

STANDARDS IN SCOTLAND'S SCHOOLS ETC. ACT 2000

EXPLANATORY NOTES

THE ACT

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

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- 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)

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(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:

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- 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.