

POLICY NOTE

THE REGISTRATION OF INDEPENDENT SCHOOLS (PRESCRIBED PERSON) (SCOTLAND) REGULATIONS 2017

SSI 2017/

1. The above instrument is made in exercise of the powers conferred by section 98A(6) and 133(2D)(a) and (b) of the Education (Scotland) Act 1980.
2. These Regulations are subject to affirmative procedure.

Policy Objective

3. The policy objective of these Regulations is that only a teacher who is registered with the General Teaching Council for Scotland (GTCS) can be appointed as a teacher in an independent school.
4. At present section 98A(5) of Part V of the Education (Scotland) Act 1980 ('the 1980 Act') sets out the circumstances in which Scottish Ministers shall not be satisfied in their consideration of an application to register an independent school. This includes that any teacher or proposed teacher in such a school is not a proper person if they are, by virtue of Part V, disqualified from being a teacher, is disqualified from working with children or is a prescribed person. Section 98A(6) of the 1980 Act provides for the Scottish Ministers to make regulations prescribing a class of persons as prescribed persons. Section 98A(6) was inserted into the 1980 Act by the School Education (Ministerial Powers and Independent School) (Scotland) Act 2004, with the policy intention of introducing compulsory GTCS registration for all teachers in independent schools.
5. The provisions of the 1980 Act did not include a power to allow transitional arrangements to be made when making regulations under section 98A(6). Discussions with the sector during the development of the regulations indicated that while it is anticipated that some teachers will meet the required standards there will be varying degrees of actions required by others to meet the standards. This may require the GTCS to grant provisional registration which would provide for a 3 year period for compliance with the standards. It therefore seemed reasonable to align the transitional provisions in the regulations with the GTCS practice. An amendment was brought forward through section 26 of the Education (Scotland) Act 2016. This provision was commenced on 1 January 2017.
6. There is currently no requirement for teachers in the independent sector to be GTCS registered although this has been encouraged by both the GTCS and the Scottish Council of Independent Schools as an alternative to introducing regulations under 98A(6) of the 1980 Act. At September 2016 there were 4017 teachers in independent schools in Scotland of which approximately 750 were not GTCS registered.
7. These Regulations provide that from 1 October 2017 **all** teachers employed in independent schools in Scotland will require to be GTCS registered and they include transitional arrangements to allow for any teacher employed prior to 1 October 2017 who is not GTCS registered to do so by 1 October 2020. These Regulations allow the Scottish

Ministers to ensure that any teacher or proposed teacher in an independent school in Scotland will have to be GTCS registered to enable them to be satisfied in respect of an application to register a new school.

8. Regulation 2 of these Regulations prescribes a class of persons under section 98A(6) of the 1980 Act for the purposes of Part V (Independent Schools) of that Act as any person who is not a registered teacher. A registered teacher is defined as a teacher whose particulars are recorded in the register maintained by the GTCS.
9. Regulation 3 of these Regulations makes transitory provision for existing teachers at existing independent schools. The requirement to register with the GTCS for Scotland for an existing teacher at an existing independent schools will take effect on 1 October 2020.
10. Regulation 4 of these Regulations makes transitory provision where an application has been made to register a school as an independent school before 1 October 2017 and the application is granted on or after 1 October 2017 and before 1 April 2018. Where such an application includes the full name and date of birth of a person as a teacher or proposed teacher in the school, the requirement to registered with the GTCS for that teacher or proposed teacher will take effect 3 years from the date of registration of that school.
11. If an independent school were to employ a teacher who is not a registered teacher after the coming into force of these Regulations (1 October 2017), Scottish Ministers could serve a notice of complaint under section 99 (Complaints) of the 1980 Act as the registered school would be objectionable upon the ground - set out in section 99(1A)(h)(iii) of the 1980 Act - that a teacher in the school is a prescribed person.

Consultation

12. A public consultation took place from 20 March to 1 May 2017. Thirteen responses were received to this with the majority of respondents agreeing with the draft Regulations.
13. There were some minor concerns that were raised by respondents in the margins of the consultation including –
 - The ability for current teachers to meet the registration criteria set by the GTCS specifically those who teach subjects not recognised by the GTCS;
 - The financial implication on the sector;
 - Concerns surrounding the process after the regulations come into force;
 - The ability to attract new teachers to the sector.
14. No amendments have been made to the Regulations following the public consultation.

Financial Effects

15. There will be no financial impact to the Scottish Government.
16. There will be financial implications for the sector. The costs of introducing this legislation will primarily fall upon individual teachers. The total cost of registering with GTCS as a teacher qualified in Scotland is currently £124. This reduces to £83 if the teacher is already a member of the PVG scheme as only a short scheme check will be

required. There could be some financial impact on independent schools in respect of releasing staff for training and/or supporting their staff to reach the required standard for GTCS registration however, this would be on a school by school basis. The 3 year transitional period will provide teachers and schools with the opportunity to plan for any training and associated costs.

Scottish Government
Learning Directorate
9th May 2017