

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

---

## **EXPLANATORY NOTES**

### **THE ACT**

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

#### ***General***

#### ***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 that 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.