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6 September 2010

Interested Parties

CONSULTATION ON THE DRAFT PUBLIC SERVICES REFORM (GENERAL TEACHING COUNCIL FOR SCOTLAND) ORDER 2011

This consultation document invites comments on the proposed draft Public Services Reform (General Teaching Council for Scotland) Order 2011 which will underpin the work of the independent General Teaching Council for Scotland (“GTCS”). You will be aware of the Scottish Government’s plans to make the GTCS a fully independent, self-regulating, professional body. Last year we consulted on the role and governance arrangements for the independent Council and in February of this year we published our plans in more detail. The proposed draft Order is to be made using the powers contained in the Public Services Reform (Scotland) Act 2010 (“the 2010 Act”). The 2010 Act requires formal consultation on the proposed draft Order and this document invites views on that draft. As part of that formal consultation, the 2010 Act requires the Scottish Ministers to lay a copy of the proposed draft Order and its proposed explanatory document before the Scottish Parliament.

The consultation period runs from now until 22 November 2010 and we would be grateful to receive your comments. If you would like to discuss the Order and the consultation process in more detail please contact David Roy on David.Roy@scotland.gsi.gov.uk (Tel 0131 244 4925).

Yours sincerely,



Michael Kellet
Schools: People and Places Division

**CONSULTATION ON THE DRAFT
PUBLIC SERVICES REFORM
(GENERAL TEACHING COUNCIL
FOR SCOTLAND) ORDER 2011**

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CHAPTER 1: INTRODUCTION

1. The General Teaching Council for Scotland (GTCS) is the regulatory body for the teaching profession in Scotland. This consultation document invites comments on the draft Public Services Reform (General Teaching Council for Scotland) Order 2011 ("the draft Order") being made under the Public Services Reform (Scotland) Act 2010 ("the 2010 Act"). The Order provides a revised statutory base for the GTCS.

2. In January 2008, the First Minister announced that the GTCS would be established as a "self-regulating, profession-led body, along the lines of the General Medical Council". To make the proposed changes to the constitution of the GTCS, the Scottish Government is now bringing forward legislation under the 2010 Act. Subject to satisfactory progress through Parliament, the draft Order will repeal the Teaching Council (Scotland) Act 1965 which founded the GTCS and introduce new legislation supporting an independent GTCS.

3. The Order making power in section 14 of the 2010 Act is subject to a super affirmative procedure. That procedure includes a formal consultation process. As part of that process, a copy of the proposed draft Order and its proposed explanatory document are laid before the Scottish Parliament. At a later stage, when consultation responses have been taken into account, the draft Order is then laid for approval by resolution of the Parliament. The purpose of this consultation is to give stakeholders an opportunity to comment on the draft proposed Order which accompanies this document.

4. This package also contains the draft explanatory document in Annex A. There are a number of preconditions set in the 2010 Act that have to be met when the Scottish Ministers wish to make an Order under section 14. This document explains how the Scottish Ministers believe the preconditions are met. We are not formally consulting on this document but it is included here for completeness and to meet the requirements of the 2010 Act.

5. Details of how to respond to this consultation are located in Chapter 3. **Responses are requested no later than 22 November 2010.**

CHAPTER 2: EXPLANATION OF KEY PROVISIONS

COMMENTARY ON THE DRAFT PUBLIC SERVICES REFORM (GENERAL TEACHING COUNCIL FOR SCOTLAND) ORDER 2011

Background

1. The draft Order repeals the Teaching Scotland Council (Scotland) Act 1965 (“the 1965 Act”) and related legislation which founded the GTCS. However it rewrites and restates many of the provisions from the 1965 Act as well as introducing a number of new provisions not covered in the 1965 Act. The overarching policy objective behind the introduction of the draft Order is to improve the exercise of public functions by making the GTCS an independent, self-regulating, professional body for teachers working in Scotland. The draft Order aims to implement the proposed way forward for the Council as set out in the Scottish Government response to the consultation on the future status of the GTCS published on 25 February 2010.

<http://www.scotland.gov.uk/Publications/2010/02/23133936/0>

2. In a similar way to the 1965 Act, the draft Order sets the aims and functions of the Council and sets broad parameters in which it can operate. It also sets out the governance arrangements for Council including its size and composition. Unlike the 1965 Act the draft Order aims to give the GTCS as much flexibility as possible in the way it discharges its functions. For example, the Council’s current committee structure is, to a certain degree, governed by provisions in the 1965 Act. The draft Order allows the Council to develop its own committee structure and similarly allows for greater flexibility in terms of the teacher election process, financial control and in considering opening new parts of the Council’s register.

Key Provisions

3. While many of the provisions in the draft Order have been substantially restated as a result of being carried over from the 1965 Act, there are a number of provisions that are either new, or have been significantly amended and these are discussed in more detail below. Clearly all provisions in the draft Order are important and we would welcome comments at this stage on any of part of the draft.

Draft Article 6 – General Functions of GTCS

4. The functions of the Council have been largely carried over from the 1965 Act. Possibly the most significant change to the general functions is that the draft Order makes it clear that the Council’s role in relation to the maintenance and development of teaching standards for school teachers includes the management of the suite of current, and the development of future, teaching standards.

Draft Article 20 – Registration Fees

5. This provision allows the GTCS to charge fees in relation to registration. As a consequence the General Teaching Council (Deduction of Fees for Renewal of Registration) (Scotland) Regulations 1971 which currently make provision about registration fees will be repealed. The effect of this change is that the Council will be able to specify arrangements requiring teachers' employers to deduct the registration fee from the salary of their staff administratively rather than by way of legislation.

