficulty solely because the language in which he is or will be taught (the “teaching language”) is different from a language, or from a form of the teaching language, which has at any time been spoken in his home.

## **66 66 Inspection of educational establishments**

- (1) The Secretary of State<sup>6</sup> shall have power to cause inspection to be made of every school at such intervals as appear to him to be appropriate, and to cause a special inspection of any school to be made whenever he considers such an inspection to be desirable, and he may from time to time cause inspection to be made of any other educational establishment (other than a designated institution within the meaning of Part II of the Further and Higher Education (Scotland) Act 1992) and such inspection shall be made

<sup>5</sup> The words “in attendance at schools” repealed by Schedule 3 to the Act.

<sup>6</sup> References in the Act to the Secretary of State are now read as references to the Scottish Ministers by virtue of section 117 of the Scotland Act 1998.

by Her Majesty's Inspectors or **any person appointed by the Scottish Ministers for the purposes of this section (or Her Majesty's Inspectors and any such person)**<sup>7</sup>.

**(1AA) If requested to do so by the Scottish Ministers—**

- (a) **Her Majesty's Inspectors or any person appointed by the Scottish Ministers for the purposes of this section shall give advice to the Scottish Ministers on such matter as may be specified in the request;**
- (b) **Her Majesty's Inspectors or any such person (or Her Majesty's Inspectors and any such person) may, as respects a matter so specified, inspect and report on a school (including any establishment in which school education is provided in pursuance of arrangements entered into under section 32 of this Act), or class of schools, so specified**<sup>8</sup>.

**(1A) Without prejudice to subsection (1) above, the Scottish Ministers shall have power to cause inspection to be made at any establishment in which school education is provided in pursuance of arrangements entered into under section 32 of the Standards in Scotland's Schools etc. Act 2000; and such inspections shall be made by Her Majesty's Inspectors or any person appointed by the Scottish Ministers for the purposes of this section (or Her Majesty's Inspectors and any such person)**<sup>9</sup>.

**(1B)** Notwithstanding subsection (1) above, the Secretary of State shall have power to cause inspection to be made of the education and training, wherever it is carried out, provided by institutions within the higher education sector (within the meaning of the Further and Higher Education (Scotland) Act 1992) wholly or mainly for persons preparing to be, or persons who are, teachers in schools, and such inspections shall be made by Her Majesty's Inspectors or other persons appointed by the Secretary of State for the purpose.

**(2)** .....<sup>10</sup>

**(3)** If any person **wilfully**<sup>11</sup> obstructs any person authorised to make an inspection in pursuance of this section in the execution of his duty, he shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale or to imprisonment for a term not exceeding three months or to both such a fine and such imprisonment.

**66A 66A Code of practice as regards inspections under section 66**

- (1)** Subject to subsection (2) below, the Scottish Ministers may, for the purposes of-
  - (a) giving practical guidance on matters relating to inspections under section 66 of this Act (including, without prejudice to that generality, such matters as the making and publishing of reports on those inspections); and
  - (b) promoting what appear to them to be desirable practices with respect to these matters,

from time to time prepare, approve and issue such codes of practice as in their opinion are suitable for those purposes.

- (2)** Subsection (1) above does not apply in relation to inspections of educational establishments which are institutions for the provision of any form of further education.

<sup>7</sup> Wording substituted by section 11 of the Act for reference only to other persons appointed by the Secretary of State for the purpose.

<sup>8</sup> **Section 1 (1AA) inserted by section 11 of the Act.**

<sup>9</sup> **Subsection (1A) substituted by section 36 of the Act.**

<sup>10</sup> Subsection (2) repealed by Schedule 9 of the Education (Scotland) Act 1981

<sup>11</sup> Word inserted by paragraph 3(6) of Schedule 2 to the Act.

*Sections 1 to 5 and 20 of the School Boards (Scotland) Act 1988*

## **1 1 Constitution of School Boards**

- (1) Every education authority shall (subject to section 20 of this Act) establish in accordance with this Act, a board, to be known as a “School Board”, for each school in their area.
- (2) A School Board shall, in respect of the school for which they are established, exercise—
  - (a) the functions assigned to them by this Act; and
  - (b) any functions delegated to them under section 15 of this Act,**and they shall exercise those functions with a view to raising standards of education in the school and shall support the endeavours of those managing the school to secure improvement in the quality of education which the school provides<sup>12</sup>.**
- (3) Where, before the commencement of Schedule 4 to this Act, a School Board are established for a school, any school council appointed under section 125(1) of the 1973 Act to discharge functions under that section in relation to that school shall cease to discharge them in respect of that school.
- (4) A School Board are established on the first occasion following the commencement of this section (or following a period of disestablishment under section 20 of this Act) when elections for members of the Board have taken place and the number of parent members prescribed under section 2 of this Act is duly elected.
- (5) A School Board shall cease to exist when the school for which they are established is discontinued.

## **2 2 Composition of Boards**

- (1) A School Board shall consist of—
  - (a) persons (to be known as “parent members”) who are, and who shall be elected by, parents of pupils in attendance at the school;
  - (b) (except in the case of a school which has no staff, as defined in subsection (13) below) persons (to be known as “staff members”) who are, and who shall be elected by, members staff of the school; and
  - (c) persons (to be known as “co-opted members”), who shall be co-opted by the Board,in such numbers as shall be prescribed<sup>13</sup>.
- (2) Parent members shall form a majority of every School Board<sup>14</sup>.
- (3) Regulations—
  - (a) shall specify the numbers of parent, staff and co-opted members, and different provision may be made for different schools and for different classes of schools;
  - (b) may specify the dates at which the number of pupils in attendance at a school is to be determined for the purposes of any regulations made under paragraph (a) above;
  - (c) shall specify, in relation to schools in existence at the commencement of section 1 of this Act (except where a decision has been taken, in accordance with section 20(1) of this Act, not to have a School Board), the date by which

<sup>12</sup> Wording inserted by section 26 of the Act.

<sup>13</sup> Wording repealed by paragraph 2 of Schedule 1 to the Act limiting “co-opted parent members” under section 23(3) to not more than two.

<sup>14</sup> Wording repealed by paragraph 2 of Schedule 1 to the Act including “co-opted parent members” as “parent members”.

an education authority shall hold the first elections of parent and staff members to School Boards under this section;

- (d) may provide for the making of education authorities, within such time as may be prescribed, of arrangements to adjust the composition of School Boards in consequence of variation of regulations made under this section or changes in the circumstances of a school, including—
  - (i) provision enabling authorities to hold elections or to direct co-options;
  - (ii) provision enabling authorities to direct the early termination of office of any member;
  - (iii) provision enabling authorities to determine the term of office of any person elected or co-opted under such arrangements.
- (4) A person who is eligible for election to a School Board as a staff member shall not be eligible for election to that Board as a parent member.
- (5) A person who is eligible for election to a School Board shall not be eligible **to be a co-opted member of that Board**<sup>(15)</sup>.
- (6) A person may not be a member of a School Board in more than one capacity (as parent, staff or co-opted member) at any one time.
- (7) Where a school is a denominational school—
  - (a) transferred to the education authority under section 16(1) of the 1980 Act (transference of denominational schools to education authorities); or
  - (b) provided by the authority under section 17(2) of the 1980 Act (which relates, among other things, to the provision by the education authority of denominational schools),

one of the co-opted members shall be a person nominated by the church or denominational body in whose interest the school is conducted.
- (8) to (12) .....
- (13) In subsection (1)(b) above, “staff” (in relation to a school) means teachers, and instructors, whether full-time or part-time, employed by the authority for the purposes of providing education at that school, whether or not they are also so employed at other schools, but does not include—
  - (a) the headteacher; and
  - (b) any teacher who is so employed at more than one school if he is so employed at that school for less than 40% of the normal hours of work of a full-time teacher.

## **2A 2A Elections**

- (1) Subject to subsections (2) **to (3A)**<sup>(16)</sup> below, elections for members of School Boards shall be held during the regular election period in every relevant year; and in this Act, an election held under this subsection shall be referred to as a “regular election”.
- (2) In the case of a school (including a combined school) which comes into existence after the commencement of section 28 of the Education (Scotland) Act 1996, the first election for members of the School Board shall be held as soon as practicable after pupils first attend the school.
- (3) In the case of a school for which no School Board is established at the commencement of the said section 28—

<sup>15</sup> Amended by paragraph 4 of Schedule 2 to the Act.

<sup>16</sup> Amended by paragraph 4 of Schedule 2 to the Act.

