

## SCHEDULE 4

Article 18(4)

### Fitness to teach: further provision

#### **GTCS rules on fitness to teach**

1.—(1) The GTCS rules may make provision about the circumstances in which, and the manner in which, an individual's fitness to teach may be investigated.

(2) The GTCS rules may also—

(a) allow the GTCS to—

(i) impose conditions on the registration of an individual in relation to an investigation of the individual's fitness to teach;

(ii) record reprimands on the entry of an individual whose fitness to teach has been investigated;

(b) require the GTCS, if requested to do so by the individual affected, to review any decision—

(i) to act as mentioned in sub sub-paragraph (a), or

(ii) to remove from the register under article 18(2)(b) any individual whose entry in the register is provisional;

(c) provide that such a decision is not to take effect until the period for requesting the review has ended or, as the case may be, the review has been concluded;

(d) make provision about the circumstances, and the manner, in which an individual removed from the register on grounds of being unfit to teach may be re-registered.

(3) The GTCS rules relating to fitness to teach have effect only if approved by the Lord President.

#### **Proceedings**

2.—(1) The GTCS may hold proceedings in respect of—

(a) an investigation of an individual's fitness to teach;

(b) a review carried out in pursuance of paragraph 1(2)(b).

(2) The GTCS rules must set out the procedure, the standard of proof and the rules of evidence which are to apply to such proceedings;

(3) The GTCS rules may specify any exceptional circumstances in which such proceedings are not to be held in public (for example, proceedings relating to individuals whose entry in the register is provisional).

(4) The GTCS may administer oaths or affirmations for the purposes of such proceedings.

(5) The Court of Session may, on an application by any party to such proceedings—

(a) order any person to attend proceedings in order to give oral evidence;

(b) order any person to disclose documents or other evidence to the GTCS;

(c) authorise the taking of evidence from any person or the examination of any documents or other evidence held by any person.

(6) But the Court of Session may not order a person to give any evidence, or to disclose anything, which the person would be entitled to refuse to give or disclose in an action in that court.

#### **Legal assessor**

3.—(1) The GTCS must appoint a legal assessor to advise it on questions of law arising in proceedings held under paragraph 2.

**Draft Legislation:** This is a draft item of legislation. This draft has since been made as a Scottish Statutory Instrument: *The Public Services Reform (General Teaching Council for Scotland) Order 2011 No. 215*

- (2) A legal assessor must be an advocate or solicitor of not less than 10 years' standing.
- (3) A legal assessor—
  - (a) may be appointed generally or for particular proceedings or types of proceeding;
  - (b) is to be remunerated by the GTCS at such rates as it may determine;
  - (c) otherwise holds and vacates office in accordance with the instrument appointing the legal assessor.
- (4) The Lord President may, by statutory instrument, make rules relating to the functions of legal assessors.
- (5) Those rules may, in particular—
  - (a) contain provision for ensuring that every party to proceedings is informed of the legal assessor's advice to the GTCS;
  - (b) require the GTCS to inform every party to proceedings of any case where it does not accept the legal assessor's advice;
  - (c) contain such incidental and supplementary provisions as the Lord President considers expedient.
- (6) The Statutory Instruments Act 1946<sup>(1)</sup> applies to any such statutory instrument as if the instrument had been made by a Minister of the Crown.

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(1) 1946 c.36; relevantly modified by S.I. 1999/1096.