Draft Article 26 – Register of Other Education Professionals

6. This article allows the Council to open new parts of the register thereby allowing the registration of other education professionals not currently covered by the work of the GTCS. In doing so, as with all their functions, the Council is bound by its aim to “contribute to improving the quality of teaching and learning”. Draft article 26 also requires the Council to consult widely before opening new parts of the register. It should be noted that this provision does not allow the Council to make registration mandatory for any new groups subject to new parts of the register. In the case of teachers, the Requirements for Teachers (Scotland) Regulations 2005 make registration mandatory for those working in state schools. The Scottish Government intends to retain the separation between the management of the register, including opening new parts, and the requirement for groups to be registered. The GTCS could not therefore compel new groups to register.

Draft Articles 29 and 30 – Teaching Qualifications

7. These articles put in place the Scottish Government proposal that the Council should play a lead role in setting entry requirements and approving courses of initial teacher education for the primary and secondary school sectors. The status quo in respect of entry requirements and approvals for teacher education for the further education sector is effectively retained in draft article 30.

Draft Article 31 – Re-accreditation

8. This article places the Council under a duty to bring forward a scheme by which it will keep itself informed as to the standards of education and training of registered teachers and the Council is given power to impose a system of re-accreditation as part of that scheme. It provides wide powers that will allow the Council to develop and manage the system as it sees fit. As with many of the Council's powers the Council must consult with their stakeholders before making or varying rules related to this process.

Draft Schedule 2 – GTCS Membership

9. Schedule 2 sets out the composition of the Council as proposed in the Scottish Government's response to last year's consultation. It requires the Council to make and publish a teacher election scheme and an appointments

scheme for members representing the public interest. The schedule also sets the term of office for members, requires the Council to make a scheme for the removal, disqualification and replacement of members and includes a power for the Scottish Ministers to amend the Schedule by Order (subject to approval by resolution of the Parliament).

10. While the Council will act as an independent body, this power is necessary to take account of any future changes that may need to be made to the constitution of the Council. For example if any of the organisations listed in paragraph 3 were to be renamed, the power would need to be used to reflect that change of name. In using this power the Scottish Ministers would be required to consult with GTCS and the Order would be subject to the affirmative procedure in the Scottish Parliament. The Scottish Government would like to highlight that the inclusion of this Order making power is not intended to undermine the Council's independent status.

11. Stakeholders may wish to note that paragraph 6 provides for 18 members of the first independent Council to serve shortened terms of membership. This will allow the membership of the GTCS to be rotated every two years and will help to ensure continuity while regularly refreshing the membership of the Council. This approach meets with the agreed policy of the GTCS itself.

Draft Schedule 3 – Further provision relating to the GTCS

12. Much of Schedule 3 is self-explanatory. It is however worth highlighting paragraphs 3, 7 and 8. Paragraph 3 gives the Council the power to develop its own committee structure. This includes allowing the Council to co-opt non-Council members onto committees as the Council sees fit. Paragraph 7 restates long-standing audit and accounting requirements. The 2010 Act itself places the GTCS, as a body listed in Schedule 8 to that Act, under a duty to publish specific details of its financial activities. Paragraph 8 makes it clear that the GTCS has the flexibility to pay remuneration and allowances to Council members if it so wishes.

Draft Schedule 4 – Fitness to Teach

13. Schedule 4 sets out the Council's responsibilities and powers in relation to a teacher's fitness to practice. We believe the draft Schedule 4 presents the Council's powers in relation to competence and conduct in a much clearer fashion than the 1965 Act as amended. It is worth noting that the schedule is titled "Fitness to Teach" as opposed to "professional conduct" or "disciplinary powers" as we believe it better encompasses the role of the Council in relation to conduct and competence cases. We would welcome any comments as to an alternative title to cover this area of GTCS work.

14. While most of Schedule 4 is self-explanatory it is worth noting that the draft Order expands the disposal routes available to the Council when considering competence cases. When considering competence cases the GTCS currently only has two disposal routes available to it. These are to

remove the teacher from the register or take no action. The Scottish Government believes the Council should also be able to attach conditions to a teacher's ongoing registration thereby giving more flexibility to the Council in the way it handles competence cases. This added flexibility may be useful in a case where the Council believes that a teacher is capable of meeting standards if certain steps are taken. Continued registration would then be allowed on the basis that this was done. The provision in paragraph 2 allows for this, and the issue of a reprimand. The Council's rules on fitness to teach require to be approved by the Lord President of the Court of Session.

15. In relation to this point stakeholders may wish to note that article 25 places a duty on employers to refer a competence case to the GTCS where an individual resigns/abandons their post and they would or might have dismissed the individual on such grounds. This is slightly different to the requirement as set under the 1965 Act where the employer is under a duty to notify the Council if the teacher is dismissed or if a hearing is to be held. This amendment will help close the loophole that currently exists where if a teacher is subject to the competency procedure, and resigns before a disciplinary hearing is set (effectively the final step in the process), they can avoid having their case considered by the GTCS and can continue to move from employer to employer.

16. These issues did not form part of the earlier consultation on the future status of the Council and we would welcome comments on this proposal.

Commencement Provisions

17. Schedule 1 of the draft Order contains provision as to when its provisions will come into force. This will be a two-stage process by which a number of provisions will be brought into force as soon as possible after the Order has completed its Parliamentary process and this is planned for April 2011. The second stage of commencement is proposed for April 2012 at which point the new constitution of the Council will be in place and the Council will be formally an independent body.