- (a) where a School Board has been disestablished or a first election has been held and no School Board has been established, further elections for members of the School Board shall be held in accordance with section 20(7) of this Act; and
  - (b) in any other case, the first election for members of the School Board shall be held as soon as practicable after pupils first attend the school.
- (3A) **In the case of a school which, by virtue of section 17 of the Standards in Scotland's Schools etc. Act 2000, ceases to be a school which is a self-governing school, the first election for members of the Board shall be held as soon as practicable after pupils first attend the school following that change in status of the school<sup>17</sup>.**
- (4) **In the event of a lesser number of parent members being elected than is necessary to make up the number for the time being prescribed for the purposes of subsection (1)(a) of section 2 of this Act, then not more than three months after the election of up to two persons from among the parents of pupils in attendance at the school may be co-opted by the Board; and a person so co-opted shall be a parent member of the Board and not a co-opted member within the meaning given in subsection (1)(c) of that section.**
- (5) **In a case where, under section 28(1) of the Standards in Scotland's Schools etc. Act 2000, a by-election falls to be held, it shall be held not more than three months after the vacancy occurs<sup>18</sup>.**
- (6) In the event of—
- (a) a lesser number of staff members being elected on any occasion than is necessary to make up the number for the time being prescribed under the said section 2 as the number of staff members for the Board; or
  - (b) a vacancy for a staff member of a Board arising,
- a by-election shall be held as soon as possible and, in any event, not more than 3 months after the occasion or, as the case may be, vacancy arising.
- (7) Where no person is elected by virtue of subsection (6) above, the education authority—
- (a) may at any time; and
  - (b) if requested in writing by a person entitled to stand and vote in an election for a staff member, shall within three months of such request,
- hold a by-election to fill the vacancy.
- (8) Where a person ceases, for whatever reason, to be a parent member or a staff member not more than 6 months before the expiry of his term of office, it shall not be necessary to hold a by-election under **section 25(1) of the Standards in Scotland's Schools etc. Act 2000 or, as the case may be, subsection (6) above<sup>19</sup>.**
- (9) Schedule 1 to this Act shall have effect for the purpose of the holding of elections.
- (10) In this section—
- “regular election period” means not earlier than 1 September in any year and not later than 30 November in that year, or such other period as may be prescribed; and
- “relevant year” means 1997 and every second year thereafter.

## **2B 2B Co-option**

- (1) A Board shall, as soon as is practicable after their establishment, co-opt members in accordance with section 2(1) of this Act.

<sup>17</sup> Section 2A(3A) inserted by section 24 of Act.

<sup>18</sup> Sections 2A(4) and (5) substituted by paragraph 3 of Schedule 1 to the Act.

<sup>19</sup> New wording substituted by paragraph 3 of Schedule 1 to the Act, substituting for old reference to section 2A(6).

- (2) Where a vacancy for a co-opted member of a Board occurs, the Board shall, in accordance with this Act, co-opt another person in his place.
- (3) **Where a vacancy for a parent member of a Board arises and—**
  - (a) **no by-election falls to be held, then the Board may, in accordance with this Act, co-opt, within three months after it does so arise;**
  - (b) **a by-election falls to be held but on its being held no parent member is elected, the Board may, in accordance with this Act, co-opt, within three months after the by-election,****from among the parent of pupils in attendance at the school another person in his place; and a person so co-opted shall be a parent member of the Board and not a co-opted member within the meaning given in section 2(1)(c) of this Act<sup>20</sup>.**

### **3 Terms of the office**

- (1) The terms of the office of members of the School Boards shall be determined in accordance with this section.
- (2) The term of office of every member elected at a regular election shall begin on the day following the end of the regular election period in the year of his election and, subject to subsection (3) below, expire at the end of the regular election period in the second relevant year thereafter.
- (3) Where a School Board are first established, the term of office of one half of the parent members (or, where an odd number of parent members is elected, the largest number less than half) selected by agreement amongst them or, by the drawing of lots, shall expire—
  - (a) in the case of a Board established during or not more than 12 months after the end of a regular election period in a relevant year, at the end of the next such regular election period; and
  - (b) in the case of a Board established not more than 9 months before a regular election period in a relevant year, at the end of the second such regular election period after their establishment,
 and the term of office of the remaining members shall expire at the end of, respectively, the second and third regular election periods in relevant years after the Board's establishment.
- (4) The term of office of a co-opted member shall expire four years after the date of his co-option.
- (4A) **The term of office of a parent member co-opted under section 2A(4) of this Act shall expire at the end of the regular election period in the second relevant year after the election which gave rise to the co-option.**
- (4B) **The term of office of a member co-opted under section 2B(3) of this Act shall expire at the end of the regular election period in the next relevant year after the co-option takes place<sup>21</sup>.**
- (5) The term of office of a member elected at a by-election ..... shall expire when the term of office of the member he is elected ..... to replace would have expired under this section<sup>22</sup>.
- (6) A parent member of a Board who ceases to be eligible to serve in the capacity in which he was elected or, as the case may be, co-opted may continue to be a member of the

<sup>20</sup> Section 2B(3) substituted by paragraph 4 of Schedule 1 to the Act for previous sections 2B(3) and (4).

<sup>21</sup> New section 3(4A) and (4B) inserted by paragraph 5 of Schedule 1 to the act.

<sup>22</sup> Wording repealed by paragraph 5 of Schedule 1 to the Act which referred to previous co-opted under section 2B(3).



Board until the next regular election unless the remaining part of his term of office is for a period of more than two years.

- (7) A member of a Board may resign office at any time by giving notice in writing to the Clerk to the Board or to the education authority for the area.
- (8) A School Board may remove any member of the Board who they are satisfied—
  - (a) is unable or unfit to carry out his duties; or
  - (b) has failed without good cause, to attend—
    - (i) any meeting of the Board for a continuous period of not less than 6 months; and
    - (ii) 3 consecutive meetings of the Board.

#### **4 4 Qualification and disqualification of members**

- (1) Persons who would be disqualified for seeking election as, or for being—
  - (a) members of a local authority by virtue of section 31(1)(b) or (c), (2) or (3) of the 1973 Act<sup>1973 c.65.</sup>; or
  - (b) members of the education authority for the area within which the school is situated by virtue of section 31(1)(d) of that Act,shall be disqualified for seeking election as, or for being a member of a School Board.
- (2) A young person may be co-opted member of a School Board.
- (3) Subject to subsection (2) above, persons subject to legal incapacity may not be nominated for election to or be members of School Boards.
- (4) A retiring member of a School Board shall not be disqualified (by reason of such retirement) from further election or co-option.

#### **5 5 Advice to Boards**

- (1) An officer of an education authority shall be entitled to attend and to speak to any meeting of a School Board in the authority's area, but shall not be a member of the Board.
- (2) **A councillor for an electoral ward which falls wholly or partly within the catchment area of a school shall be entitled to attend, and to speak at, any meeting of a School Board for the time being established for that school; but no councillor shall be a member of a School Board for the time being established for a school situated within the area of the council<sup>23</sup>.**
- (3) The headteacher of a school shall—
  - (a) have the right and, if requested by the School Board, the duty to give advice to the Board on any matter within the Board's competence;
  - (b) have the right to be present and to speak at meetings of the School Board, but shall not be a member of the Board.
- (4) An education authority shall give advice to a School Board in their area when requested on any matter within the Board's competence.
- (5) A School Board shall consider any advice given to them under subsection (3)(a) or (4) above.
- (6) Every education authority shall take such steps as are appropriate to ensure that the headteacher and staff of each school in their area are available when necessary for the purposes of—

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<sup>23</sup> New section 5(2) substituted by section 26 of Act.

- (a) fulfilling the headteacher's duties by or under this Act in respect of the School Board; and
  - (b) giving effect to any competent decisions of the Board.
- (7) In subsection (2) above "catchment area" means the area from which pupils resident therein will be admitted to the school in terms of any priority based on residence in accordance with the guidelines formulated by the authority under section 28B(1)(c) of the 1980 Act.

## **20 20 Schools without a Board and disestablishment of Boards**

- (1) An education authority may decide not to establish a School Board for a school for which no School Board have been established or whose School Board are for the time being disestablished if—
  - (a) they are satisfied that by reason of the small number of pupils in attendance at the school there are insufficient parents of such pupils who are qualified to serve as parent members to satisfy the requirements of this Act; and
  - (b) the Secretary of State<sup>24</sup> consents to the decision.
- (2) A decision under subsection (1) above shall be rescinded if a number of parents equal to the number of parent members prescribed for the Board for that school request it in writing, and a School Board shall be established for that school as soon as is practicable.
- (3) The authority may review a decision under subsection (1) above at any time, and shall do so if there is in their view a significant increase in the number of pupils in attendance at the school: and shall, if they consider that there are sufficient parents qualified to serve as parent members, establish a School Board for that school as soon as is practicable.
- (4) Section 10, 12(3) and 17(4) to (6) of this Act shall apply in relation to each parent of pupils in attendance at a school which does not have a School Board by reason of subsection (1) above as those provisions would apply to a School Board established for that school.
- (5) .....
- (6) **Where—**
  - (a) **so few parent members are elected that co-option under section 2A(4) of this Act would not be sufficient to make up the number for the time being prescribed for the purposes of section 2(1)(a) of this Act, the School Board shall not be established or, in the case of an existing Board, shall be disestablished; or**
  - (b) **a vacancy occurs for a parent member and the case is—**
    - (i) **one where, under section 25(1) of the Standards in Scotland's Schools etc. Act 2000, a by-election falls to be held but on its being held no parent member is elected; or**
    - (ii) **not one where, as is mentioned in sub-paragraph (i) above, a by-election falls to be held,**

**and, in either case, the Board choose not to, or are unable to or fail to, exercise their power under section 2B(3) of this Act so as to make up the number so prescribed, the Board shall be disestablished<sup>25</sup>.**
- (7) Where by reason of subsection (6) above a Board are not established or are disestablished, unless it is decided in accordance with subsection (1) above not to

<sup>24</sup> References in the Act to the Secretary of State are now read as references to the Scottish Ministers by virtue of section 117 of the Scotland Act 1998.

<sup>25</sup> Section 20(5) is repealed by and new section 20(6) is substituted by paragraph 6 of Schedule 1 to the Act.

establish a Board for the school, further elections for members of the Board shall be held—

- (a) at any time when a number of parents equal to the number of parent members prescribed for the Board request it in writing;
  - (b) in any event, at the time required by section 2A(1) of this Act.
- (8) Where no School Board or Interim School Board are for the time being established for a school—
- (a) any functions delegated to a Board for such a school which has become disestablished; and
  - (b) the functions conferred on School Boards by section 14 of this Act, shall be exercised by the education authority for the area in which the school is situated.
- (9) A School Board re-established as a result of elections under subsection (7) above shall have all the delegated functions which they had before they became disestablished.

