

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

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## **EXPLANATORY NOTES**

### **INTRODUCTION**

1. These revised Explanatory Notes have been prepared by the Scottish Executive in order to assist the reader of the Act. They do not form part of the Act and have not been endorsed by the Parliament.
2. The Notes should be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section or schedule, or part of a section or schedule, does not seem to require any explanation or comment, none is given.

### **THE ACT**

3. The Act is directed at raising standards in Scotland's schools. It will do this primarily by establishing new duties and rights in respect of education and a new framework for improvement. Sections 1 to 13 cover this.
4. Other provisions in the Act support this general focus on improvement and raising standards. The other main areas dealt with in the Act are –
  - abolition of self-governing schools (sections 17 to 23);
  - school boards (sections 26-31);
  - pre-school education (sections 32-39);
  - reform of the General Teaching Council (sections 45-54); and
  - abolition of the Scottish Joint Negotiating Committee (section 55).

### ***Provision of school education : right of child and duty of education authority***

#### ***Section 1 – Right of child to school education***

5. In terms of section 1 of the Education (Scotland) Act 1980, education authorities are under a duty to provide education in their area. Section 1 of the Act establishes a complementary statutory right in favour of every child to have a "school education". The establishment of the statutory right to education reflects in the domestic law of Scotland the right to education which is enshrined in the European Convention on Human Rights and in the UN Convention on the Rights of the Child, the United Kingdom being a signatory to these 2 instruments. "School education" is defined in section 1(5)(a) of the Education (Scotland) Act 1980. "School age" is defined in section 31 of the Education (Scotland) Act 1980, broadly in terms of a person being of school age if he has attained the age of 5 years and has not attained the age of 16 years. These definitions in the Education (Scotland) Act 1980 apply to the Standards in Scotland's Schools etc. Act 2000 by virtue of section 58(2) of the Act.

## ***Section 2 – Duty of education authority in providing school education***

6. The provision in section 2 adopts wording from Article 29(1)(a) of the UN Convention on the Rights of the Child. It describes a key aim towards which “school education” must be directed by the education authorities. The aim is to make the development of the personality, talents etc. of the child or young person central to the direction of school education. Section 1(1) of the Education (Scotland) Act 1980, which imposes a general duty on authorities to secure adequate and efficient provision of school education for their area, is left unamended. This new provision puts education authorities under a statutory duty to look beyond general provision to the development of the individual child. Authorities will also be required, in carrying out their duty under this provision, to take account of the child’s views when making decisions that would significantly affect them.

## ***Raising Standards***

### ***Section 3 – Raising standards***

7. This section is part of the improvement framework in the Act and places statutory duties on Scottish Ministers and education authorities in relation to the improvement in the quality of school education.
8. The duty imposed on the Scottish Ministers by section 3(1) covers both public provision of education by education authorities and provision by the independent sector.
9. The duties imposed on an education authority by section 3(2) extend only to schools managed by them. They do extend however to education provided outwith school by an authority in terms of section 14 of the 1980 Act (for children who are ill or excluded etc.) and also to provision of pre-school education under arrangements made by the education authority with other providers under section 35 (section 3(3)).
10. **Section 3(4)** provides that in relation to Scottish Ministers’ and authorities’ duties to endeavour to secure improvement in school education, what is being referred to is school education informed by the guiding philosophy of the development of the child to which it must now be directed under section 2 of the Act.

### ***Section 4 – National priorities in education***

11. The “national priorities” to be identified under section 4 are areas where improvement is desirable. Examples might be improvement in literacy, numeracy, mathematics, teaching, reduction in truancy or exclusions. They might also set a target for a particular percentage of improvement across the country.
12. Scottish Ministers will define by order what the priorities for education should be following consultation. The priorities will be subject to the approval of Parliament. In addition to imposing a duty on the Scottish Ministers to set “national priorities” this section gives them a discretion to define and publish “measures of performance” in respect of the priority. These “measures of performance” are prescribed methods of measuring what progress is being made across the country. They are set centrally so that improvement is measured on a uniform basis across the country.

### ***Section 5 – Education authority’s annual statement of improvement objectives***

13. This section sets out the planning machinery which education authorities must now have in place to deliver improvement in education in their area in accordance with national priorities laid down by Scottish Ministers. Detailed plans setting out objectives in accordance with national priorities must be drawn up on an annual basis, by dates to be set by Scottish Ministers after consultation, setting out the improvement which the education authority is setting itself to deliver.

14. These plans must say how the authority intends to involve parents in their children's education. The authority must also say how it will encourage equal opportunities in schools and how it will provide and, if already provided, develop Gaelic medium education.
15. Section 5(3) requires education authorities to set objectives in respect of each of the national priorities set by the Scottish Ministers and approved by Parliament and by reference to published measures of performance. Although objectives must be set in respect of the national priorities, education authorities have the discretion to introduce further objectives of their own not covered by the national priorities and set out their own additional independent measures of performance.

### ***Section 6 – School development plans***

16. Section 6 requires, as part of the improvement planning process, education authorities to produce complementary documents additional to the annual statement of education improvement objectives. These “school development plans”, give the detailed planning in relation to each school as to how that school is to go about delivering the progress aimed at in the annual statement of education improvement objectives. By virtue of section 8(2)(a), preparation of the plan in respect of any school covered by a scheme under that section is delegated to the headteacher.
17. Section 6(3) requires the development plan to include an account of what proposals the headteacher has for consulting pupils at the school and involving them in decision making concerning the everyday running of the school. This subsection does not actually require consultation with the pupils or their involvement in decision making concerning the running of the school, but only that any intentions or proposals to do this are set out in the development plan.
18. The Scottish Ministers will determine the time-scales for the preparation of and reporting on school development plans after consulting education authorities.

### ***Section 7 – Review of school performance***

19. This section provides for education authorities to review schools' performance in relation to quality of education and against “measures of performance”. This review must be published.
20. **Section 7(1)** places a duty on education authorities to publish a report on the performance of schools managed by them, indicating the quality of education provided and set against the objectives set down and measured according to measures of performance. Measures of performance may be different for different categories of schools. This differs from the measures of performance set nationally which have to be uniform throughout the country.
21. In terms of section 7(2), if an education authority concludes that a school is not performing satisfactorily, they are under a statutory duty to take steps to remedy the under performance.

### ***Section 8 – Delegation schemes***

22. This section gives a statutory framework to the delegation by education authorities of functions to schools. Schools do not have a separate legal personality to that of the education authority which manages them, and accordingly delegation is to be to the “headteacher”, who is an employee of the education authority. All education authorities must have a scheme drawn up for the delegation of functions to the headteachers of schools managed by them within their area. However, not all schools managed by them need to be covered by the scheme. For example, it may not be appropriate to delegate any functions to schools below a certain size or in the opinion of the education authority

certain types of school may not have staff sufficiently qualified to perform the delegated tasks.

23. **Section 8(1)** makes it mandatory for education authorities to draw up schemes for delegating some of their functions to schools managed by them within their area. The key function which it is envisaged will be delegated is the spending of the school budget as allocated in each education authority's annual budget. In some cases an education authority will want to retain the spending of some of the budget.
24. **Section 8(2)** provides that the preparation of the school development plan referred to in section 6 of the Act shall be delegated to the headteacher. This does not preclude local education authorities from delegating responsibility for the preparation of the school development plan to the headteacher of schools, which are not covered by the delegation scheme. In addition to the preparation of the school development plan, education authorities may delegate any other functions which they think fit. This could include, for example, hiring staff and giving advice on major capital projects.
25. **Section 8(3)** requires that a local authority include as part of its delegation scheme the requirement that the headteacher should carry out the delegated functions in a way that is consistent with the local authority's obligations under section 3 to promote improvement.