18. The first stage will allow the Council to run processes and develop rules that will lead to the formation of the first independent Council. This will include commencement of:

- Schedule 2, Paragraph 2 – this will allow GTCS to run election and appointments schemes ensuring that the first independent Council can be formed.
- Article 15 – this will allow GTCS to make rules reflecting the new fitness to teach proceedings being introduced by the Order.
- Schedule 3, Paragraph 3 – this will allow GTCS to make rules about the new committee structure before it takes shape in April 2012.

19. The second stage will take place in April 2012 at which point all remaining provisions will be commenced.

Timetable

20. Section 26(2)(a)(ii) of the 2010 Act provides that a copy of the proposed explanatory document has to be laid before the Parliament as part of the consultation process under section 26, along with a copy of the proposed draft order. The timetable below shows the proposed steps that will lead to the full commencement of the Order.

Event	Dates
Introduction of draft Order to the Scottish Parliament for consideration	6 September – 22 November 2010
Formal Consultation	6 September – 22 November 2010
Consideration of comments / If necessary further circulation of the draft	November 2010 – January 2011
Draft Order laid in the Scottish Parliament for approval	January – March 2011
First part of the Order commenced*	April 2011
First fully independent Council formed and all functions in place	April 2012

*Please note that these dates, apart from those representing the current consultation, are estimates and are subject to change. They are also, of course, subject to approval of the draft Order by resolution of the Parliament. We do not however expect to significantly deviate from this timetable.

CHAPTER 3: Responding to the Consultation

3.1 How to respond

We are inviting responses to this consultation by **22 November 2010**.

Please send any comments you may have, along with the completed Respondent Information Form to Leanne Gulisano at Leanne.Gulisano@scotland.gsi.gov.uk.

Alternatively respondents may send comments to:

*Leanne Gulisano
Schools: People and Places Division
Scottish Government
2A South, Victoria Quay
Edinburgh
EH6 6QQ*

3.2 The Scottish Government consultation process and Respondent Information Form

Consultation is an essential and important aspect of Scottish Government working methods. Given the wide-ranging areas of work of the Scottish Government, there are many varied types of consultation. However, in general, Scottish Government consultation exercises aim to provide opportunities for all those who wish to express their opinions on a proposed area of work to do so in ways which will inform and enhance that work.

The Scottish Government encourages consultation that is thorough, effective and appropriate to the issue under consideration and the nature of the target audience. Consultation exercises take account of a wide range of factors, and no two exercises are likely to be the same.

Typically Scottish Government consultations involve a written paper inviting answers to specific questions or more general views about the material presented. Written papers are distributed to organisations and individuals with an interest in the issue, and they are also placed on the Scottish Government web site enabling a wider audience to access the paper and submit their responses. Consultation exercises may also involve seeking views in a number of different ways, such as through public meetings, focus groups or questionnaire exercises. Copies of all the written responses received to a consultation exercise (except those where the individual or organisation requested confidentiality) are placed in the Scottish Government library at Saughton House, Edinburgh (K Spur, Saughton House, Broomhouse Drive, Edinburgh EH11 3XD, telephone 0131 244 4565).

All Scottish Government consultation papers and related publications (eg, analysis of response reports) can be accessed at: Scottish Government consultations (<http://www.scotland.gov.uk/consultations>)

The views and suggestions detailed in consultation responses are analysed and used as part of the decision making process, along with a range of other available information and evidence. Depending on the nature of the consultation exercise the responses received may:

- indicate the need for policy development or review
- inform the development of a particular policy
- help decisions to be made between alternative policy proposals
- be used to finalise legislation before it is implemented

Final decisions on the issues under consideration will also take account of a range of other factors, including other available information and research evidence.

While details of particular circumstances described in a response to a consultation exercise may usefully inform the policy process, consultation exercises cannot address individual concerns and comments, which should be directed to the relevant public body.

RESPONDENT INFORMATION FORM

Please Note That This Form **Must** Be Returned With Your Response To Ensure That We Handle Your Response Appropriately

1. Name/Organisation

Organisation Name

Title Mr Ms Mrs Miss Dr Please tick as appropriate

Surname

Forename

2. Postal Address

<input type="text"/>		
<input type="text"/>		
<input type="text"/>		
<input type="text"/>		
Postcode	Phone	Email

3. Permissions

I am responding as...

Individual

/

Group/Organisation

Please tick as appropriate

(a) Do you agree to your response being made available to the public (in Scottish Government library and/or on the Scottish Government web site)?

Please tick as appropriate Yes No

(b) Where confidentiality is not requested, we will make your responses available to the public on the following basis

Please tick ONE of the following boxes

Yes, make my response, name and address all available

or

Yes, make my response available, but not my name and address

or

Yes, make my response and name available, but not my address

(c) The name and address of your organisation **will be** made available to the public (in the Scottish Government library and/or on the Scottish Government web site).

Are you content for your **response** to be made available?

Please tick as appropriate Yes No

(d) We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

Please tick as appropriate Yes No

Proposed Explanatory Document laid before the Scottish Parliament under section 26(2)(a)(ii) of the Public Services Reform (Scotland) Act 2010 for the purposes of consultation required by section 26(1) of that Act.