*Teaching Council (Scotland) Act 1965*<sup>26</sup>

**1 1 Establishment of General Teaching Council for Scotland**

- (1) There shall be a body, to be called the General Teaching Council for Scotland (in this Act referred to as "the Council"), which shall have in relation to Scotland the functions assigned to it by or under this Act.
- (2) The Council shall be constituted in accordance with Part I of Schedule 1 to this Act; and the supplementary provisions contained in Part II of that Schedule shall have effect with respect to the Council.
- (2A) **The principal aims of the Council in exercising their functions shall be—**
  - (a) **to contribute to improving the quality of teaching and learning; and**
  - (b) **to maintain and improve teachers' standards of professional competence**<sup>27</sup>.
- (3) In exercising their functions, the Council shall have regard to the requirements of persons who are disabled persons for the purposes of the Disability Discrimination Act 1995.
- (4) **In exercising their functions the Council shall have regard to the interests of the public**<sup>27</sup>.

**2 2 Standards for entry to the teaching profession**

- (1) It shall be the duty of the Council to keep under review the standards of education, training and fitness to teach appropriate to persons entering the teaching profession and to make to the Secretary of State<sup>28</sup> from time to time such recommendation with respect to those standards as they think fit.
- (2) Without prejudice to the foregoing subsection the Council may in particular make to the Secretary of State recommendations as to the matters which, in their view, should be prescribed by him under, or determined by virtue of, section 7(1)(b) to (d) of this Act.

<sup>26</sup> The 1965 Act has been amended by the Education (Scotland) Act 1969, the Teaching Council (Scotland) Act 1971, the Local Government (Scotland) Act 1975, the Education (Scotland) Act 1981, the Self-Governing Schools etc. (Scotland) Act 1989, the Further and Higher Education (Scotland) Act 1992, the Teaching and Higher Education Act 1998 and by [SI 1969/586](#), [1970/523](#), [1991/1997](#), [1992/817](#), [1997/207](#) and [1999/1820](#).

<sup>27</sup> Subsections (2A) and (4) are inserted by section 45(1) of the Act.

<sup>27</sup> Subsections (2A) and (4) are inserted by section 45(1) of the Act.

<sup>28</sup> References in the Act to the Secretary of State are now read as references to the Scottish Ministers by virtue of section 117 of the Scotland Act 1998.

- (3) It shall also be the duty of the Council to consider, and make to the Secretary of State from time to time recommendations on, such other matters relating to the education, training, **career development**<sup>29</sup> and fitness to teach of teachers as they think fit or as may be referred to them by the Secretary of State.

### **3 Supply of teachers**

It shall be the duty of the Council to consider, and make to the Secretary of State from time to time recommendations on, such matters (other than remuneration or conditions of service) relating to the supply of teachers as they think fit or as may be referred to them by the Secretary of State.

### **4 Secretary of State to have regard to recommendations**

In exercising his functions under the Education (Scotland) Acts 1939 to 1965 the Secretary of State shall have regard to any recommendations made to him by the Council under the two last foregoing sections.

### **4A Additional functions**

- (1) **The Scottish Ministers may by order confer or impose on the Council such additional functions as the Scottish Ministers consider it would be appropriate for the Council to discharge in connection with any of the Council's functions under this Act.**
- (2) **Before making an order under subsection (1) above, the Scottish Ministers shall –**
- (a) **consult the Council; and**
  - (b) **carry out such other consultation as appears to them to be appropriate.**<sup>30</sup>

### **5 Colleges of Education**

- (1) It shall be the duty of the Council—
- (a) to keep themselves informed of the education and training of teachers in relevant institutions, and
  - (b) to undertake such other functions in relation to relevant institutions as may be **conferred or imposed on them by virtue of section 4A(1) of this Act**<sup>31</sup>.
- (2) For the purposes of their duty under paragraph (a) of the foregoing subsection the Council may appoint on such terms as may be agreed persons to visit relevant institutions on their behalf, and it shall be the duty of those visitors to report to the Council as to the general content and arrangement of the courses of instruction provided in the relevant institutions visited by them; but no such visitor shall interfere with the giving of any instruction or with the conduct of any examination.
- (3) Where it appears to the Council (as a result of a report under the last foregoing subsection or otherwise) that any change should be made in the general content or arrangement of the courses of instruction provided in any relevant institution the Council may make recommendations in that behalf to the governing body of that institution; and if, after consultation between the Council and the governing body, and any resulting modification by the Council of the recommendations, the governing body refuses to accept the recommendations (or, as the case may be, the recommendations as modified) the Council may report the circumstances to the Secretary of State.

<sup>29</sup> Inserted by section 45(2) of the Act.

<sup>30</sup> Section 4A is added by section 45(3) of the Act.

<sup>31</sup> Amended by paragraph 1 of Schedule 2 to the Act.

## **5A 5A General advice and publication of advice and recommendations**

**The Council may give advice of a general nature, on any matter relevant to their functions (whether or not it is a matter as respects which they may make recommendations under any other provision of this Act), to any person or body; and they may publish any such advice or recommendations.**<sup>32</sup>

## **5B 5B Supply of information relating to teachers**

(1) **The Council shall supply to the General Teaching Council for England and the General Teaching Council for Wales such information as it is necessary or desirable for the Council in question to have for the purpose of carrying out any of the functions conferred on them by or under the [Teaching and Higher Education Act 1998 \(c.30\)](#).**

(1A) **Once the General Teaching Council for Northern Ireland is established, subsection (1) above shall apply in relation to that Council and to the functions conferred on them by or under the Education (Northern Ireland) Order 1998 ([SI 1998/1759 \(NI 13\)](#)) as that subsection applies in relation to, and to the functions of, the General Teaching Council for England and the General Teaching Council for Wales.**

(2) **Subsections (1) and (1A) above do not limit the circumstances in which information may be supplied other than by virtue of this section and are without prejudice to section 9A of this Act.**

## **6 6 Establishment of register**

(1) **It shall be the duty of the Council to establish and keep a register containing the names, addresses and such qualifications and other particulars as may be prescribed, of persons who are entitled under the following provisions of this section to be registered therein and who apply in the prescribed manner to be so registered.**

(2) **Any person shall be entitled to be registered if—**

- (a) **he is a certificated teacher; or**
- (b) **having fulfilled the requirements prescribed by the Secretary of State under the next following section, he has been duly recommended by the governing body of a relevant institution to the Council for registration; or**
- (ba) **in the case of a person who is not entitled to be registered under either of the two foregoing paragraphs, he fulfils such requirements as the Secretary of State may by regulations made under this paragraph prescribe; or**
- (c) **in the case of a person who is not entitled to be registered under paragraphs (a) to (ba) above, his education, training, fitness to teach and experience are such as, in the opinion of the Council, to warrant his registration; or**
- (d) **having been a certificated teacher whose certificate has been withdrawn or suspended, and not restored under any enactment in force before the commencement of this Act, his registration has been directed by the Disciplinary **Sub-committee by virtue of paragraph (d) of section 10C(1)**<sup>33</sup> of this Act or, in a case not falling under that paragraph, by the Council:**

**Provided that the entitlement of any person to be registered by virtue of this subsection shall, in a case referred to the Disciplinary **Sub-committee by virtue of section 10B(1)(b)**<sup>33</sup> of this Act, be subject to any direction by that **Sub-committee under section 11(8)**<sup>33</sup> of this Act.**

<sup>32</sup> Sections 5A and 5B are added by section 45(4) of the Act.

<sup>33</sup> Amended by paragraph 1 of Schedule 2 to the Act.

<sup>33</sup> Amended by paragraph 1 of Schedule 2 to the Act.

- (2A) Before making regulations under subsection (2)(ba) above the Secretary of State shall consult the Council and such organisation as appears to him to be representative of the interests of education authorities.
- (2C) Regulations made by the Secretary of State under subsection (2)(ba) above shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.
- (3) For avoidance of doubt it is hereby declared that a person shall not be entitled to be registered by virtue of paragraph (c) of the last foregoing subsection if he has been a certificated teacher and his certificate has been withdrawn or suspended, and not restored under any enactment in force before the commencement of this Act.
- (4) The Council may make rules with respect to the form and keeping of the register, and the making of entries and alterations therein; and rules made under this subsection may in particular—
  - (a) subject to subsection (5B) below, provide for the registration of a person to be provisional until such conditions as may be prescribed in that behalf are satisfied, and for the cancellation of provisional registration in such circumstances as may be prescribed;
  - (b) provide for the payment of such fees as the Council think appropriate in relation to registration;
  - (c) **provide for the removal of a name from the register on a failure—**
    - (i) **to pay a prescribed fee and for its re-registration in the register on the making of the prescribed application in that behalf and on payment of that fee and any additional fee;**
    - (ii) **to supply information, or details of a change in information, within such reasonable period as may be intimated to the person by the Council provided that such intimation was given after the person had already failed to supply timeously, under subsection (5C) below, the information or details and for its re-registration in the register on the making of the prescribed application in that behalf, the supplying of the information or details and the payment of a fee,**
  - prescribed in respect of the re-registration<sup>34</sup>.**
  - (d) provide for the issue of certificates of registration;
  - (e) prescribe anything required or authorised by this section to be prescribed;
  - (f) make such consequential, ancillary and incidental provisions as appear to the Council to be expedient for the purposes of the rules;

and in this section (except in subsections (2)(b) and (ba) thereof) "prescribed" means prescribed by the Council in rules made under this subsection.