### ***Inspections***

#### ***Section 9 – Inspection of education authority***

26. **Section 9** complements the powers of inspection of schools contained in section 66(1) of the 1980 Act. It gives a new power to Scottish Ministers to request an inspection of a local authority in relation to their school education functions. Previously there had been no provision for the inspection of education authorities. The persons who may be requested to carry out the inspection are Her Majesty's Inspectors of Schools (HMI) as defined in section 135(1) of the 1980 Act, or any other person appointed by Scottish Ministers, or HMI and such other persons together. In allowing inspection by HMI and other persons together, this provision goes further than that in section 66(1) of the 1980 Act.
27. **Section 9(1)** provides for the inspection of education authorities, but only in relation to the exercise of their functions in relation to the provision of school education, which includes pre-school education. It is envisaged that the main focus of inspection would be on the quality of the management of schools and meeting the purposes of the Act and the 1980 Act. Inspection need not be limited to the education department of the authority but could cover activities of other departments which were relevant to the authority's school education functions. However, how local education authorities organise their finances and conduct their administration generally would not primarily be matters for HMI : these would be matters for audit and local commissioners to investigate.
28. **Section 9(2)** allows for inspections of the carrying out of the general function and in relation to aspects of the function. Accordingly, the teaching of primary education could be looked at generally, or literacy among primary pupils. These functions would not include review of an individual case or investigation of an individual case, unless that matter arose as incidental to the review of a function or aspect of a function.
29. **Section 9(3)** gives the education authority a duty to help those carrying out the inspection. This provision assumes co-operation between those inspecting and the education authority and, unlike section 66(3) of the 1980 Act, does not create a criminal offence of obstructing an investigation.

### ***Section 10 – Code of practice as regards inspection of education authority***

30. **Section 10** allows the Scottish Ministers to issue codes of practice as regards inspection of education authorities under section 9. These codes of practice would be primarily to give education authorities guidance as to how inspectors would properly conduct inspections. Also covered would be best practices as regards co-operation by education authorities with inspectors. The codes of practice would be reviewed from time to time and updated according to experience.

### ***Section 11 – Inspection of educational establishment***

31. **Section 11** amends section 66 of the 1980 Act to allow for joint inspections by HMI and other inspectors appointed by Scottish Ministers, as provided for in relation to the inspection of education authorities by section 9 of the Act. The newly inserted section 66(1AA) of the 1980 Act allows, in terms of paragraph (a) of that subsection, for inspections on specific matters rather than just general inspections. Paragraph (b) of the subsection extends the power of HMI and other inspectors to inspect establishments which are not schools but have an arrangement with education authorities to provide certain types of pre-school education under section 32 of the Act, i.e. publicly funded pre-school centres.
32. To help clarify the effect of this provision, it has been incorporated into section 66 of the 1980 Act for illustrative purposes, as shown in the annex.

### ***Section 12 – Code of practice as regards inspection of educational establishment***

33. This section allows the Scottish Ministers to issue codes of practice as regards inspection of schools, pre-schools and initial and in-service teacher training provided by higher education institutions. These codes of practice would be primarily to give guidance as to how inspectors would properly conduct these inspections. The codes of practice would be reviewed from time to time and updated according to experience.

### ***Guidance***

#### ***Section 13 – Guidance to education authorities : raising standards and delegation schemes***

34. This section empowers the Scottish Ministers to issue statutory guidance to education authorities in relation to their functions under sections 3 to 8. The Secretary of State previously issued guidance from time to time but this was non-statutory guidance. The education authorities are not under an absolute duty to comply with the guidance but must have regard to it. They could still be open to challenge for not following the guidance if it was shown that they acted wholly unreasonably in doing so.

#### ***Section 14 - Guidance to education authorities as to home education***

35. This section empowers Scottish Ministers to issue statutory guidance to education authorities on the circumstances in which parents may choose to educate their children at home. As for the guidance issued under section 13, the education authorities are not under an absolute duty to comply with this guidance but must have regard to it.

#### ***Section 15 - Requirement that education be provided in mainstream schools***

36. This section aims to establish what is effectively a presumption in favour of “mainstream education” for all children in Scotland. It will strengthen the rights of children with special educational needs to be included alongside their peers in mainstream schools. In this context “mainstream” refers to education in a school other than a special school. Subsection (2) applies the section to children under school age. For these children, the presumption in favour of “mainstream education” applies both to

education provided by the local authority and education provided by non-local authority providers (by virtue of arrangements made under section 35 of this Act).

37. At the same time the provision recognises that a mainstream setting may not be appropriate for all children, or in all cases, and sets out circumstances in subsection (3) where a local authority may decide to offer education in a special school. Such circumstances are presumed to only arise exceptionally. A local authority will be required to take account of the views of the child and his parents where, after consideration of the circumstances specified in subsection (3), they still believe mainstream to be more appropriate than a special school.

### ***Section 16 – No justification for corporal punishment***

38. In terms of section 48A of the 1980 Act, as amended by section 294 of the Education Act 1993 (c.35), corporal punishment may not be administered to pupils attending state schools or independent schools whose fees or costs are financed or supported by public funds. Section 48A further provides that corporal punishment generally may not be administered if the punishment is inhumane or degrading. The words “inhumane or degrading” follow wording in the European Convention on Human Rights.
39. The position in England and Wales was the same as in Scotland until section 131 of the School Standards and Framework Act 1998 substituted a new section 548 in the Education Act 1996. The effect of this new provision for England and Wales is to extend the abolition of corporal punishment to all pupils in all independent schools and to children receiving state supported nursery education in England and Wales. In a House of Lords written answer on 11 December 1998, Ministers stated that children in independent schools in Scotland should benefit from the same protection against corporal punishment as those in England and Wales. Scottish Ministers endorsed this and agreed that the ban should also extend to children receiving pre-school education which is provided by education authorities, or under arrangements with education authorities. Section 16 of the Act accordingly re-enacts section 48A of the 1980 Act with amendment to extend the categories of establishment where corporal punishment is no longer allowed.
40. At common law those lawfully in charge of children were entitled to administer reasonable chastisement in the form of corporal punishment. This gave a defence to any criminal or civil action based on assault. What section 48A did was to remove that common law entitlement and defence to civil and criminal action. Section 16 of the Act extends the categories of situation where there is no such common law defence available. In the residual category of private nurseries where there is no support given by the education authorities, in the home, and in child minding centres, the defence at common law is still available.
41. **Section 16(1)** sets out the new categories of establishment where corporal punishment is not allowed. Section 16(1)(a) covers school education provided by an education authority, whether at school or elsewhere, for example at home or in hospital. Section 16(1)(b) covers independent schools including nursery classes at independent schools. Section 16(1)(c)(i) covers independent nurseries where they are in receipt of grant under the Education (Scotland) Act 1996. Section 16(1)(c)(ii) covers nursery schools where there is an arrangement with the education authority under section 35 of the Act. The first category in section 16(1)(c) will in time be superseded by the second. State nursery schools or nursery classes in state schools are covered by the definition of “school education” in section 16(1)(a).
42. **Section 16(2)** covers corporal punishment given at an educational establishment or extramurally such as on a school trip.
43. **Section 16(4)** identifies 2 situations where assault would not be inferred: first, where the action towards the pupil was done for reasons which included averting an immediate danger of personal injury to any person, including the pupil; and, secondly, where the

reasons for the action included averting an immediate danger to the property of any person, including the pupil. These specified reasons need not be the primary or only reason for the commission of an act towards the pupil. Provided one of those reasons is included, assault will not be inferred. These reasons will be subject to a *de minimis* rule, so that averting immediate danger to worthless property or immediate danger of trivial personal injury would not constitute a defence to assault.