ANNEX A: EXPLANATORY DOCUMENT

THE PUBLIC SERVICES REFORM (GENERAL TEACHING COUNCIL FOR SCOTLAND) ORDER 2011

EXPLANATORY DOCUMENT

CONTENTS

- Chapter 1 Introduction
- Chapter 2 Background to the Order
- Chapter 3 Requirements of the Public Services Reform (Scotland) Act 2010 including preconditions under section 16

CHAPTER 1: INTRODUCTION

1.1 This proposed explanatory document is laid before the Scottish Parliament in accordance with section 26(2)(a)(ii) of the Public Services Reform (Scotland) Act 2010 (“the 2010 Act”) together with a copy of the proposed draft Public Services Reform (General Teaching Council for Scotland) Order 2011 (“the draft Order”) which the Scottish Ministers propose to make under section 14 of the 2010 Act.

1.2 The overarching purpose of the draft Order is to improve the exercise of public functions. At present the GTCS is classed as an advisory Non-Departmental Public Body whose role in regulating the teaching profession in Scotland is governed by the Teaching Council (Scotland) Act 1965 (“the 1965 Act”). Effective ongoing regulation of teaching in Scotland will be supported by making the General Teaching Council for Scotland ‘the GTCS’ an independent body that is able to carry out its functions without recourse to Scottish Ministers. Public functions are improved by amending and updating the governance arrangements for the GTCS, slightly expanding its responsibilities and removing any unnecessary restrictions on how GTCS organises its affairs. Both the 1965 Act and the Teaching Council (Scotland) Act 1971 (“the 1971 Act”) will be repealed and replaced by the draft Order. These changes are designed to ensure that the GTCS becomes an independent, self-regulating professional body while retaining an important role in Scottish education. The draft Order also aims to ensure the independent GTCS is supported by appropriate functions and modern governance arrangements.

1.3 The proposed Explanatory Document is arranged as follows:

- Chapter 2 sets out the background and provides an overview of the proposals.
- Chapter 3 explains how the requirements of sections 16 (preconditions) and 27 (explanatory document) of the 2010 Act are met.

CHAPTER 2: BACKGROUND TO THE DRAFT ORDER

THE GENERAL TEACHING GTCS FOR SCOTLAND

2.1 The GTCS is the regulatory body for the teaching profession in Scotland. The GTCS was the first Teaching Council in the United Kingdom and one of the first Teaching Councils in the world. It was established by the 1965 Act. In continuing to ensure that an effective and well trained teaching profession is in place in Scotland's schools, the GTCS makes a crucial contribution to Scottish education.

2.2 The GTCS is wholly self-funded by the registration fees that teachers pay on an annual basis. Unlike most other Non-Departmental Public Bodies ('NDPBs') the GTCS receives no additional funding from the Scottish Government.

CURRENT GOVERNANCE ARRANGEMENTS

2.3 The GTCS is currently an advisory NDPB whose governance arrangements and functions are set by the 1965 Act as amended¹. The GTCS has 50 members 26 of which are registered teachers, 18 are appointed by key bodies that have an interest the work of the GTCS and 6 are appointed by Scottish Ministers to represent aspects of public interest.

2.4 The core functions of the GTCS as set by the 1965 Act are:

- to maintain a register of those entitled to teach;
- to keep under review the standards of education, training and fitness to teach of persons entering the teaching profession and to maintain and enhance the professional standards;
- to keep itself informed of the education and professional preparation of teachers in teacher education institutions, and to review the content and arrangement of, and to accredit, initial teacher education programmes;
- to determine whether registration is to be refused or withdrawn on grounds of professional conduct or withdrawn on grounds of professional competence; and
- to make recommendations to Scottish Ministers on the supply of teachers and teacher standards.

REASON FOR REFORM

2.5 In January 2008 the First Minister announced that the GTCS would be established as a "self-regulating, profession-led body, along the lines of the General Medical Council". This statement reflects the view that the GTCS is

¹ The 1965 Act was substantially amended by the Standards in Scotland's Schools etc Act 2000.

an important body within Scottish education and that it performs its functions to a high standard.

2.6 The overarching policy objective behind the introduction of the draft Order is to improve the exercise of public functions by making the GTCS an independent, self-regulating, professional body for teachers working in Scotland which is more agile and has more flexibility in the way it operates. The move away from being an advisory NDPB to a fully independent body has provided an opportunity to consider the responsibilities of the GTCS and the way in which these responsibilities are delivered.

2.7 The Scottish Government believes that the constitution of the GTCS should be revised at this point to ensure that the GTCS has a suitable legislative basis for continuing its work in an era when it will for the first time operate independently of the Scottish Ministers. With this in mind the draft Order gives the GTCS a revised membership structure which reduces the size of the GTCS and changes the balance of its members. Reducing the size of the GTCS will allow for a more concentrated strategic focus while encouraging more dynamic interaction between Council members. Amending the make-up of the GTCS will help reflect the wide-range of groups and individuals who have an interest in the work of the GTCS.

2.8 The Order also slightly expands the functions of the GTCS and provides a constitution that allows for an increased level of flexibility in the way it carries out its role. Expanding the functions is appropriate as the Order reflects the current situation by which Scottish Ministers take a formal lead in areas such as the approval of courses of initial teacher education, but the GTCS undertake the vast majority of the work to which this relates. Other functions such as the introduction of a system of re-accreditation are appropriately being given to the GTCS as it is well placed, as the regulatory body for teaching in Scotland, to take on this role. The 1965 Act is restrictive in that it strictly governs the way in which the GTCS carries out its role. For example, it requires the Council to put in place elements of its committee structure. Therefore it is important that the draft Order increases the level of flexibility in the way the GTCS operates commensurate with the GTCS' status as an independent body.