- (5) Rules made under the last foregoing subsection prescribing fees may provide for the charging of different fees in different classes of case.
- (5A) Before making any rules under this section in respect of any matter which is, or may be, the subject of regulations under section 1 of the Teaching Council (Scotland) Act 1971, the Council shall consult the Secretary of State.
- (5B) The Council may with the consent of the Secretary of State make rules under subsection (4)(a) above in respect of persons entitled to be registered by virtue of regulations made under subsection (2)(ba) above.
- (5C) **A person whose name is contained in the register shall, within such period as may be prescribed, supply the Council with—**

<sup>33</sup> Amended by paragraph 1 of Schedule 2 to the Act.

<sup>34</sup> Substituted by section 47(2) of the Act.

- (a) **details of any change in the information recorded against that name in the register if it is a change of such kind as may be prescribed;**
  - (b) **such information as may be prescribed, being information of a kind not already so recorded<sup>35</sup>.**
- (6) Rules made under subsection (4) of this section shall be published in such manner as the Council may determine and shall be so made as not to come into force before the expiration of one month from the date on which they are so published.

#### **6A 6A Further provision as to keeping of register**

- (1) **After consultation with the Council, the Scottish Ministers may, by statutory instrument subject to annulment in pursuance of a resolution of the Scottish Parliament, make regulations requiring rules under section 6(4) of this Act—**
- (a) **to make such provision as to the form and manner in which the register is to be kept as shall be specified in the regulations; and**
  - (b) **to prescribe matters (being matters specified in the regulations) which are to be recorded in the register.**
- (2) **The Council shall, within one month after any regulations made under subsection (1) above come into force, make and publish such rules, revocations or amendments as the regulations make requisite<sup>36</sup>.**

#### **7 7 Conditions for recommendation for registration**

- (1) Subject to the following provisions of this section, the Secretary of State may make regulations as to—
- (a) the provision of education and training for teachers in relevant institutions;
  - (b) the admission of students to courses of education and training for teachers;
  - (c) matters connected with the recommendation of students by the governing bodies of such institutions to the Council for registration; and
  - (d) so far as it relates to the matters mentioned in paragraphs (b) and (c) above, the fitness of persons to become teachers.
- (2) Regulations under subsection (1) above may contain provision—
- (a) as to the content, nature and duration of courses of education and training for teachers provided by relevant institutions and as to requirements for the assessment of students participating in such courses;
  - (b) as to the functions of the governing bodies, the principals and members of staff of relevant institutions;
  - (c) .....<sup>37</sup>; and
  - (d) as to such matters as are to be determined or approved by the Secretary of State or by such persons as may be prescribed,
- and such regulations may make different provision for different institutions or classes of institution and for different circumstances.
- (3) Without prejudice to section 4 of this Act the Secretary of State shall, before making regulations under this section, consider any relevant recommendation and, unless he considers it inexpedient to do so, shall make regulations under this section giving effect to that recommendation, or, if any modification to the recommendation is approved both by the Secretary of State and by the Council, the recommendation as so modified.

<sup>35</sup> Inserted by section 47(2) of the Act.

<sup>36</sup> Section 6A is added by section 47(1) of the Act.

<sup>37</sup> Repealed by Schedule 3 to the Act.

- (4) If the Secretary of State considers that it is inexpedient to make regulations giving effect to any relevant recommendation, but no modification thereof is approved as aforesaid and the recommendation is not withdrawn, the Secretary of State may either—
  - (a) refuse to make regulations giving effect to the recommendation, or
  - (b) make regulations giving effect to the recommendation modified in such manner as he thinks fit.
- (5) If the Secretary of State proposes to make regulations under this section otherwise than in consequence of a relevant recommendation he shall, before publishing a draft thereof in pursuance of subsection (8A) of this section, afford to the Council an opportunity of considering the draft and shall have regard to representations made by them.
- (6) If the Secretary of State refuses to make regulations under this section giving effect to a relevant recommendation he shall, as soon as may be, publish in such manner as he thinks fit a statement of the terms of the recommendation and his reasons for refusing to make regulations giving effect to it.
- (7) If the Secretary of State proposes to make regulations under this section—
  - (a) in the circumstances mentioned in subsection (4)(b) above, or
  - (b) in the circumstances mentioned in subsection (5) above, and without giving effect to any representations made by the Council under that subsection,he shall, when publishing a draft of the regulations in pursuance of subsection (8A) of this section, publish in such manner as he thinks fit a statement of the terms of the relevant recommendation, his reasons for modifying it and, if the Council have notified him of any objections to the modifications, those objections; or, as the case may be, a statement of any representations made by the Council under the said subsection (5) and his reasons for not giving effect to them.
- (8) Subsections (1), (4) and (5) of section 144 of the Act of 1962 shall apply to the making of regulations under this section as they apply to the making of the regulations referred to in that section.
- (8A) The Secretary of State shall, not less than forty days before making regulations under this section, cause a draft of the regulations to be published and send a copy thereof to every education authority, and shall have regard to any representations made by an education authority or by any person interested before he makes the regulations; and the regulations may be made in the same form as in the published draft or in an amended form.
- (9) In this section "relevant recommendation" means a recommendation made by the Council under section 2(2) of this Act.

## **8 8 Principles for entitlement to registration under section 6(2)(c)**

The Council shall from time to time prepare, and publish in such manner as they think fit, a statement specifying the principles to which they will have regard in considering, for the purpose of section 6(2)(c) of this Act, whether a person's education, training, fitness to teach and experience warrant his registration.

## **9 9 Penalty for false representations etc. to obtain registration**

If a person—

- (a) procures or attempts to procure the entry of any name on the register by wilfully making or producing or causing to be made or produced, either orally or in writing, any declaration, certificate or representation which he knows to be false or fraudulent, or
- (b) falsely or fraudulently holds himself out to be registered,



he shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

**9A 9A Provision of information contained in register**

The Council shall, after consultation with the Scottish Ministers, with the education authorities and with such bodies as appear to the Council to represent other employers of registered teachers, make rules with respect to there being made available for inspection (by such means, in such form and within such time as may be prescribed in the rules) information contained in the register; and such rules may make—

- (a) provision as to the circumstances and form in which and the conditions subject to which that information may be made so available; and
- (b) different provision for different classes of information, for different classes of person to whom information is made so available and for different classes of case<sup>38</sup>.

**9B 9B Notification of dismissal etc. to Council**

The employer of a registered teacher shall—

- (a) on dismissing the teacher on grounds of—
  - (i) misconduct; or
  - (ii) incompetence;
- (b) on the teacher resigning, or abandoning his position, in circumstances where, but for the resignation or abandonment—
  - (i) he would have been dismissed on grounds of misconduct; or
  - (ii) his dismissal on grounds of misconduct would have been considered by the employer; or
- (c) on the teacher resigning, or abandoning his position, after being informed by the employer that a disciplinary hearing is to be held by the employer as respects the teacher's alleged incompetence,

forthwith notify the Council of the dismissal, resignation or abandonment; and the employer shall in so doing provide the Council with an account of the circumstances which led to the dismissal or which were present when the resignation or abandonment took place<sup>39</sup>.

**9C 9C Provision of other information to Council by employer**

The employer of a registered teacher shall, when requested to do so by the Council, provide the Council with such information as respects that teacher as the Council may reasonably require in connection with the exercise of the functions assigned to them under this Act<sup>40</sup>.

**10 10 Constitution of Professional Conduct Committee and Investigating and Disciplinary Sub-committees**

- (1) The Council shall set up from their own number a committee, to be known as the Professional Conduct Committee; and that committee shall have two sub-committees, to be known respectively as the Investigating Sub-committee and the Disciplinary Sub-committee.

<sup>38</sup> Section 9A is added by section 48 of the Act.

<sup>39</sup> Section 9B is added by section 49 of the Act.

<sup>40</sup> Section 9C is added by section 49 of the Act.

- (2) **The members of either sub-committee may include persons who, though members of the Council, are not members of the Professional Conduct Committee.**
- (3) **A majority of the members of the Council appointed to—**
  - (a) **the Professional Conduct Committee;**
  - (b) **each of the sub-committees,****shall be registered teachers.**
- (4) **No member of the Council shall be a member of both sub-committees in their consideration of any one case.**
- (5) **The Council shall make rules regulating—**
  - (a) **subject to the provisions of this section, the membership of the committee and of each of the sub-committees; and**
  - (b) **the times and places of meetings, the quorum and the method of summoning the members of the Disciplinary Sub-committee.**
- (6) **The provisions of Schedule 2 to this Act shall have effect with regard to the procedure of the Disciplinary Sub-committee<sup>41</sup>.**

#### **10A 10A The Professional Conduct Committee**

- (1) **Without prejudice to subsections (2) and (3) below, the Professional Conduct Committee shall have the functions of—**
  - (a) **formulating and keeping under review the policy of the Council as respects the professional conduct of teachers; and**
  - (b) **overseeing the actings of its own sub-committees.**
- (2) **Where the Professional Conduct Committee has been notified by—**
  - (a) **a person's employer (or former employer if the person is for the time being unemployed); or**
  - (b) **the Scottish Ministers,****that the person has an illness or some other medical condition and after due inquiry the committee is satisfied that that is so and that the nature of the illness, or condition, and its effect on the person are such as to warrant a direction that the person's name be removed from the register, the committee may so direct.**
- (3) **The Professional Conduct Committee shall be charged with the duty of considering and determining any application for re-registration of a name in the register where the name was removed by virtue of subsection (2) above.**
- (4) **Schedule 2 to this Act shall apply in relation to proceedings under subsection (2) above before the Professional Conduct Committee as it applies in relation to any proceedings before the Disciplinary Sub-committee; except that in so applying paragraph 2 of that schedule that paragraph shall be modified as follows—**
  - (a) **in sub-paragraph (1)—**
    - (i) **in head (a), the words "under section 10B(2) of this Act" shall be disregarded; and**
    - (ii) **head (g) shall be disregarded; and**
  - (b) **in sub-paragraph (2), heads (b) and (c) shall be disregarded,****and such rules as are, for the purposes of that application, made under the said paragraph 2 shall include rules relating to any need for the person to submit himself for examination by an appropriately qualified practitioner appointed**

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<sup>41</sup> Sections 10 to 11B are added by section 50 of the Act.

by the committee and permitting the attendance at any such examination of a qualified medical practitioner appointed for that purpose by the person.