44. **Section 16(5)** defines the categories of persons who would be “members of staff” giving them, prior to the enactment of this section and its predecessor in section 48A of the 1980 Act, a common law defence to an action for assault as specified in section 16(1). They must have had “lawful control or charge” of the pupil. Included are teachers, auxiliaries and other carers who would have lawful charge. Cleaners and other casual staff would never have been entitled to administer corporal punishment.

### ***Ending of self-governing status of schools***

#### ***Section 17 – Ending of self-governing status of schools***

45. Self-governing schools were created under the Self-Governing Schools etc. (Scotland) Act 1989. They were formerly local authority schools that “opted out” following a ballot of parents. They are run by boards of management established under the 1989 Act. They are funded directly by the Scottish Ministers (although part of this funding is in turn recovered from the authority in whose area the school is situated).
46. In practice, Scottish Ministers’ power under section 17 to return a named self-governing school to local authority management may be exercised only in relation to St. Mary’s Episcopal Primary School, Dunblane which is currently the only self-governing school in Scotland.

#### ***Section 18 – Order supplementary to ending of self-governing status***

47. **Section 18(1)** gives the Scottish Ministers – after making an order under section 17 – the power to make a further order in relation to the transfer of a school to local authority control following consultation with the authority. In general terms, the order-making power will be used as Scottish Ministers consider appropriate to facilitate the school’s return to local authority management.
48. **Section 18(3)** allows the Scottish Ministers, following consultation with the education authority, to recover funds where property originally purchased by a self-governing school out of money provided by government grant is sold by the local authority to whom it has transferred under section 17(3). The amount recoverable is the value of the grant or the amount received by the authority for the sale if that is less.

#### ***Section 19 – Transfer of staff of self-governing school***

49. **Section 19** explains the legal effect of the transfer of staff to the employment of the authority. Subsection (1) identifies the staff to whom the section applies, i.e. those employed by the board of management in a self-governing school immediately prior to transfer to a local authority under an order made under section 17.

#### ***Sections 20 and 21 – Provision of information and educational endowments in relation to self-governing school***

50. These sections deal with other ramifications of transferring self-governing schools into the local authority sector in relation to staff and the provision of information.

#### ***Section 22 – Interruption of process of transition to self-governing status***

51. **Section 22** provides that if a school’s proposals for self-governing status have been approved by the Secretary of State or the Scottish Ministers, but that the school has not

yet assumed full self-governing status, the school's transition to self-governing status will be treated as if it had never started. The school will therefore remain within the local authority's management.

52. In practice, this provision affects only Fort William Primary School, which is currently the only school in this transitional state, i.e. where their proposals for acquisition of self-governing status have been approved, but the school has not yet assumed that status.

### ***Section 23 – Purported disposal of property of self-governing school***

53. **Section 23** requires the board of management of a self-governing school to get the permission of the Scottish Ministers to any transfer of moveable property owned by the Board on or after the date this Act came into force i.e. 14 July 2000. Scottish Ministers must consult the relevant education authority before giving consent. Any transfer of property is void if prior consent is not obtained. The intention is to prevent a Board's deliberate disposal of property in order to stop it passing to the authority.

### ***Independent schools***

#### ***Section 24 – Registration of independent school***

54. Section 98(1) of the Education (Scotland) Act 1980 provides that an independent school may not be registered if the proprietor is already disqualified under the Act from being the proprietor of an independent school or if the premises to be used are disqualified from being used as a school. Section 24(1)(a) amends section 98 to provide a further ground for non-registration based on the unsuitability of the proprietor, a teacher at the school or the condition of the premises.
55. At present, independent schools are allowed to operate for one month before being provisionally registered. By virtue of the repeal of section 98(2A) of the 1980 Act by section 24(1)(b), prospective managers of new independent schools must be provisionally registered before the school opens. Operating a school which is not registered is a criminal offence under section 98(2) of the 1980 Act.
56. **Section 24(2)** adds a new section, section 98A, to the Education (Scotland) Act 1980. This requires that a proprietor and/or teacher must be told why the registration is being refused on this new ground and gives them the right to request that the refusal be referred to an Independent Schools Tribunal. The Tribunal may uphold the refusal or direct that the Registrar registers the school. If the refusal is upheld, the Tribunal may: disqualify the proprietor from being the proprietor of any independent school; disqualify the teacher from being a teacher in any school; or disqualify the premises or parts of the premises from being used as a school or as part of a school, as appropriate. A person may apply under section 102 of the 1980 Act for removal of any disqualification if, because of a change of circumstances, it is no longer necessary.

#### ***Section 25 – Welfare of pupil attending independent school***

57. Section 99 of the 1980 Act imposes a duty on the Scottish Ministers to serve a notice of complaint on the proprietor of an independent school if they are satisfied that the school is objectionable on one of a number of grounds. If the appropriate steps are not taken to remedy the problem, as required by the notice, the ultimate sanction may be removal of the school from the register. Section 25 amends section 99 to add a further ground for serving a notice of complaint, namely failure to provide adequately for the welfare of any pupil attending the school.

## **School Boards**

### **Section 26 – Role of School Board in raising standards and improving quality of education**

58. The School Boards (Scotland) Act 1988 identifies the main functions of a School Board as: promoting contact between the school, parents and the community (section 12); taking part in the selection of headteachers and other senior staff (schedule 2); encouraging community use of school premises and, subject to the direction of the education authority, controlling their use outwith school hours (section 14); setting occasional holidays during term time after consultation with the education authority (section 14) and approving the headteacher's plans for use of the budget for the purchase of books and other materials (section 9). Section 26 of the Act amends section 1(2) of the School Boards (Scotland) Act 1988 to require that a School Board exercises its functions with a view to raising standards of education in the school and to support those managing the school to secure improvement in the quality of education provided by the school. In practice this should help focus the School Boards' activities and reaffirm what successful Boards already do.

### **Section 27 – Election to School Board after school ceases to be self-governing**

59. **Section 27** amends section 2A of the School Boards (Scotland) Act 1988, which makes provision as respects elections for members of School Boards, by inserting a new subsection (3A). This provision is consequential on sections 17 to 23 of the Act dealing with abolition of self-governing schools.

### **Section 28 – Vacancies for parent members of School Board**

60. Under section 2 of the School Boards (Scotland) Act 1988 each School Board consists of staff members, co-opted members and parent members, the latter being elected by parents of pupils in attendance at the school. Under sections 2A and 2B, parent members are elected at regular elections (held every two years). In the event of no parents, or not enough parents, being elected at such an election, a by-election is held. If not enough parents are elected at a by-election, the Board may co-opt up to two parent members from amongst the parents of pupils at the school. If a vacancy for a parent member arises in between regular elections, a by-election is held within three months if the Board requests it, or else at the next regular election period (which is between 1 September and 30 November each year). If no parent is elected at such a by-election, the Board may co-opt a parent member (as long as there are no more than two co-opted parent members on the Board at any one time).
61. **Section 28** of the Act amends the existing requirement to hold a by-election to fill parental vacancies on a School Board which arise either following a regular election of parent members, or during members' term of office.
62. Subsection (1) provides that if a vacancy arises during a parent member's term of office, a by-election shall not take place unless 30 parents, or a quarter of the electoral roll, whichever is the smaller number, sign a request for a by-election to fill the casual vacancy within two months of the vacancy being announced. If no request is made, the Board can co-opt a parent member under section 2B(3) of the 1988 Act, as substituted by paragraph 4 of schedule 1 to the Act. The subsection also provides that the education authority will take reasonable steps to notify parents that a vacancy has arisen and the circumstances in which a by-election will be held.
63. In relation to a regular election of parent members, which is held for half the parent members every two years, subsection (2) provides that a by-election shall no longer be held. This means that at a regular election, if not enough parents are elected to fill vacancies for parent members, the Board can go straight to co-opt up to two parent members in terms of section 2A(4) of the 1988 Act, as substituted by paragraph 3 of schedule 1 to the Act.