CONSULTATION

2.9 The role and governance arrangements for the independent GTCS were the subject of a Scottish Government consultation that took place between April and June 2009. 223 responses were received and these were taken into account in preparing the Analysis of the Consultation and Scottish Government Response which was published in February 2010 setting out the proposed way forward for the independent GTCS.

2.10 This explanatory document will be amended following the statutory consultation required by section 26 of the 2010 Act.

OVERVIEW OF PROPOSALS

2.11 The draft Order repeals both the 1965 Act and the 1971 Act along with a number of pieces of secondary legislation related to the GTCS. The reforms take account of wider changes to the governance of other UK regulatory bodies and are intended to remove restrictions and administrative burdens affecting the operation of the GTCS.

2.12 The draft Order reduces the number of members of the GTCS, changes the balance of its membership, and gives the GTCS greater flexibility in the way in which the GTCS formulates its committee structure. The responsibilities of the GTCS will be extended to include:

- entry requirements to courses of initial teacher education;
- the approval of courses of initial teacher education; and
- current and future Teaching Standards.

2.13 The draft Order also:

- strengthens the GTCS' powers in relation to teachers who may be subject to professional conduct/competence processes;
- makes it clear that new parts of the register can be opened for other educational professionals; and
- places the GTCS under a duty to introduce a system of re-accreditation for Scotland's teachers.

TIMETABLE

2.14 Section 26(2)(a)(ii) of the 2010 Act provides that a copy of the proposed explanatory document has to be laid before the Parliament as part of the consultation process under section 26, along with a copy of the proposed draft Order. The timetable below shows the steps that will lead to the full commencement of the Order.

Event	Dates
Introduction of draft Order to the Scottish Parliament for consideration	6 September – 22 November 2010
Formal Consultation	6 September – 22 November 2010
Consideration of comments / If necessary further circulation of the draft	November 2010 – January 2011
Draft Order laid in the Scottish Parliament for approval	January – March 2011
First part of the Order commenced*	April 2011
First fully independent GTCS formed and all functions in place	April 2012

* This will allow GTCS to develop and seek approval for new disciplinary rules and the new election/appointments procedures in advance of the new GTCS forming in April 2012.

CHAPTER 3: REQUIREMENTS OF THE PUBLIC SERVICES REFORM (SCOTLAND) ACT 2010

INTRODUCTION

3.1 Section 26(2)(a)(ii) of the 2010 Act provides that a copy of the proposed explanatory document has to be laid before the Parliament as part of the consultation process under section 26, along with a copy of the proposed draft order.

3.2 The proposed explanatory document laid before the Parliament under section 26 must contain the details set out in section 27 of the 2010 Act, with the exception of the details required by section 27(1)(f), which relate to the consultation undertaken under section 26. The explanatory document must accordingly address what is required by the various elements of section 27. In respect of provision which does not merely restate an enactment, the details required by section 27 include an explanation of why the Scottish Ministers consider that the preconditions specified in section 16(2) of the 2010 Act, where relevant, are satisfied in relation to that provision.

3.3 Although the draft Order restates a number of earlier provisions (some of which are modified by the draft Order) the Order as a whole does not 'merely restate an enactment' in terms of section 16(1) of the 2010 Act and accordingly the conditions of section 16(2) require to be satisfied. As it is only the relevant preconditions of section 16(2) which require to be satisfied, in this analysis for the purposes of sections 27 and 16(2) only those preconditions which the Scottish Ministers consider to be relevant are addressed.

3.4 Subsequent to the consultation under section 26, the explanatory document has to be laid before the Parliament along with the draft order (section 25(2)(b)). At this stage, the explanatory document will have to include the details required by section 27(1)(f), which relate to the consultation undertaken under section 26.

3.5 This chapter will accordingly be amended and expanded after the consultation required by section 26 of the 2010 Act has been completed.

PRECONDITIONS

Powers under which the draft Order is being made

3.6 Provision in the draft order is made under section 14 of the 2010 Act.

Improvement in the exercise of public functions

3.7 *The Scottish Ministers consider that, for the following reasons, the provision made by the order would improve the exercise of public functions (section 27(1)(c)(ii) of the 2010 Act):*

3.8 The draft Order gives the GTCS a revised and improved constitution which will provide a better basis for the GTCS' ongoing work. The current constitution of the GTCS as set by the 1965 Act requires to be changed as it is overly prescriptive in its nature and does not provide the Council with a clear set of functions appropriate for the independent body regulating teaching in Scotland. Public functions are therefore improved in a number of ways. These include:

- Providing the GTCS, as the independent, profession-led regulatory body for teaching in Scotland with a statutory base which allows for greater flexibility in the way it carries out its work. The GTCS will have full control over its own committee structure and will be able to populate committees with a mixture of members and co-opted non-members as necessary. Many of the current legislative requirements which the GTCS are required to follow (for example the teacher election scheme being formulated in secondary legislation) are highly restrictive and will be removed so that the GTCS will be able to take forward this work under its own rules. Providing the GTCS with a more flexible statutory base is necessary as it will allow the independent GTCS to manage its own business as it sees fit, directing its resources (both in terms of GTCS members and staff) as appropriate rather than being required to manage sections of its business as required by the 1965 Act.
- Amending the GTCS' powers in relation to teacher competence so that the GTCS has more options available to it when considering taking action against incompetent teachers. Currently, the GTCS can only remove a teacher from the register or take no action. The Order allows the GTCS to consider attaching conditions to a teacher's ongoing registration or issuing a reprimand. The Order also requires employers to notify the GTCS when a teacher has resigned from their post and they would have considered taking disciplinary action against them. Currently, the employers are only required to make a referral to the GTCS on competence grounds if a teacher is dismissed or they have resigned and a hearing date has been set. These changes will ensure the GTCS can take appropriate action against teachers proven to be incompetent and in turn will help ensure that Scotland retains a good quality teaching workforce.
- Requiring the GTCS to introduce a re-accreditation scheme through which registered teachers will be required to take steps to keep their professional skills up to date on a regular basis. This proposal will help ensure that Scotland's teachers continuously develop and will ensure that Scotland retains a good quality teaching workforce as the educational landscape changes. The Scottish Ministers consider that the development and subsequent management of a system of re-accreditation fits well with the

GTCS over-arching responsibility to ensure that the teaching profession provides the highest possible quality of education for children in Scotland's schools. In addition an increased focus on the development of skills will help embed a culture of ongoing professional development throughout teaching.

- Attributing appropriate functions to the GTCS which clarify and expand its role commensurate with the role of the self-regulating body for teaching in Scotland. Functions have been expanded to include giving the GTCS direct oversight of the maintenance and development of teaching standards for the school sector and direct oversight of courses leading to primary and secondary qualifications. The GTCS currently take a lead role on this work in conjunction with the Scottish Government and it is appropriate that they have a clear responsibility to lead in this area. It is logical that an independent GTCS focussed on the development and maintenance of teacher's skills should have responsibility to lead on work that relates to teaching standards and the draft Order allows for this.

3.9 The draft Order reduces the size of the GTCS and refreshes its membership while increasing the number of seats set aside for members representing the public interests. Reducing the size of the GTCS will allow the GTCS to adopt a more concentrated strategic focus. It will also encourage more dynamic interaction between GTCS members, especially in the forum of full Council meetings. It is the view of the Scottish Ministers that the revised membership will improve the effectiveness of the GTCS by giving a guaranteed voice to an increased number of members being drawn from outwith teaching while retaining elected teachers and nominees from key organisations.

3.10 The draft Order repeals the 1965 Act and other legislation related to the GTCS. The draft Order will therefore contain all relevant legislation relating to the GTCS and will form a much more easily accessible and useable document. This is particularly useful to the GTCS itself, the primary users of the legislation and in turn will also help improve the exercise of public functions.

The effect of the provision is proportionate to the policy objective

3.11 The Scottish Ministers consider that the effect of the provision made by the order is proportionate to the policy objective for the following reasons (section 16(2)(a) of the 2010 Act):

3.12 The overarching policy objective behind the introduction of the draft Order is to improve the regulation of the teaching profession by the GTCS. The exercise of public functions is improved by making the GTCS an independent, self-regulating, professional body with a statutory basis, constitution and functions commensurate with its independent status. There are also two further substantive policy objectives.

Proposed Explanatory Document laid before the Scottish Parliament under section 26(2)(a)(ii) of the Public Services Reform (Scotland) Act 2010 for the purposes of consultation required by section 26(1) of that Act.

- To provide the GTCS with a refreshed constitution including giving more flexibility in the way it operates; and
- To provide GTCS with revised and appropriate functions commensurate with the regulation of Scotland's teachers.

3.13 The draft Order will allow the GTCS to effectively operate as an independent body separate from the Scottish Government. The new constitution gives the GTCS much more control over its own affairs while providing a suitable set of functions governing the scope of the GTCS' work. The functions of the GTCS are only being slightly expanded and in the main reflect its current responsibilities. The effect of the provision is therefore proportionate with the policy objective.

Ensuring the law is more accessible or easily understood

3.14 The Scottish Ministers consider that, for the following reasons, these elements of the provision made by the order which merely restate an enactment would make the law more accessible or more easily understood (section 16(10) of the 2010 Act):

3.15 For Orders being made under section 14 it is necessary to ensure that any provisions that restate an enactment would make the law more accessible or easily understood. The draft Order repeals two pieces of primary legislation and makes amendments to a number of instruments that have been introduced since the 1965 Act was made. Some of the 1965 Act and associated legislation has been restated, albeit in amended form in the draft Order. The Scottish Ministers consider that taken as a whole, the draft Order provides a much more accessible and easy to understand piece of legislation than the 1965 Act and the additional primary and secondary legislation that followed it.

3.16 Having all the legislation governing the GTCS in a single document is clearly an advantage to users of the legislation, particularly to the GTCS itself. The draft Order is also more accessible than the 1965 Act as the drafting has been updated and given a more logical structure. For example, the provisions in the Order covering the GTCS' requirements and powers relating to teachers' fitness to practice have all been encompassed in a single schedule (schedule 4) as opposed to them being spread through numerous sections and schedules of the 1965 Act. Other aspects of the draft Order such as schedule 2 which sets the constitution of the GTCS are much clearer and easier to follow than the equivalent provisions in the 1965 Act.