**(5) When the Professional Conduct Committee directs—**

- (a) that a person's name be removed from the register; or**
- (b) that an application for re-registration be refused,**

the committee shall serve on the person notice of the direction; and any such notice shall include a statement of the reasons for the direction.

**10B 10B The Investigating Sub-committee**

**(1) The Investigating Sub-committee shall be charged with the duty of conducting a preliminary investigation into any case where it appears -**

- (a) that a registered person may be liable, under or by virtue of any of the provisions of this Act (other than section 10A(2)), to have his name removed from the register; or**
- (b) that a person who—**
  - (i) has been duly recommended for registration;**
  - (ii) fulfils requirements prescribed under paragraph (ba) of subsection (2) of section 6 of this Act; or**
  - (iii) in the opinion of the Council is a person whose registration is warranted in terms of paragraph (c) of that subsection,**

and has applied to be registered may have been convicted of a relevant offence or may otherwise have been guilty of relevant misconduct (irrespective of whether the offence or misconduct took place in Scotland).

**(2) If, after fulfilling its duty under subsection (1) above, the Investigating Sub-committee considers it just to do so it shall refer the case to the Disciplinary Sub-committee.**

**(3) In subsection (1)(b) above—**

**"relevant misconduct" means conduct which falls short of the standard expected of a registered teacher; and**

**"relevant offence" means an offence other than one having no material relevance to the fitness of the perpetrator to be a registered teacher.**

**10C 10C The Disciplinary Sub-committee**

**(1) The Disciplinary Sub-committee shall be charged with the duty of considering and determining—**

- (a) any case referred to it by the Investigating Sub-committee;**
- (b) any application for re-registration of a name in the register;**
- (c) any second or subsequent application for registration by a person whose original application has been refused in pursuance of its direction under section 11(8) of this Act; and**
- (d) any application for registration by any person who has been a certificated teacher but whose certificate has been withdrawn on the ground of misconduct, or suspended on that ground, and not restored under any enactment in force before the commencement of this Act.**

**(2) Subsection (1)(b) above does not apply in respect of—**

- (a) an application made by virtue of section 6(4)(c)(i) of this Act; or**
- (b) a name removed by virtue of section 10A(2) of this Act.**

## **11 11 Decisions of the Disciplinary Sub-committee**

- (1) Where a registered person—**

  - (a) has been convicted (whether in Scotland or elsewhere and irrespective of whether the person was a registered person at the time of conviction) of a relevant offence; or**
  - (b) is judged by the Disciplinary Sub-committee to have been guilty of relevant misconduct,**

**of where the Disciplinary Sub-committee is satisfied that the name of such a person has been registered in error in consequence of any false or fraudulent declaration or representation then the sub-committee may, if it thinks fit, direct that—**

  - (i) the person's name be removed from the register;**
  - (ii) the person shall be subject to a conditional registration order; or**
  - (iii) a reprimand shall be recorded against the person's name in the register.**
- (2) Where a registered person of whom the Council have received notification under sections 9B(a)(ii) or (c) of this Act is judged by the Disciplinary Sub-committee to have been guilty of serious professional incompetence and the Sub-committee is satisfied that the nature of the incompetence is such as to warrant the removal of that person's name from the register, the Sub-committee may direct that it be removed accordingly.**
- (3) In subsection (1)(ii) above, the reference to a conditional registration order is to an order of the Disciplinary Sub-committee that the person shall continue to be eligible for registration under section 6(2) of this Act but, for such period as may be specified in the order or for an unlimited time, shall comply with such conditions as to employment as a teacher as may be so specified; and if there is a failure so to comply, the Disciplinary Sub-committee may direct that the person's name be removed from the register.**
- (4) A person in relation to whom a conditional registration order has been made may apply to the Professional Conduct Committee for variation or revocation of a condition specified in the order; and the committee shall, in determining that application, cause notice of its determination to be served on the person and in relation to any such application no person who was a member of the Disciplinary Sub-committee at the time the condition was imposed shall be entitled to take part in the proceedings of the Professional Conduct Committee.**
- (5) A notice under subsection (4) above shall include a statement of the sub-committee's reasons for its determination.**
- (6) Schedule 2 to this Act shall apply in relation to proceedings under subsection (4) above before the Professional Conduct Committee as it applies to any proceedings before the Disciplinary Sub-committee; except that in so applying paragraph 2 of that Schedule the provisions of that paragraph shall be modified as follows—**

  - (a) in sub-paragraph (1)—**

    - (i) in head (a), the words "under section 10B(2) of this Act" shall be disregarded; and**
    - (ii) head (g) shall be disregarded; and**
  - (b) sub-paragraph (2) shall be disregarded.**
- (7) Where, in the five years which immediately follow the recording, under subsection (1)(iii) above, of a reprimand against a person's name no further direction is made under this section by the Disciplinary Sub-committee in respect of that person, the reprimand shall be removed from the register; but the sub-committee may have regard to any past reprimand in fulfilling its duty under section 10C(1) of this Act even though the reprimand has been so removed.**

- (8) Where a person such as is mentioned in any of sub-paragraphs (i) to (iii) of section 10B(1)(b) of this Act has applied to be registered but is as described in paragraph (a) or (b) of subsection (1) above and, in the opinion of the sub-committee, is in consequence unfit to be registered, the sub-committee may direct that the person's application be refused.
- (9) A person whose—
  - (a) application for registration has been refused in compliance with a direction -
    - (i) given by virtue of a determination under section 10C(1)(d) of this Act; or
    - (ii) under subsection (8) above; or
  - (b) name is removed from the register in compliance with a direction under subsection (1)(i) or (2) above,

shall not be entitled to be registered, or as the case may be re-registered, except in compliance with a direction of the Disciplinary Sub-committee.
- (10) The Disciplinary Sub-committee, in directing that a person's application for registration, or re-registration, be refused or that a person's name be removed from the register, may in the direction prohibit the person from applying or, as the case may be, applying again, for a direction under subsection (9) above until the expiration of such period, not exceeding twelve months from the date of the direction, as may be specified in the prohibition.
- (11) When the Disciplinary Sub-committee directs that a person's application for registration or re-registration be refused, or that a person's name be removed from the register, the sub-committee shall serve on the person notice of the direction; and any such notice shall include a statement of—
  - (a) the facts found proven in the proceedings before the sub-committee; and
  - (b) the reasons for the direction.

#### **11A 11A Temporary suspension**

- (1) Where, as respects a registered person—
  - (a) a preliminary investigation under section 10B(1) of this Act is pending, the Investigating Sub-committee; or
  - (b) proceedings under section 10C of this Act are pending, the Disciplinary Sub-committee,

may, if it is satisfied that there is *prima facie* evidence of circumstances on the basis of which the person's name might come to be removed from the register, direct that, until the date on which the case is finally disposed of, the entry for the person's name shall be marked on the register as suspended; but if in determining the case the Disciplinary Sub-committee makes no direction for the removal of the name from the register, it shall direct that the suspension be cancelled and the mark on the register removed accordingly.
- (2) When the Investigating Sub-committee or the Disciplinary Sub-committee makes a direction under subsection (1) above, it shall serve notice of the direction—
  - (a) on the person; and
  - (b) if the person is in employment as a teacher, on the employer.
- (3) Subsections (1) and (2) above shall apply in relation to proceedings under section 10A(2) of this Act and to the Professional Conduct Committee as they apply in relation to proceedings under section 10C of this Act and to the Disciplinary Sub-committee.