64. Necessary consequential amendments to the School Boards legislation are included in schedule 1.

### ***Section 29 – Restriction on councillor's membership of School Boards***

65. **Section 29** amends section 5(2) of the 1988 Act to prohibit a local councillor from being a member of any School Board which is within his or her Council's area. At present the prohibition under section 5(2) applies only to councillors whose electoral ward falls wholly or partly within the catchment area of the school. This change has been made to avoid a conflict of interest which might arise if a councillor was both a parent member of a Board and on the Education Committee making decisions related to that school.
66. To help clarify the effect of the amendments made by the Act to the 1988 Act, the main changes have been incorporated into the relevant sections of the 1988 Act for illustrative purposes. This is shown in the annex.

### ***Section 30 – Involvement of School Board in preparing short leet for appointment of headteacher etc.***

67. **Section 30** amends schedule 2 of the 1988 Act (which relates to the appointment of headteachers, deputy headteachers and assistant headteachers), by removing paragraphs 9 to 13 (which relate to the power of the Board to add or delete names on a short leet for headteacher appointments and the production of a short leet for other senior staff appointments), and inserting new paragraphs 9 and 10. These new paragraphs provide for a more streamlined procedure whereby the authority prepares a short leet in consultation with the School Board and the headteacher (if the post is that of deputy headteacher or assistant headteacher).

### ***Section 31 – Delegation of education authority's functions to School Board***

68. **Section 31** repeals paragraphs 2 to 13 of schedule 3 of the 1988 Act. These paragraphs allow a School Board to request the delegation of functions from the education authority and give the Board power (following a ballot of parents) to refer the request to the Scottish Ministers should the authority refuse. The functions that may be delegated are described in section 15 of the 1988 Act. While there remains a right for authorities to delegate functions to Boards if they so wish (under section 15 of the 1988 Act), and in practice they would do so in consultation with the Board, there are now no longer formal powers for the Board to challenge a refusal by the authority of the Board's request for delegation of functions. To date, no Board has successfully challenged a refusal to delegate functions.

## ***Pre-school children***

### ***Section 32 – Provision of education for pre-school children etc.***

69. As currently drafted, section 1(2) of the 1980 Act empowers an education authority to make provision for nursery education for its area, but does not require it to do so. Section 32 of the Act now imposes a duty on the authority in relation to nursery provision, in terms of requiring it to secure the provision of pre-school education for such categories of children as may be prescribed by the Scottish Ministers. In practice, the categories that will be prescribed under this new provision will broadly be 3 and 4 year olds.
70. The policy intention is that authorities should work in partnership with providers in the voluntary and private sectors to ensure that adequate and appropriate provision is made. Specific provision is made in section 35 to enable an authority to contract with third parties for the provision of nursery education that would be paid for by the authority. Effectively, the authority would commission places in private and voluntary pre-school centres to ensure that adequate and appropriate provision was available for all children coming within the prescribed category. Provision would therefore be a mix of local

authority and voluntary/private sector provision, but the exact mix would be determined by the authority on whom the duty to secure provision is imposed in the first place.

71. **Section 32(3)** adds three new subsections after section 1(1) of the 1980 Act. Subsections (1A) and (1B) require local authorities to secure pre-school education for such categories of children and duration as may be identified by the Scottish Ministers by order.
72. Subsection (1C) gives local authorities the power to secure additional provision for all pre-school children beyond the requirements of the pre-school duty – for example – full-time provision for four year olds or provision for two year olds.
73. To help clarify the effect of these provisions, they have been incorporated into section 1 of the 1980 Act for illustrative purposes, as shown in the annex.

### ***Section 33 – Fees***

74. **Section 33(1)** prevents authorities from charging fees in respect of pre-school provision provided under the duty in section 1 of the 1980 Act (as amended by section 32 of this Act).
75. **Section 33(2)** allows authorities to charge for pre-school education where the provision secured goes beyond that required by the statutory duty.
76. **Section 33(4)** adds new subsection (7) to section 3 of the 1980 Act (which sets out exceptions to the general rule that authorities may not charge for school education). This additional subsection prevents a local authority from making use of the general exceptions to the rule against charging for school education where they provide pre-school education under section 1 of the 1980 Act (as amended by section 32 of this Act) either under the duty or the discretionary power. This is to avoid any confusion between this section and section 3 of the 1980 Act.

### ***Section 34 – Guidance to education authorities as respects discharge of certain functions***

77. **Section 34** gives the Scottish Ministers the power to issue guidance to local authorities about their functions in relation to pre-school education. This covers their power under section 33(2) of the Act to charge fees, as well as their pre-school functions under the 1980 Act.

### ***Section 35 – Provision of school education by persons other than education authorities***

78. **Section 35** allows local authorities to secure pre-school provision by entering into arrangements with other persons, for instance private or voluntary pre-school centres. This section gives a statutory base to the pre-school partnership arrangements which involve private and voluntary providers in public-funded pre-school education.

### ***Section 36 – Inspection of establishments other than schools***

79. **Section 36** substitutes a new section 66(1A) of the Education (Scotland) Act 1980. The present section 66(1A) links the power of inspection to the receipt of pre-school grant, which will in due course become redundant. The revised section 66(1A) gives Scottish Ministers the power to require inspection of all establishments that provide publicly funded school education to pre-school children, including those in the private and voluntary sector where there is an arrangement under section 35 of the Act.

### ***Section 37 – Provision of transport etc. by education authority***

80. **Section 37** gives education authorities the power to make arrangements for children receiving publicly-funded pre-school education to receive transport from home to their

pre-school class (whether by providing transport or by offering assistance with transport costs). The discretion in section 37 is absolute and authorities are free, if they choose, to provide no transport.

### ***Section 38 – Admission of children under school age to primary school***

81. **Section 38(1)** requires an education authority to provide primary school education for a child under school age if their parents request it, and if it is appropriate to the aptitude and ability of that child. The authority has a discretion as to the school in which they place the child.

### ***Section 39 – Repeal of Part II of Education (Scotland) Act 1996***

82. **Section 39** repeals Part II of the Education (Scotland) Act 1996, which gave the Scottish Ministers powers to make grants for the education of children under school age. These provisions are the statutory base for the present pre-school grant system and will not be necessary when the funds for this service are re-integrated into general local government resources and the new pre-school duty is brought into force.