Ensuring provisions do not remove any necessary protection

3.17 The Scottish Ministers consider that, for the following reasons, the provision made by the order does not remove any necessary protection (section 16(2)(b) of the 2010 Act):

3.18 The provisions in the draft Order remove any necessary protections as described in section 16(2)(b) of the 2010 Act. Schedule 4 of the draft Order sets out the powers of the GTCS in relation to taking decisions as to the competence and conduct of teachers. As in the 1965 Act it is necessary for the GTCS to have rules relating to fitness to teach approved by the Lord President. As in the 1965 Act Schedule 4 also requires the GTCS to appoint a legal assessor to advise in fitness to teach cases. The Order also retains the ability for the Lord President to make rules as to the function of assessors appointed under the draft Order (schedule 4, paragraph 3(4)). The role of the Lord President therefore ensures an oversight of the quasi-judicial decisions that the GTCS is frequently required to make.

3.19 Article 24 provides for a right of appeal to the Court of Session in respect of a decision made by the GTCS to remove an entry from the register, to refuse an application for registration or to apply a temporary suspension. This expands the existing right of appeal as set out in section 12 of the 1965 Act to include temporary suspension orders. Article 22(3) also provides that other decisions made by the GTCS (restoration of an entry, conditional registration and reprimand) can be referred to the GTCS itself who will be required to review the decision. This provision broadly reflects the existing review provisions in section 12 of the 1965 Act.

Functions consistent with general objects or purpose of the person, body or office-holder.

3.20 In so far as the provision made by the order does not merely restate an enactment, the Scottish Ministers consider that, for the following reasons, the public functions of the GTCS which are to be modified or which are to be conferred on the GTCS will, as modified or conferred as the case may be, be broadly consistent with the general objects or purpose of the GTCS (section 16(2)(c) and (d) of the 2010 Act):

3.21 The functions of the GTCS conferred by the draft Order are consistent with the general objects or purpose of the GTCS. The functions of the GTCS as set out in the draft Order are all consistent with its role as the regulatory body for the teaching profession in Scotland. Many of the functions have been effectively carried over from the 1965 Act and are not new. These include responsibility to manage the register of teachers and maintain the standards of teaching in Scotland.

3.22 A number of functions in the draft Order slightly expand the role of the GTCS by building on work the GTCS already carries out. These include article 29 which gives the GTCS an oversight in relation to courses of initial teacher education for the school sector. This role is currently carried out by the GTCS

in conjunction with the Scottish Government and expanding the GTCS' functions is, in the view of the Scottish Government, entirely consistent with the purpose of the body. Similarly article 6 of the draft Order formalises the GTCS' role in relation to the maintenance and development of teaching standards (Standard for Full Registration, Standard for Chartered Teacher etc). While this explicit role is presented in statute for the first time, this is really a formalisation of their current role and is consistent with the purpose of the body.

3.23 The draft Order includes a number of articles giving the GTCS entirely new responsibilities. The first of those is in article 31 (Re-accreditation). Article 31 requires the GTCS to develop rules for the provision of a scheme through which registered teachers will be required to take steps to keep their professional skills up to date on a regular basis. It is appropriate for the GTCS, as the regulatory body for teachers in Scotland, to take forward this work and it is consistent with the purpose of the GTCS in maintaining and developing the standards of education, training and fitness of individuals working in the teaching profession.

3.24 Article 26 allows the GTCS for the first time to register other education professionals. By introducing this article the GTCS will continue to operate within its core purpose as article 5 states that one of the principal aims of the GTCS is to "contribute to improving the quality of teaching and learning". By opening parts of the register to other education professionals the GTCS will set standards for these groups and will ultimately result in an improvement in the quality of teaching and learning provided to Scotland's learners. Allowing the GTCS to register other educational groups is consistent with the purpose of the body.

3.25 Ultimately, Scottish Ministers consider that all the functions of the GTCS are consistent with the remit of the professional regulatory body for Scotland's teachers.

Functions of legislating conferred by the Order

3.26 Identify and give reasons for any functions of legislating conferred by the order and the procedural requirements attaching to the exercise of those functions: (Section 27(1)(e)(i) and (ii) of the 2010 Act)

3.27 Paragraph 8 of Schedule 2 provides the Scottish Ministers with a power to amend Schedule 2 in consultation with the GTCS and other persons appearing to have an interest. This power is required to enable changes to be made to the constitution of GTCS as and when changes may become necessary or appropriate in the light of changes in circumstances or operational experience, without the need for a further order under section 14 of the 2010 Act. It is considered that affirmative procedure is appropriate in view of the significance of the constitution of the GTCS, given the GTCS' pivotal role in the regulation of the teaching profession in Scotland, and

having regard also to the significant level of parliamentary scrutiny which affirmative procedure affords.

Functions of the Scottish Ministers

3.28 If the order relates to the Scottish Ministers, or confers functions on or transfers or delegates functions to, the Scottish Ministers, describe the functions and identify the part of the Scottish Administration through which the functions are, or are to be, exercised (section 27(1)(c)(iii) of the 2010 Act):

3.29 Article 6(3) of the Scotland Act 1998 (Transitory and Transitional Provisions)(Publication and Interpretation etc. of Acts of the Scottish Parliament) Order 1999 (SI 1999/1379) will apply to the interpretation of the 2010 Act and accordingly the definition of "function" used in the Scotland Act 1998 (the 1998 Act) will apply. Functions are defined in section 126(1) of the 1998 Act as including "powers and duties" and "confer", in relation to functions, includes impose". There are a number of places where the draft Order confers functions, powers and duties on the Scottish Ministers including article 11 (recommendations to the Scottish Ministers), article 30 (teaching qualification: further provision), paragraph 8 of Schedule 2 (power to amend schedule) and paragraph 10(1) and (3) of Schedule 3 (grants and loans). In the main these functions replicate those contained in the 1965 Act. As the 1965 Act is being repealed then it is necessary for the powers of the Scottish Ministers to be retained in the draft Order.