**11B 11B Notification to employer of outcome of disciplinary proceedings**

**When proceedings in a case such as is mentioned in section 10A(2) or 10C(1)(a) of this Act against a person employed as a teacher are finally disposed of, the Council shall forthwith advise the person's employers of the outcome of those proceedings.**

**12 12 Appeals**

**(1) Any—**

- (a) such person as is mentioned in section 10A(2) or in paragraph (a) or (b) of section 11(9) of this Act;**
- (b) person whose application for re-registration has been refused in compliance with a direction under this Act; or**
- (c) person whose application for registration has been refused in compliance with a direction of the committee appointed under paragraph 16(1) of Part II of Schedule 1 to this Act,**

**may, with twenty-eight days after the service on him of notice of the direction in question, appeal against—**

- (i) that direction; or**
- (ii) in the case of a direction by the Disciplinary Sub-committee, any prohibition imposed by virtue of section 11(10) of this Act,**

**to the Court of Session in accordance with such rules as may be made by Act of Sederunt for the purposes of this subsection; and on any such appeal the Court may give such directions in the matter as it thinks proper, including directions as to the expenses of the appeal.**

**(1A) Any person—**

- (a) in respect of whom a direction has been made by the Disciplinary Sub-committee, the Investigating Sub-committee or the Professional Conduct Committee and who does not have a right of appeal under subsection (1) above; or**
- (b) whose application for variation or revocation of a condition specified in a conditional registration order has been refused by the Professional Conduct Committee,**

**may, within the prescribed number of days after the service on him of notice of the direction or refusal in question, require the Council to review the direction or refusal; and in relation to any such review no person who was a member of the Disciplinary Sub-committee, or as the case may be of the Investigating Sub-committee or the Professional Conduct Committee, at the time the direction, or the decision to refuse the application, was made shall be entitled to take part in the proceedings of the Council<sup>42</sup>.**

- (2) No appeal shall lie from a decision of the Court of Session on an appeal under subsection (1) above<sup>43</sup>.**
- (3) On an appeal under subsection (1) above<sup>43</sup> the Council shall be entitled to appear as respondent; and, whether they so appear or not, the Council shall be deemed for the purposes of any award of expenses in the appeal to be a party thereto.**
- (4) No direction under section 10A(2), 11(1) or (2) or 11A(1) of this Act (or section 11A(1) as applied in relation to proceedings under section 10A(2) of this Act) shall take effect until—**
  - (a) where, in accordance with this section, the person concerned -**

<sup>42</sup> Subsection (1) substituted and subsection (1A) inserted by section 51(1) of the Act.

<sup>43</sup> Amended by section 51(2) of the Act.

<sup>43</sup> Amended by section 51(2) of the Act.

- (i) **appeals against the direction, the appeal has been withdrawn or dismissed; or**
  - (ii) **requires the Council to review the direction or refusal, the requirement has been withdrawn or the direction or refusal has been upheld; or**
- (b) **in any other case, the twenty-eight days mentioned in subsection (1), or as the case may be the prescribed number of days mentioned in subsection (1A), above have elapsed<sup>44</sup>.**
- (5) **The Council shall make rules as respects the procedure to be followed and the rules of evidence to be observed in proceedings in any review required under subsection (1A) above; but such rules shall not come into force until approved by the Lord President of the Court of Session.**
- (6) **In subsection (1A) above, "the prescribed number of days" means such number of days as may be prescribed by the Council in rules made under this subsection; and different numbers may be so prescribed for different categories of review.**
- (7) **For the purposes of advising the Council on questions of law arising in proceedings in any review required under subsection (1A) above, there shall in all such proceedings be an assessor to the Council who shall be an advocate or solicitor of not less than ten years' standing appointed by them; and sub-paragraph (2) of paragraph 3 of Schedule 2 to this Act shall apply in relation to such proceedings and to the Council as that sub-paragraph applies in relation to proceedings before the Disciplinary Sub-committee and to that sub-committee.**
- (8) **An assessor may be appointed under this section either generally or for any particular proceedings or class of proceedings and shall hold and vacate office in accordance with the terms of the instrument under which he is appointed.**
- (9) **The Council shall pay to an assessor appointed under this section remuneration at such rates as may be determined by them with the consent of the Lord President of the Court of Session.**

### **13 13 Service of notices**

Any notice or other document authorised or required to be served under this Act may, without prejudice to any other method of service, be served by registered or recorded delivery post; and for the purpose of the application to this section of section 26 of the Interpretation Act 1889 (which relates to service by post) the proper address of a person to whose registration such a notice or other document relates shall, if he is a registered person, be his address on the register.

### **14 14 Orders**

- (1) Any power conferred by this Act to make an order shall include power to vary or revoke the order by a subsequent order.
- (2) Any order made by the Secretary of State under this Act shall be made by statutory instrument; and a statutory instrument containing any such order (except an order under section 18(3) of this Act) shall be subject to annulment in pursuance of a resolution of either House of Parliament<sup>45</sup>.

<sup>44</sup> Subsection (4) substituted and subsections (5) to (9) inserted by section 51(2) of the Act.

<sup>45</sup> This is now read as referring to the Scottish Parliament by virtue of section 118(2) of the Scotland Act 1998.

**15 15 Financial provisions**

- (1) The Secretary of State may from time to time make to the Council such grants as he thinks fit in respect of expenses incurred or to be incurred by the Council in discharging their functions under this Act, and may make to the Council such loans as he thinks fit in respect of the initial expenses incurred or to be incurred by the Council in establishing the register.
- (2) Where the Secretary of State incurs expenses under paragraph 2 of Schedule 1 to this Act in connection with the first election of the Council he shall be deemed to have made to the Council a loan of an amount equal to the amount of the expenses incurred.
- (3) Any loan made, or deemed to be made, to the Council by the Secretary of State under the foregoing provisions of this section shall be subject to such terms and conditions and shall be repaid to him at such times, as he may direct.
- (4) Any expenses incurred by the Secretary of State under this Act shall be defrayed out of moneys provided by Parliament<sup>46</sup>.
- (5) .....

**16** .....

**17 17 Interpretation**

- (1) In this Act, unless the context otherwise requires, the following expressions have the meanings hereby assigned to them respectively—
  - "Act of 1962" means the Education (Scotland) Act 1962;
  - "education authority" has the meaning given by section 135(1) of the Education (Scotland) Act 1980<sup>47</sup>**
  - "establishment" and "residential establishment" have the same meaning as in the Social Work (Scotland) Act 1968;
  - "notice" means a notice in writing
  - "the register" means the register kept under section 6(1) of this Act (analogous expressions being construed accordingly) and "registered" includes conditionally or provisionally registered<sup>48</sup>;**
  - "relevant misconduct" and "relevant offence" have the meanings given by section 10B(3) of this Act<sup>48</sup>;**
  - "teach" means teach in an educational establishment (as defined in section 145 of the Act of 1962) or in an establishment or residential establishment, where school or further education is provided, and "teaching" and "teacher" shall be construed accordingly.
- (2) Any **other**<sup>49</sup> expression used in this Act and in the Act of 1962 has in this Act, unless the context otherwise requires, the same meaning as it has in that Act.
- (3) Any reference in this Act to an enactment shall be constructed as a reference to that enactment as amended or extended by or under any other enactment, including this Act.
- (3A) In this Act—

<sup>46</sup> This is now read as referring to the Scottish Consolidated Fund by virtue of sections 65 and 119(2) of the Scotland Act 1998.  
<sup>47</sup> **Inserted by paragraph 1(3) of Schedule 2 to the Act.**  
<sup>48</sup> **Inserted by section 52 of the Act.**  
<sup>48</sup> **Inserted by section 52 of the Act.**  
<sup>49</sup> Amended by paragraph 1(3) of Schedule 2 to the Act.



- (a) "relevant institution" means an institution within the higher education sector which provides courses for the education and training of teachers; and
- (b) references to institutions within the higher education sector shall be construed as in Part II of the Further and Higher Education (Scotland) Act 1992.

**18      18 Short title, extent and commencement**

- (1) This Act may be cited as the Teaching Council (Scotland) Act 1965.
- (2) This Act extends to Scotland only.
- (3) This Act shall come into operation on such day as the Secretary of State may by order appoint; and different days may be appointed for different provisions.

## “SCHEDULE 1

### *Section 1*

## THE COUNCIL

### *CONSTITUTION OF THE COUNCIL*

- 1 (1) Subject to the provisions of this Schedule the Council shall consist of 49 persons, comprising—
  - (a) **twenty-six**<sup>50</sup> persons representing registered teachers (in this Schedule referred to as "elected members");
  - (b) **eighteen**<sup>50</sup> persons (in this Schedule referred to as "appointed members") appointed as follows—
    - (i) three by the Convention of Scottish Local Authorities;
    - (ii) .....
    - (iii) three by the Association of Directors of Education in Scotland;
    - (iv) **one by the boards of management of colleges of further education;**
    - (v) **one by the Scottish Council of Independent Schools;**
    - (vi) **four by the governing bodies of relevant institutions;**
    - (vii) **three by the universities of Scotland and by the governing bodies of other institutions in the higher education sector (other than relevant institutions);**
    - (viii) **one by the Education Committee of the General Assembly of the Church of Scotland;**
    - (ix) **one by the Scottish Hierarchy of the Roman Catholic Church; and**
    - (x) **one by the Association of Directors of Social Work in Scotland**<sup>51</sup>;
  - (c) **six persons (in this Schedule referred to as "nominated members") nominated by the Scottish Ministers**<sup>51</sup>.
- (2) **The twenty-six elected members shall be registered teachers and shall comprise—**
  - (a) **four employed as headteachers in primary schools or nursery schools;**
  - (b) **seven employed in primary schools or nursery schools other than as headteachers;**
  - (c) **three employed as headteachers in secondary schools;**
  - (d) **eight employed in secondary schools other than as headteachers;**
  - (e) **one employed as a teacher of pre-school children elsewhere than in a primary school or nursery school ("pre-school children" having the meaning given by section 53(1) of the Standards in Scotland's Schools etc. Act 2000);**
  - (f) **two employed in further education centres; and**
  - (g) **one employed in a relevant institution**<sup>52</sup>.
- (3) In the foregoing provisions of this paragraph references to primary schools and to secondary schools include respectively references to primary departments and secondary departments of schools having departments of different grades; references

<sup>50</sup> Amended by section 46(2)(a) of the Act.