### ***Section 40 – Education outwith school***

83. Section 14 of the 1980 Act gives an education authority a discretionary power to educate a pupil elsewhere than at an educational establishment if they are satisfied that by reason of any extraordinary circumstances, the pupil is unable to attend a suitable educational establishment. Section 40 re-enacts that provision in a substituted new section 14 of the 1980 Act as section 14(1)(a). The ambit of that provision is extended to include also circumstances where it would be unreasonable to expect the pupil to attend a suitable educational establishment. In addition, the new section 14 introduces a new statutory duty on education authorities to educate “without undue delay” pupils who are not receiving education in the usual way at an educational establishment.
84. There are 3 categories of pupil covered by this new duty inserted in the re-enacted section 14:
- (i) pupils suffering from prolonged ill-health;
  - (ii) pupils exempted under section 34(1) of the 1980 Act from attending school because they are required to give assistance as carers to ill or infirm members of their families; and
  - (iii) pupils who have been excluded from school by the education authority.
85. In the case of the first 2 categories, the education authority is under a duty to make special arrangements to educate these children away from an educational establishment, which would normally be at home. In the second category, where pupils are caring for a family member, the duty is to make arrangements “in so far as is practicable”. This is to ensure that the arrangements made will fit with the pupil’s caring responsibilities. In the case of excluded children, the duty is without undue delay to find an alternative educational establishment to provide education, failing which to educate them under similar special arrangements to the first 2 categories.

### ***Section 41 – Rights of appeal against exclusion from school***

86. At present, the parent of the pupil, or the pupil where the pupil is a young person, can appeal against exclusions. Section 41 extends the right to appeal to include pupils with legal capacity in terms of the Age of Legal Capacity (Scotland) Act 1991. In effect, it allows pupils under 16, as long as they have legal capacity, to appeal on their own behalf, independently of their parents.

### ***Section 42 – Grants in respect of activities relating to school education***

87. Section 73 of the Education (Scotland) Act 1980 gives the Scottish Ministers power to give grants to fund training and development. However, it does not cover grants to fund projects where there may be a non-education element. This provision would allow slightly greater flexibility in grant giving which may be needed in relation to funding, especially in respect of the early years sector.

### ***Placing requests***

#### ***Section 43 – Placing requests: extent of education authority's duty***

88. The statutory placing request regime contained in sections 28A to 28G of the Education (Scotland) Act 1980 enables a person to make a written request to an authority to place his child at a particular school. That request must be granted unless one of a number of specified grounds of refusal apply. Section 43(1) and (2) of the Act makes it clear that a placing request may not be made for entry to a particular nursery school or class. By virtue of subsection (4), this limitation on the scope of the placing request regime does not apply where a child has a record of special educational needs.
89. In general terms, education authorities will be expected to take some account of parental preferences in the way in which they discharge their duty under section 1(1) and (1A) of the 1980 Act to secure adequate and efficient provision of pre-school education. That may be either at their own hand or in partnership with other providers. In discharging this duty, authorities will continue to be bound by section 28 of the 1980 Act, which requires them to have regard to the general principle that, "so far as compatible with the provision of suitable instruction and training and the avoidance of unreasonable public expenditure, pupils are to be educated in accordance with the wishes of their parents."

#### ***Section 44 – Further provisions as respects placing requests***

90. Subsection (2) amends section 28A(1) of the 1980 Act to the effect that placing requests can be made only for children over school age. Separate provision dealing with parental requests for early entry to primary 1 is made in section 38 of the Act.
91. Subsection (3) empowers Scottish Ministers to issue statutory guidance to education authorities on section 28A(1) of the 1980 Act. Education authorities are not under an absolute duty to comply with the guidance but must have regard to it.
92. Subsection (4) adds two additional grounds on which an authority may refuse a placing request. The first is that granting the request would require the formation of an additional class or the appointment of an additional teacher at a future stage of the child's education at primary school. This reflects the recent introduction of lower maximum class sizes for primaries 1 to 3 than currently apply for primaries 4 to 7. The reconfiguration of classes within primaries 1 to 3 to comply with the reduced maximum size can result in the creation of a whole new class. This gives greater scope to accept placing requests for pupils at this stage of education. It can, however, cause problems at later stages where that spare capacity does not exist. This provision enables an authority to refuse a placing request for primary 1 to 3 in this kind of circumstance.
93. The second additional ground on which an authority may refuse a placing request is if accepting it would mean that the school's maximum capacity would be breached. This could be the case even if the first two grounds for refusing a placing request set out in section 28A(3a) are not met (that placing a child in the specified school would make it necessary for the authority to take an additional teacher into employment or give rise to significant expenditure on extending or otherwise altering the accommodation at or facilities provided in connection with the school).
94. Subsections (5) and (6) relate to authorities' ability to refuse a placing request in order to reserve places at schools for children moving into the catchment area. Subsection

(6) repeals subsections (3B) and (3E) of section 28A, which restrict an authority's ability to reserve places for catchment area children at a school to cases where there is an equivalent school within walking distance. This repeal has the effect of allowing authorities to reserve places on this basis at all schools. In accordance with section 28(3C), which defines "reserved places", authorities can reserve only as many places as are in their opinion reasonably required to accommodate pupils likely to become resident in the catchment area of the school. A consequential amendment is also made to subsection (3A).

95. Subsection (7) applies subsections (3) to (6) (described above) to schedule A2 of the Education (Scotland) Act 1980, which relates to placing requests for recorded children. It also ensures that parents of children with a record of special educational needs may make a placing request for a school or a centre with which the authority has an arrangement for the provision of pre-school education, as well as schools under the direct management of the authority.

## ***The General Teaching Council***

### ***General***

96. Sections 45 to 54 amend the Teaching Council (Scotland) Act 1965 (the "1965 Act") which established the General Teaching Council for Scotland (GTC). To help clarify the effect of the provisions they have been incorporated into the Act for illustrative purposes, as shown in schedule 3 annexed.

### ***Section 45 – Functions of the Council***

97. Section 45 inserts new provisions into the sections of the 1965 Act which deal with the setting up of the GTC and their general functions. It sets out the aims of the Council in statute for the first time, although the Council have had aims of this nature for some time. The aims as expressed in new section 2A(a) and (b) recognise both the GTC's role in relation to standards within the teaching profession and their wider interest in the quality of teaching and learning. The purpose of the insertion of the words "career development" into section 2(3) of the 1965 Act is to make clear that the GTC are able to consider and provide advice on issues relating to teachers' continuing professional development and staff development and review. New section 4A of the 1965 Act allows Scottish Ministers to confer additional functions on the GTC, by order. An example might be executive functions in the area of teachers' continuing professional development, supplementary to the advisory role already added to section 2(3).
98. The 1965 Act currently empowers the GTC to provide advice only to the Scottish Ministers and to teacher education institutions. In practice the Council also provide advice informally to other bodies, particularly education authorities. New section 5A puts that wider advisory role on a statutory basis. New section 5B requires the GTC to supply the new General Teaching Councils for England and Wales (and for Northern Ireland when it is set up) with the information that is necessary or desirable for those Councils to have in carrying out their functions.

### ***Section 46 – Constitution of the Council***

99. Section 46 makes a number of changes to the current membership of the GTC, by amending Schedule 1 to the 1965 Act. The overall size of the Council will increase from 49 to 50 members.

### ***Elected members***

100. At present, 30 members are registered teachers elected by the profession, as follows:
- 11 primary teachers

- 11 secondary teachers
  - 3 teachers in further education (FE) colleges
  - 5 teachers in teacher education institutions (TEIs), 4 of whom must be principals
101. In terms of the amendment made by section 46(2)(a)(i), 26 members will now be registered teachers elected by the profession, in the different categories identified in the provision set out in section 46(2)(b).
102. No stipulation is attached to the level of teacher to be elected from a TEI. The TEIs also have 4 places on the Council as appointed members (see below).
103. Teachers are currently registered with the GTC in one (or more) of the following categories: primary; secondary; FE. This will be unaffected by the extension of the categories, as set out above, for membership and voting purposes.

### **Appointed members**

104. At present there are 15 appointed members, as follows:
- 3 appointed by CoSLA
  - 1 appointed by the boards of management of colleges of further education
  - 3 appointed by the Association of Directors of Education in Scotland
  - 4 appointed by the universities of Scotland
  - 2 appointed by the governing bodies of the central institutions and institutions in the higher education sector (other than universities) which are not teacher education institutions
  - 1 appointed by the Education Committee of the General Assembly of the Church of Scotland
  - 1 appointed by the Scottish Hierarchy of the Roman Catholic Church.
105. The amendment made by section 46(2)(a)(ii) provides for a total of 18 appointed members, in the different categories specified there.

### **Nominated members**

106. At present, 4 members of the Council are nominated by the Scottish Ministers. This power has been used to secure coverage of interests unlikely to be reflected in the elected and appointed members. In exercising this power, Scottish Ministers must have regard to the desirability of the membership of the Council reflecting the interests of persons concerned with teaching those with special educational needs, but this is the only stipulation currently in legislation. The amendment made by section 46(2)(a)(iii) provides that 6 members will be nominated by Scottish Ministers, in accordance with the requirements specified in the new provision set out in section 46(2)(f).
107. [Section 46\(2\)\(c\)\(i\)](#) makes a consequential amendment to the definition of the institutions described in the constitution of the GTC, to take account of the removal of the reference to central institutions as bodies which can appoint members.
108. At present, elected teacher members must be in full-time employment when elected. Section 46(2)(c)(ii) amends the definition of “employed” in the 1965 Act to allow teachers who work for at least 20% of the normal working hours of a full time-teacher to stand for election to the GTC. In relation to continuing membership of the GTC, the amendments made by section 46(4) provide that part-time teachers will be required to vacate office on one of the anniversaries of their election if they have not met the 20% requirement averaged out over the preceding year. Part-time teachers will be required

to provide the GTC, no later than each anniversary of their election, with satisfactory evidence that they are eligible to remain in office for the following year. Section 46(2) (f), (g) and (h) requires the GTC's electoral scheme to provide that only headteachers will be able to vote for candidates standing in the headteacher categories in the GTC elections.

109. **Section 46(3)** repeals the provision in the 1965 Act which prohibits people aged 70 or over from taking up appointment on the GTC.
110. The current members of the GTC have terms of office which run until January 2003. The amendment made by section 46(5) provides transitional arrangements to allow the new composition to be introduced before then and by 31 October 2001 at the latest.
111. **Section 46(6)** makes a consequential amendment, following the removal of the stipulation that 4 elected members must be principals of teacher education institutions. Paragraph 6(1) of the 1965 Act, which it amends, relates to the balance between elected and other members on the Council which must be preserved in any change to the constitution of the Council which Scottish Ministers may make by order under this paragraph.

### ***Section 47 – Further provision as to keeping of register of teachers***

112. The 1965 Act is not prescriptive about the contents of the register and it is left to the GTC to prescribe, in rules, what information it contains. It is proposed that the information held on the register be increased, after consultation by the GTC with teachers and their employers. Section 47(1) enables Scottish Ministers to prescribe in regulations, if necessary, information which should be held on the register and the form and manner in which it should be kept. Before exercising such a power, Scottish Ministers would request the GTC to amend their rules in a particular way. If the Council did not respond to such a request, Scottish Ministers would consult the GTC on draft regulations.
113. The GTC have power to prescribe the information required from applicants for registration. The amendment made by section 47(2)(b) allows the GTC to prescribe new or updated information required from teachers already on the register and requires teachers to provide this information. An example might be current or past employment details or details about postgraduate qualifications. The amendment made by section 47(2)(a) incorporates an existing provision which allows the GTC to remove a teacher's name from the register if he has not paid the prescribed fee, and to re-register the person if he makes an application and pays the fee. That amendment also enables the GTC to include in their rules provision for the removal of a teacher's name from the register if he does not supply information, or a change in information, (as required by new section 6(5C) of the 1965 Act, inserted by section 47(2)(b)), and to re-register the person if he makes an application and pays the fee.

### ***Section 48 – Provision of information by the Council***

114. **Section 48** inserts a new section 9A into the 1965 Act, which places a duty on the GTC to make rules about the availability of information from the register. The GTC's rules will be able to differentiate between the kinds of information to be made available to the public generally and to employers or potential employers of teachers, and the way in which information will be available, e.g. by providing on-line access, by making a copy of the register (or a section of the register) available for inspection, or by responding to a request for information.

### ***Section 49 – Provision of information to Council***

115. New section 9B places a requirement on the employers of registered teachers to notify the GTC about cases of misconduct or incompetence by teachers. The reason for notification is to enable the GTC to consider whether de-registration, or an intermediate

sanction in the case of misconduct, would be appropriate. In the case of incompetence the GTC's locus will be to consider cases where an employer has dismissed a teacher for incompetence, or the teacher has resigned from or left a post after receiving notice of a hearing which could have led to dismissal. The notification requirement on employers reflects this position.

116. In the case of misconduct, it is open to any person to draw a case to the notice of the GTC and there is no stipulation as to the point at which the GTC becomes involved in a case. Under current arrangements, employers of registered teachers involve the GTC in misconduct cases at as early a point as they consider appropriate, and, at the latest, when dismissal takes place or the teacher resigns or retires in circumstances where dismissal was under consideration. The requirement on employers provides for notification where a teacher resigns from or leaves a post, and dismissal for misconduct would have been considered. This would not preclude an employer from notifying the GTC at an earlier stage, e.g. where a teacher had been suspended pending investigation.
117. New section 9C, which requires the employers of registered teachers to provide the GTC with information needed by the Council to enable them to carry out their functions, is most likely to relate to information relevant to the disciplinary functions of the Council.

### ***Section 50 – Professional Conduct Committee and Investigating and Disciplinary Sub-committees***

118. **Section 50** replaces sections 10 and 11 of the 1965 Act, which deal with disciplinary provisions, with new sections 10, 10A, 10B, 10C, 11, 11A and 11B. At present the GTC's disciplinary role relates to cases of misconduct and relevant criminal convictions. They consider and deal with these through their Investigating and Disciplinary Committees. New section 11(2) requires the GTC to consider also cases of teachers dismissed for serious professional incompetence, or who resign after notice of a hearing which could lead to dismissal on that ground.
119. New section 10A provides for the creation of a new Professional Conduct Committee (the "PCC"), to oversee this expanded role. The PCC will have 2 sub-committees: the Investigating Sub-committee (the "ISC") and the Disciplinary Sub-committee (the "DSC"). These sub-committees will essentially assume the current duties of the Investigating and Disciplinary Committees, expanded to take account of incompetence cases.
120. The PCC itself will deal with ill-health cases. Under section 10A(2), the PCC will be able to direct that the name of a registered person who is ill, or has a medical condition, will be removed from the register where it is satisfied that the nature of the illness or condition, and its effect on the person, warrant this. Such consideration by the PCC will take place after notification by a person's employer or former employer, or by the Scottish Ministers, that a registered person is ill or has a medical condition. The reference to Scottish Ministers relates to the interest of the Scottish Public Pensions Agency in cases of premature retirement on health grounds. Provision about the procedure to be followed in such cases is made in new section 10A(4) which applies Schedule 2 to the 1965 Act, with suitable modifications.
121. The effect of new section 10(6) is that the Disciplinary Sub-committee will follow the same procedures as the existing Disciplinary Committee. New section 10B replicates existing provisions, except in the following respects:
  - At the moment, in relation to applicants for registration, the GTC are empowered to conduct investigations into misconduct or convictions in the case of applicants "recommended for registration", i.e. who have completed a teacher education course at an institution in Scotland. This does not include teachers who have trained outwith Scotland and who apply for registration under the GTC's "exceptional admissions" procedure. The GTC does screen such applicants for criminal convictions under its rules for exceptional admission, but new section 10B(1)

(b) (iii) now puts this on a clearer statutory footing. Section 10B(1)(b)(ii) similarly gives the Investigating Sub-committee a remit to consider misconduct or convictions in the case of applicants who fulfil other specific requirements prescribed by the Scottish Ministers (none has in fact been prescribed).