<sup>50</sup> Amended by section 46(2)(a) of the Act.

<sup>51</sup> **Heads (iv) to (x) substituted by section 46(2)(a) of the Act.**

<sup>51</sup> Heads (iv) to (x) substituted by section 46(2)(a) of the Act.

<sup>52</sup> **Substituted by section 46(2)(b) of the Act.**

to the universities of Scotland, **relevant institutions**<sup>53</sup>, institutions in the higher education sector and colleges of further education shall be construed, in relation to any appointment, as references to the universities of Scotland, such institutions or, as the case may be, such colleges of further education established at the time the appointment falls to be made; and—

- (a) **a reference to a person "employed" is to a person who, as at such date as may be prescribed by the Council in the scheme made under sub-paragraph (6) below, is employed full-time in the position in question or who, in the period of twelve months which ends with that date, has been employed in that position for not less than one-fifth of the hours which would have fallen to be worked had the employment been full-time; and**
- (b) "further education centre" means an institution for the provision of further education but does not include—
  - (i) a university, a theological college or a hostel or other residence used exclusively by students attending university or theological college, or
  - (ii) a designated institution within the meaning of Part II of the Further and Higher Education (Scotland) Act 1992, a central institution, a relevant institution, a hostel used mainly by pupils attending designated institutions, central institutions or relevant institutions, or, unless the Secretary of State otherwise directs, a residential institution conducted under a scheme under the Educational Endowments (Scotland) Acts 1928 to 1935 or Part VI of the Education (Scotland) Act 1946 or Part VI of the Act of 1962.

(4) .....<sup>54</sup>

(5) The elected members .....<sup>55</sup> shall, subject to paragraph 2 of this Schedule, be elected in accordance with the provisions of a scheme made under **this paragraph**<sup>56</sup>.

- (6) For the purpose of the last foregoing sub-paragraph the Council shall, within two years of their establishment, make a scheme, which shall include provision for—
- (a) the appointment of a returning officer and of such staff as may be necessary;
  - (b) the making up, **subject to sub-paragraph (6A) below**,<sup>57</sup> of a roll of electors consisting of all registered teachers whether in employment as such or not, showing the category of elected member for which each registered teacher is entitled to vote;
  - (c) the giving of notice of the holding of an election;
  - (d) the nomination of candidates;
  - (e) any other matter necessary for the holding of the elections.

(6A) **The roll of electors made up as provided for in a scheme under this paragraph shall show that, in respect of the category of elected members which comprises persons employed as is mentioned in –**

- (a) **head (a) of sub-paragraph (2) above, only persons so employed;**
- (b) **head (c) of that sub-paragraph, only persons so employed,**

**are entitled to vote.**<sup>58</sup>

<sup>53</sup> Amended by section 46(2)(c) of the Act.

<sup>54</sup> **Repealed by section 46(2)(d) of the Act.**

<sup>55</sup> Words repealed by section 46(2)(e) of the Act.

<sup>56</sup> Amended by section 46(2)(e) of the Act.

<sup>57</sup> Words inserted by section 46(2)(f) of the Act.

<sup>58</sup> **Inserted by section 46(2)(g) of the Act.**

- (7) A scheme made under **this paragraph** may be modified or revoked by a subsequent scheme made by the Council under **this paragraph**<sup>59</sup>.
- (8) A scheme made under this paragraph shall not come into force until approved by the Secretary of State by order.
- (9) **In nominating members of the Council under sub-paragraph (1)(c) above, the Scottish Ministers shall—**
- (a) **ensure that at least one nominee represents the interests of parents of pupils;**
  - (b) **ensure that at least one nominee is engaged in, or represents the interests of persons engaged in, commerce or industry;**
  - (c) **ensure that at least one nominee is engaged in, or represents the interests of persons engaged in, the teaching of children or young persons with special educational needs (as defined in section 1(5)(d) of the Education (Scotland) Act 1980); and**
  - (d) **have regard to the desirability of the membership of the Council reflecting the interests of the public**<sup>60</sup>.
- 2 (1) In respect of the initial membership of the Council the foregoing paragraph shall have effect in relation to elected members as if any reference in that paragraph to registered teachers included a reference to certificated teachers, and as if sub-paragraphs (5) to (8) thereof were omitted; and the elected members other than the principals of relevant institutions shall be elected by certificated teachers, being teachers employed in educational establishments and in approved schools, in accordance with arrangements made by the Secretary of State.
- (2) Arrangements made for the purposes of the foregoing sub-paragraph shall secure—
- (a) that a teacher shall not be eligible to be elected unless he is, on such date as may be determined by or under the arrangements, employed in an educational establishment of one of the categories referred to in paragraph 1(2) of this Schedule; and
  - (b) that each teacher shall be entitled to vote only in respect of an elected member employed in an educational establishment of the same category as that in which he himself is employed on that date;
- and shall provide for the determination by the Secretary of State of the category in which a teacher is employed.
- 3 .....<sup>61</sup>
- 4 (1) Subject to paragraphs 5(3) and 5A of this Schedule the period of office of members of the Council shall be four years save that in respect of the initial membership of the Council the period of office shall be five years.
- (2) A member shall vacate office—
- (a) on the expiration of his period of office;
  - (b) on the taking effect of any notice of resignation given by him to the Council;
  - (c) on his estate being sequestrated or on his executing a trust deed for creditors;
  - (d) **where, being an elected member—**
    - (i) **employed otherwise than as mentioned in head (e) of paragraph 2(2) above, he ceases to be employed in the category of educational establishment in respect of which he was elected;****or**

<sup>59</sup> Amended by section 46(2)(h) of the Act.

<sup>60</sup> Substituted by section 46(2)(i) of the Act.

<sup>61</sup> Repealed by section 46(3) of the Act.

- (ii) **employed as mentioned in that head, he ceases to be so employed; or**
  - (e) **where, being an elected member who is employed part-time, he has, as at any anniversary of his election, not been employed as a teacher, in the period of twelve months which ends with that anniversary, for one-fifth of, or more than one-fifth of, the hours which would have fallen to be worked had the employment been full-time<sup>62</sup>**

whichever first occurs.
- (2A) **For the purposes of sub-paragraph (2)(e) above, an elected member who is employed part-time shall in each year, on or immediately before the anniversary of his election, provide the Council with evidence, in such form as they may require, as to the hours which he has worked during the period mentioned in that sub-paragraph<sup>63</sup>.**
- (3) Nothing in this paragraph shall prevent the election or re-election of a person who has ceased to be a member, or will have so ceased at or before the commencement of the term of office to which the election or re-election relates.
- (4) The last foregoing sub-paragraph shall apply to appointment and nomination, and to re-appointment, as it applies to election and re-election.
- (4A) Where a member of the Council or of any committee of the Council has failed without good cause to attend meetings for a period of at least six months and to attend three consecutive meetings, the Council may, by a vote taken at a meeting of the Council at which the member has been given an opportunity to be heard, remove him from the Council.
- 5 (1) Where an elected member dies or vacates office before the expiration of his period of office the vacancy shall be filled by the person who, in the election of that member, obtained the second highest number of votes; whom failing, by the person who in that election obtained the next highest number of votes, and so on; and if no such person is available the Council shall fill the vacancy by co-opting such registered teacher or certificated teacher as they think fit, being a teacher of like electoral qualifications as the said member.
- (2) Where an appointed or nominated member dies or vacates office before the expiration of his period of office the vacancy shall be filled by the appointment or, as the case may be, nomination of another person by the body, group of bodies or person who appointed or nominated the member who has died or vacated office.
- (3) In relation to a member who takes office by virtue of this paragraph, paragraph 4 of this Schedule shall have effect as if, for the reference in sub-paragraph (1) thereof to four years, or, as the case may be five years there were substituted a reference to the unexpired part of the period of office of the member who has died or vacated office.
- 5A **A person holding office as a member of the Council on the date on which section 42 of the Standards in Scotland's Schools etc. Act 2000 comes into force shall go out of office on such date as the Scottish Ministers may, after consultation with the Council, determine; but that date shall not be later than 31 October 2001<sup>64</sup>.**
- 6 (1) The Secretary of State may, if owing to a change of circumstances he considers it expedient to do so, and after consultation with the Council and any other body or person who appears to him to be concerned, by order amend the foregoing provisions of this Part of this Schedule:

<sup>62</sup> Amended by section 46(4) of the Act.

<sup>63</sup> Inserted by section 46(4) of the Act.

<sup>64</sup> Inserted by section 46(5) of the Act.

Provided that an order under this paragraph shall not reduce the proportion which the number of members of the Council who are elected members .....<sup>65</sup> bears, under the said foregoing provisions, to the total number of members.

- (2) An order under this paragraph may contain such consequential and ancillary provisions as the Secretary of State thinks necessary for the purposes of the order.

6A .....<sup>66</sup>

*SUPPLEMENTARY PROVISIONS RELATING TO THE COUNCIL*

*Incorporation*

- 7 The Council shall be a body corporate, with a common seal.

*Powers*

- 8 (1) **In addition to the powers conferred on the Council by the other provisions of this Act, the Council shall have power—**  
(a) **to acquire, dispose of and otherwise intromit with rights in land; and**  
(b) **to borrow money.**  
(2) **The consent of the Scottish Ministers is required for the exercise of the power conferred by sub-paragraph (1)(b) above<sup>67</sup>.**

*Chairman*

- 9 (1) The chairman of the Council shall be appointed by the members of the Council from their own number.  
(2) The chairman, or in his absence the person acting as chairman, of the Council shall have a casting vote in the proceedings of the Council.