- Section 10B(1)(b) makes clear that that the ISC can take into account convictions and misconduct which have taken place outwith Scotland.
- Under the 1965 Act the Investigating Committee looks into allegations of “serious misconduct” or convictions for a “serious offence” and the Disciplinary Committee judges whether a person is guilty of “infamous conduct in any professional respect” or has been convicted of an offence which “renders him unfit to be registered”. None of these terms is defined in the 1965 Act. Under new section 10B, the ISC will look into any case where it appears that a relevant offence or relevant misconduct may have been committed. Under new section 11(1) the DSC will determine whether that is indeed the case. “Relevant misconduct” and “relevant offence” are defined in new section 10B(3).

122. New section 10C replicates existing provisions and gives the DSC the following duties:

- to consider any cases referred by the ISC;
- to consider applications for re-registration (other than in routine cases involving removal of a name from the register for non-payment of the registration fee or failure to provide information, or where the teacher’s name has been removed from the register on ill-health grounds by the PCC);
- to consider second or subsequent applications for registration from people whose original application was rejected because the DSC (or previously the Disciplinary Committee) decided they had been convicted of a relevant offence or had committed relevant misconduct and issued a direction under section 11(7);
- to look at any applications for registration from teachers whose teaching certificate was withdrawn or suspended on the grounds of misconduct, and not restored, prior to the commencement of the 1965 Act. (Teaching certificates were issued by the Secretary of State before the GTC was established).

123. New section 11 deals with decisions of the DSC, effected through directions, and the range of sanctions available to it. Section 11(1)(a) makes clear that a direction of the DSC against a registered teacher, on the grounds of conviction for a relevant offence, can relate to an offence committed outwith Scotland or before the person became a registered teacher. In practice, offences in the latter category will be relevant only if they come to light after the person has become registered since they will otherwise already have been considered by the ISC and DSC when that person first applied for registration. There is doubt about whether such an offence would be covered by the existing provisions.

124. The 1965 Act allows only the following options in dealing with discipline cases: removal from the register or dismissal of the case. Also, under its procedural rules, the GTC may defer a decision in a case for up to 2 years. Section 11(1), as substituted by section 50 of the Act, provides for additional sanctions in conviction and misconduct cases of conditional registration (e.g. restrictions on age of pupils to be taught) and the recording of a reprimand on the register. Under section 11(4), a person who is subject to a conditional registration order may apply to the PCC to have the condition varied or revoked. Provision about the procedure to be followed in such proceedings is made in section 11(6) which applies Schedule 2 to the 1965 Act, with suitable modifications. The only sanction available in incompetence cases and ill-health cases will be removal from the register – sections 11(2) and 10A(2) respectively.

125. Under new section 11A, the PCC, ISC and DSC will be able to suspend a teacher from the register while a case is under consideration, if there is prima facie evidence that the

outcome of the case might be that the teacher's name will be removed from the register. By virtue of the requirement in the Schools (Scotland) Code 1956 that an education authority employ only registered teachers, an authority would have to dismiss a teacher who was temporarily suspended from the register of the GTC. The Scottish Executive intends to amend the Code to allow authorities to continue to employ teachers while they are suspended from the register. This will mean that a teacher could be suspended from his job with pay as at present, pending the outcome of investigations, and he would not be able to work as a teacher elsewhere. If the ultimate decision is that a teacher's name should not be removed from the register, no indication will be left on the register than the person had been suspended.

126. Under new section 11(9), where an application has been refused because the applicant has been convicted of a relevant offence or has been guilty of relevant misconduct, that person cannot be registered thereafter, other than through a direction from the DSC. The same applies in relation to a person whose name has been removed from the register on grounds of criminal offence, misconduct or incompetence (or who was a certificated teacher whose certificate had been withdrawn and who applied unsuccessfully for registration).
127. Under new section 11B, the GTC has to notify a teacher's employer of the outcome of any case referred to the DSC by the ISC, or considered by the PCC.

### ***Section 51 – Appeals***

128. This section amends section 12 of the 1965 Act, which provides for appeals.
129. In any case where a decision of the DSC or the PCC results in permanent removal of a person's name from the register (subject only to his reapplying), or a person's application for registration or re-registration is refused, the person will have a right of appeal to the Court of Session. This replicates existing provisions.
130. Under the 1965 Act, applications for registration from teachers trained outwith Scotland are considered by the GTC's committee on Exceptional Admission to the Register (EAR). Applicants refused registration can at the moment appeal to the Council against a decision of the EAR committee. New section 12(1) provides a right of appeal to the Court of Session against a decision of the EAR committee. This is partly for consistency with the other cases mentioned above where a person's name is removed from the register or his application is refused. It is also considered appropriate in light of the requirements of Article 6(1) of the European Convention on Human Rights (ECHR). Article 6(1) requires that, in the determination of his civil rights and obligations, a person is entitled to a fair and public hearing by an independent and impartial tribunal established by law. This includes determination of rights to enter or remain in a profession.
131. As in the existing provisions, appeals to the Court of Session will be governed by rules made by the Court by Act of Sederunt. The appeal period is 28 days in these cases.
132. New section 12 (1A) provides a right of appeal to the Council in the case of:
  - decisions by the DSC in relation to:
    - conditional registration;
    - a reprimand being recorded against the person's name in the register;
  - decisions by the PCC in relation to:
    - refusal of an application for variation or revocation of the condition specified in a conditional registration order;
  - decisions by the PCC, DSC or ISC in relation to:

- temporary suspension.

133. Rules made by the GTC to govern the proceedings of appeals to the Council will require to be approved by the Lord President of the Court of Session. The rules will provide for time limits for appeal in these cases. By virtue of substituted section 12(4), decisions made by the PCC, DSC or ISC will take effect only on expiry of the relevant time limit or, if an appeal is made, on dismissal or withdrawal of the appeal.

### ***Section 52 – Amendment of section 17 of the 1965 Act***

134. Section 17(1) of the 1965 Act provides definitions of terms used in the Act. This provision amends the definition of “registered” to include conditionally registered, to take account of the new sanction of conditional registration which will be available to the GTC. For the sake of completeness, it also provides clarification that “registered” includes provisionally registered, although this does not effect any change to the existing position under the Act.

### ***Section 53 – Power of Council to borrow money***

135. **Section 53** substitutes a new paragraph 8 of Schedule 1 to the 1965 Act for the existing one. New paragraph 8(1)(a) replicates an existing provision. Paragraph 8(1)(b) and (2) confer a new power on the GTC to borrow money, with the consent of the Scottish Ministers. This power could, for example, be used by the GTC to obtain a short-term bank overdraft to assist with any cash flow difficulties that might arise because of the timing of payment of registration fees.

### ***Section 54 – Power of Scottish Ministers to require Council to establish committees***

136. Under paragraph 17 of Schedule 1 to the 1965 Act the GTC are empowered to appoint whatever committees they think are necessary, subject to the requirement to have a committee on exceptional admission to the register and now the PCC, DSC and ISC. This discretion will remain but, under new paragraph 16A, Scottish Ministers will be able to stipulate, through regulations, that a committee should be established and what its membership should be. The intention is not to empower Scottish Ministers to identify named individuals as members of committees, but rather to allow them to ensure, if necessary, that a committee has adequate representation of relevant interests.

### ***Section 55 – Abolition of Scottish Joint Negotiating Committee for School Education***

137. The Scottish Joint Negotiating Committee (SJNC) is established under section 91 of the Education (Scotland) Act 1980. It has a remit to negotiate and agree national terms and conditions of service of school teachers employed by education authorities. It is made up of representatives of education authorities (17 members), teacher organisations (19 members) and 2 representatives of the Scottish Ministers who act as observers. By virtue of section 97A(2) of the 1980 Act, SJNC agreements form part of teachers’ contracts of employment and can be changed only by further SJNC agreements.

138. Repeal of the relevant provisions of the 1980 Act removes the statutory basis on which the SJNC operates. It leaves the way open for any new arrangements for determining teachers’ pay and conditions following the report of the Committee of Inquiry into teachers’ professional conditions of service. In the meantime, it does not preclude the establishment of national voluntary collective bargaining arrangements between teacher organisations and local authorities.

139. **Section 55(2)** ensures that current agreements of the SJNC remain in force until superseded by other arrangements.

### ***Sex education and medical matters***

#### ***Section 56 - Guidance to education authorities as to manner of conducting sex education***

140. This section gives the Scottish Ministers the power to issue guidance to education authorities in relation to the manner in which sex education is conducted. If local authorities do not comply with the guidance they may be open to challenge if it was shown that they acted unreasonably in doing so.

#### ***Section 57 – Consent of child to medical procedures***

141. Section 57(2) of the Education (Scotland) Act 1980 empowers an education authority in certain circumstances to require the parent of any pupil at one of their schools to submit the pupil for medical or dental inspection (or to require a 16 or 17 year old at any other educational establishment run by them to submit himself for such inspection). Section 58 of the Act gives education authorities the powers likewise to ensure cleanliness of pupils and young persons. Since the 1980 Act was introduced there have been changes to the age of legal capacity whereby a child under the age of 16 with sufficient understanding to consent to medical or dental treatment has the right to do so. The new section 131A of the Education (Scotland) Act introduced by section 52 ensures that in the case of such a child any inspection or treatment under section 57 or 58 of the 1980 Act can only be carried out with the child's consent.

### ***General***

#### ***Section 59 – Regulations***

142. The regulation-making power conferred by section 59 is similar to that contained in section 2 of the Education (Scotland) Act 1980, in relation to authorities' functions under that Act.

#### ***Section 61 – Short title and commencement***

143. Subsection (2) of this section provides that section 23 (disposal of moveable property owned by a self-governing school) and the repeals of those sections of the Self-Governing Schools etc. (Scotland) Act 1989 under which self-governing status is acquired, come into force on Royal Assent. That subsection also provides a power to bring the other provisions of the Act into force by order.

#### ***Schedule 1 – Amendments of 1988 Act consequential on ending of by-elections for parent members of School Boards***

144. The necessary amendments to the School Boards legislation to give effect to section 28 are included in Schedule 1.
145. Sub-paragraph (a) of paragraph 3 amends section 2A of the 1988 Act (which deals with elections) so as to remove the requirement to hold a by-election following a failed regular election of parent members or in order to fill a casual parental vacancy arising during a member's term of office. It also replaces subsection (4) with a new subsection which allows up to two parent members to be co-opted should the Board have an insufficient number of parent members elected at a regular election. Such co-options have to be made within three months of the election.
146. That sub-paragraph also replaces subsection (5) of section 2A with a new subsection which requires the authority to hold a by-election to fill a casual vacancy, where one is requested under section 28(1) of the Act, within three months of that request.

147. Sub-paragraph (b) of paragraph 3 makes a consequential amendment of section 2A(8), under which it is not necessary to hold a by-election if a parent member resigns within 6 months of the end of his or her term of office.
148. Paragraph 4 makes consequential amendments of section 2B of the 1988 Act dealing with co-option of Board members and removes references to the by-election process. New subsection (3) will allow Boards to co-opt a parent member of the Board in the event of a casual vacancy within three months of the vacancy arising, where no by-election falls to be held. Where a by-election does fall to be held, but it does not produce a new parent member, the Board has three months from the date of the by-election to co-opt instead.
149. Paragraph 5(a) amends section 3 of the 1988 Act (which deals with terms of office of members). It inserts into that section a new subsection (4A) which provides that the term of office of parent members who are co-opted after a regular election will run to the end of the second regular election after the election which gave rise to the co-option (which would be for four years). It also inserts a new section 4B which provides that the term of office of a member co-opted as a result of a casual vacancy shall expire at the end of the next regular election period, i.e. the person co-opted would be a member for up to two years.
150. Paragraph 6(a) repeals section 20(5) of the 1988 Act which provides for a by-election should the regular election process produce insufficient numbers. It also replaces subsection (6) with a new subsection dealing with the circumstances in which a Board is not established, or in the case of an existing Board, is disestablished following an unsuccessful by-election, where held, and a failure of the Board to co-opt.

### ***Schedule 2 – Minor and consequential amendments and repeals***

151. Most of the amendments in paragraph 1 to the Teaching Council (Scotland) Act 1965 are consequential on the changes to the GTC's committee structure made by section 46 of the Act. The amendments in paragraph 2 to the Sex Discrimination Act 1975 and in paragraphs 3(3), (4), (6)(a) and (8) to the Education (Scotland) Act 1980 are consequential on the abolition of self-governing schools.
152. Paragraph 3(6)(b) amends section 57(3) of the 1980 Act which makes it a criminal offence for a person, without reasonable excuse, not to comply with a requirement made by an education authority for the medical or dental inspection of a pupil or young person. The amendment restricts the application of this offence to parents of pupils, to take account of the fact that a young person aged 16 or 17 is entitled to refuse his consent to the inspection and should not therefore be subject to any criminal penalty for doing so. In the case of a pupil whose parent is obliged to submit him for inspection, it would be a reasonable excuse for the parent not to do so where the child was capable of giving his own consent to the inspection but refused to give it.
153. The amendment to section 66(3) of the 1980 Act made by paragraph 3(7) makes it an offence for anyone wilfully to obstruct a person carrying out an inspection of an educational establishment under this section. Unintentional obstruction is no longer an offence.
154. The amendment to section 70 of the 1980 Act by paragraph 3(7A) ensures that the powers available to the Scottish Ministers to enforce education authorities' statutory duties apply also in relation to authorities' duties under or by virtue of Acts of the Scottish Parliament dealing with school education.

### ***Schedule 3 – Further repeals***

155. Most of the repeals in schedule 3 relate to the abolition of self-governing schools.
156. Section 7(2)(c) of the Teaching Council (Scotland) Act 1965 enables the Scottish Ministers to confer functions on the GTC in connection with the provision of education

*These notes relate to the Standards in Scotland's Schools etc. Act 2000 (asp 6)*

and training for teachers. This provision is repealed as no longer necessary, being superseded by a more general power to confer functions on the GTC under new section 4A of the 1965 Act, inserted by section 45(3) of the Act.

**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 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 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 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 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 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 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 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 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 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 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 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 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.

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<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.

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<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 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 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 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 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 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 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 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 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 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 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 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.**

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<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 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 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 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 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 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 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 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 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 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 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 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 construed 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 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>

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**53** Amended by section 46(2)(c) of the Act.  
**54** Repealed by section 46(2)(d) of the Act.  
**55** Words repealed by section 46(2)(e) of the Act.  
**56** Amended by section 46(2)(e) of the Act.  
**57** Words inserted by section 46(2)(f) of the Act.  
**58** 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;**

<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) .....

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<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.