*Assessors*

- 10 The Secretary of State may appoint not more than two persons to be assessors for him at the proceedings of the Council; and each such assessor (or in his absence from any proceedings such other person as may be nominated by him for the purpose of those proceedings) shall be entitled to attend and speak at the proceedings of the Council and of any committee thereof except the **Investigating Sub-committee, the Disciplinary Sub-committee and in relation to proceedings for the purposes of sections 10A(2) and (3) and 11(4) of this Act, the Professional Conduct Committee<sup>68</sup>**; but no assessor shall be entitled to vote at any such proceedings.

*Proceedings*

- 11 The powers of the Council, and any committee thereof, may be exercised notwithstanding any vacancy in the membership thereof, and the proceedings of the Council or any such committee shall not be invalidated by reason only of any defect in the election, appointment or nomination of a member.

<sup>65</sup> Words repealed by section 46(6) of the Act.

<sup>66</sup> Repealed by section 46(7) of the Act.

<sup>67</sup> Amended by section 53 of the Act.

<sup>68</sup> Amended by paragraph 1 of Schedule 2 to the Act.

*Standing orders*

- 12 Subject to the provisions of this Act the Council may make standing orders for the regulation of their proceedings and the quorum at such proceedings, and of the proceedings, and the quorum at the proceedings, of any committee of the Council other than the **Disciplinary Sub-committee**<sup>69</sup>; and for the keeping of records, the execution of documents and such other matters connected with the conduct of the Council's business as the Council think fit.

*Expenses and accounts*

- 13 (1) Any fees payable by virtue of this Act in respect of the entry, or retention of a name on, or the **re-registration of a name in**<sup>69</sup>, the register shall be paid to the Council, and any expenses of the Council shall be defrayed out of the sums received by the Council either on account of those fees or otherwise.
- (2) The Council shall keep proper accounts of all sums received or paid by them, and proper records in relation to those accounts, and the accounts for each financial year of the Council shall be audited by auditors appointed by the Council; and as soon as any accounts of the Council have been audited the Council shall cause them to be published, and shall send a copy of them to the Secretary of State, together with a copy of any report of the auditors thereon.
- (3) No person shall be appointed as an auditor under this paragraph unless he is eligible for appointment as a company auditor under section 25 of the Companies Act 1989.
- 14 (1) The Council may employ a registrar and such other wholetime and part-time officers and servants as they may require to enable them to carry out their functions, and may do so on such terms as to remuneration, allowances or otherwise as the Council may determine.
- (2) The Council may require any person employed by them whose responsibility includes intromission with their funds to find such caution as they may determine for his duly accounting for his intromissions.
- (3) The Council may pay, or enter into arrangements with insurance companies or local authorities for the payment of, pensions and other superannuation benefits to persons who have been employed by them.

*Allowances for members*

- 15 The Council may, with the approval of the Secretary of State, pay to their members, and to other persons who are members of any committee appointed by the Council, such travelling subsistence and other allowances as they think fit.

*Committee on exceptional admission to the register*

- 16 (1) The Council shall appoint a committee, consisting of not more than one-third of the members of the Council, to review from time to time the principles specified in any statement under section 8 of this Act, and shall delegate to that committee the functions of the Council in dealing, in accordance with those principles, with applications for registration by virtue of section 6(2)(c) of this Act.
- (2) .....<sup>70</sup>

<sup>69</sup> Amended by paragraph 1 of Schedule 2 to the Act.  
<sup>69</sup> Amended by paragraph 1 of Schedule 2 to the Act.  
<sup>70</sup> Repealed by Schedule 3 to the Act.

- (3) .....<sup>70</sup>
- (4) Where the said committee .....<sup>70</sup> refuse a person's application for registration, the committee .....<sup>70</sup> shall cause notice of the refusal to be served on that person; and any such notice shall include a statement of the reasons for the refusal.

*Other committees*

- 16A     **The Scottish Ministers may, by statutory instrument subject to annulment in pursuance of a resolution of the Scottish Parliament, make regulations—**
- (a)     **requiring the Council to establish such committees, for such purposes, as are specified in the regulations; and**
  - (b)     **providing for the membership of any committee so established<sup>71</sup>.**
- 17       Subject to **paragraphs 16 and 16A of this Schedule** and to the provisions of this Act relating to the **Professional Conduct Committee, the Investigating Sub-committee and the Disciplinary Sub-committee<sup>72</sup>**, the Council may appoint such committees (consisting either wholly of members of the Council or partly of such members and partly of other persons) as the council think fit; and any committee appointed under this paragraph may appoint such sub-committees as the committee think fit.

SCHEDULE 2<sup>73</sup>

PROCEDURE OF DISCIPLINARY SUB-COMMITTEE

- 1       For the purpose of any proceedings before the Disciplinary **Sub-committee**, the **Sub-committee** may administer oaths; and the Court of Session shall, on the application of any party to the proceedings, have the like power as in any action in that Court to grant warrant for the citation of witnesses and havers to give evidence or to produce documents before the **Sub-committee**, and for the issue of letters of second diligence against any witness or haver failing to appear after due citation, to grant warrant for the recovery of documents, and to grant commissions to persons to take the evidence of witnesses or to examine havers and receive their exhibits and productions.
- 2     (1) Subject to the next following sub-paragraph, the Council shall make rules as to the procedure to be followed and the rules of evidence to be observed in proceedings before the Disciplinary **Sub-committee**, and in particular—
- (a)     for securing that notice that the proceedings are to be brought shall be given, at such time and in such manner as may be specified by the rules, to any person whose case has been referred to the **Sub-committee** under section **10B(2)** of this Act, and that such notice shall include a statement of the alleged facts and circumstances on which the proceedings are to be based;
  - (b)     for determining who, in addition to the person aforesaid, shall be a party to the proceedings;
  - (c)     for securing that any party to the proceedings shall, if he so requires, be entitled to be heard by the **Sub-committee**;

<sup>70</sup> Repealed by Schedule 3 to the Act.  
<sup>70</sup> Repealed by Schedule 3 to the Act.  
<sup>70</sup> Repealed by Schedule 3 to the Act.  
<sup>71</sup> **Inserted by section 54 of the Act.**  
<sup>72</sup> Amended by paragraph 1 of Schedule 2 to the Act.  
<sup>73</sup> SCHEDULE AMENDED BY PARAGRAPH 1 OF SCHEDULE 2 TO THE ACT.



- (d) for enabling any party to the proceedings to be represented by counsel or solicitor or otherwise;
  - (e) for requiring the proceedings to be held in public except so far as may be provided by the rules;
  - (f) for securing that where evidence is tendered which would be inadmissible in criminal proceedings in Scotland it shall not be admitted by the **Sub-committee** unless, after consultation with the assessor acting under paragraph 3 of this Schedule, the **Sub-committee** is satisfied that its duties under this Act require that it should be admitted;
  - (g) for requiring, in cases where it is alleged that a person is guilty of **relevant misconduct**, that where the **Sub-committee** judges that the allegation has not been proved it shall record a finding that the person is not guilty of such **misconduct** in respect of the matters to which the allegation relates.
- (2) As respects proceedings for—
- (a) the **re-registration** of the name of a person whose name was previously removed from the register by direction of the Disciplinary **Sub-committee**,
  - (b) the determination of an application under section **10C(1)(d)** of this Act, or
  - (c) the determination of a second or subsequent application for registration by a person whose original application has been refused in pursuance of a direction by the Disciplinary **Sub-committee** under section **11(8)** of this Act,
- the Council shall have power to make rules with respect to all or any of the matters mentioned in the foregoing sub-paragraph, but shall not be required to do so; and separate rules under this paragraph may be made as respects such proceedings.
- (3) Rules under this paragraph shall not come into force until approved by the Lord President of the Court of Session.
- 3 (1) For the purpose of advising the Disciplinary **Sub-committee** on questions of law arising in proceedings before it, there shall in all such proceedings be an assessor to the **Sub-committee** who shall be an advocate or solicitor of not less than ten years' standing appointed by the Council; but if no assessor appointed by the Council is available to act in any particular proceedings the **Sub-committee** may appoint an assessor qualified as aforesaid for those proceedings.
- (2) The Lord President of the Court of Session may, by statutory instrument, make rules as to the functions of assessors appointed under this paragraph, and in particular such rules may contain provision for securing—
- (a) that where an assessor advises the Disciplinary **Sub-committee** on any question of law as to evidence, procedure or any other matters specified by the rules, he shall do so in the presence of every party or person representing a party to the proceedings who appears thereat or, if the advice is tendered while the **Sub-committee** is deliberating in private, that every such party or person as aforesaid shall be informed what advice the assessor has tendered;
  - (b) that every such party or person as aforesaid shall be informed if in any case the **Sub-committee** does not accept the advice of the assessor on such a question as aforesaid;
- and may contain such incidental and supplementary provisions as the Lord President considers expedient.
- (3) The Statutory Instruments Act 1946 shall apply to any statutory instrument made by the Lord President under the last foregoing sub-paragraph as if the instrument had been made by a Minister of the Crown.
- (4) Except in the case of an assessor appointed by the **Sub-committee** itself under sub-paragraph (1) above, an assessor may be appointed under this paragraph either generally or for any particular proceedings or class of proceedings, and shall hold

and vacate office in accordance with the terms of the instrument under which he is appointed.

- (5) The Council shall pay to an assessor appointed under this paragraph remuneration at such rates as may be determined by the Council with the consent of the Lord President.