3.30 In terms of article 11 of the draft Order, the Scottish Ministers must, when performing functions relating to education, have regard to any relevant recommendations made by the GTCS. This replicates section 4 of the 1965 Act albeit that section was limited to recommendations made under section 2 (standards for entry to the teaching profession) and section 4 (supply of teachers). Article 11 is not so limited so it could be the case that the GTCS makes recommendations to the Scottish Ministers about any of the matters which fall within its remit and Ministers would require to have regard to them when exercising their functions relating to education. Article 30 mirrors article 29 but gives powers to the Scottish Ministers to make determinations in relation to initial teacher education courses for the further education sector. This meets with Scottish Government policy of retaining Ministerial powers in relation to this sector. Prior to making or varying any such determination, the Scottish Ministers are required to consult and they must publish the determination.

3.31 As mentioned in paragraph 3.29 above, paragraph 8 of Schedule 2 confers on the Scottish Ministers power to modify Schedule 2 by order so as to amend the constitution of the GTCS and is subject to affirmative procedure. A similar power was contained in paragraph 6 of schedule 1 to the 1965 Act although that power was subject to negative procedure. Affirmative procedure is considered the most appropriate procedure for this power in the light of the significance of the constitution of the GTCS. Like the power in the 1965 Act, this power is subject to a consultation requirement with persons appearing to

Proposed Explanatory Document laid before the Scottish Parliament under section 26(2)(a)(ii) of the Public Services Reform (Scotland) Act 2010 for the purposes of consultation required by section 26(1) of that Act.

have an interest prior to an order being made. Paragraph 10(1) and (3) confers power upon the Scottish Ministers to make grants or loans to the GTCS that they determine which may be made subject to such conditions as the Scottish Ministers may specify (including conditions about repayment). This replicates the power contained in section 15(1) of the 1965 Act.

3.32 The functions of the Scottish Ministers in article 11, paragraph 8 of Schedule 2 and paragraph 10(1) and (3) of Schedule 3 will be undertaken, as they are now, by Learning Directorate. The functions of the Scottish Ministers in article 30 will be undertaken, as they are now, by Lifelong Learning Directorate.

**Schools: People and Places Division
Learning Directorate
Scottish Government
September 2010**

ANNEX B: LIST OF CONSULTEES

This consultation has been issued to a wide range of groups and individuals with an interest in this area. The organisations and groups of individuals consulted include:

- Association of Directors of Education Scotland
- Association of Directors of Social Work Scotland
- Convention of Scottish Local Authorities
- Equality and Human Rights Commission
- Faith Groups
- General Medical Council
- General Teaching Council for Scotland
- Her Majesty's Inspector of Education
- Learning Teaching Scotland
- Local Authority Chief Executives
- Local Authority Directors of Education
- Office of the Commissioner for Public Appointments Scotland
- Office of the Scottish Public Service Ombudsman
- Office of the Lord President
- Parents Groups
- Political Parties
- Scotland's Commissioner for Children and Young People
- Scottish Council for Independent Schools
- Scottish Further Education Colleges
- Scottish Higher Education Institutes
- Scottish Local Authorities
- Scottish Youth Parliament
- Scottish Qualifications Authority
- Teacher Unions and Professional Bodies
- UK General Teaching Councils

ANNEX C

EXECUTIVE NOTE

PUBLIC SERVICES REFORM (GENERAL TEACHING COUNCIL FOR SCOTLAND) ORDER 2011

1. The above instrument (“the Order”) is to be made by Scottish Ministers in exercise of the powers conferred by the Public Services Reform (Scotland) Act 2010 (“the 2010 Act”). The instrument is subject to a super-affirmative procedure set out in sections 25 to 27 of the 2010 Act. Scottish Ministers are required to lay before the Parliament a copy of the proposed draft Order, and the proposed Explanatory Document which accompanies it, and to consult on these for a period of 60 days. This Executive Note relates to this stage of the Parliamentary process. Scottish Ministers must have regard to any representations made during the 60-day consultation period. Thereafter, the Order and the Explanatory Document are to be finalised for laying in the Scottish Parliament, where the Order will then be subject to affirmative resolution procedure.

Policy Objectives

2. In January 2008 the First Minister announced that the GTCS would be established as a self-regulating, profession-led body. The overarching policy objective behind the introduction of the draft Order is to improve the exercise of public functions by making the GTCS an independent, self-regulating, professional body for teachers working in Scotland. This change in status reflects the Scottish Government’s stated policy of reducing the number of public bodies in Scotland while acknowledging the Council’s consistent and effective performance as the regulatory body for Scotland’s teachers since it started work in 1966. The decision to make the GTCS an independent body has been warmly welcomed by the education community. The proposed draft Order allows for the GTCS, currently classed as an advisory Non-Departmental Public Body, to be re-established as an entity independent of the Scottish Government. The Order also improves the governance arrangements of the Council, slightly expands its responsibilities and removes any unnecessary restrictions on how the GTCS organises its affairs.

3. Both the Teaching Council (Scotland) Act 1965 and the Teaching Council (Scotland) Act 1971 will be repealed and replaced by provision made in the proposed draft Order. The intention of the Order is to ensure that the GTCS becomes an independent, self-regulating professional body while retaining an important role in Scottish education. The Order also aims to ensure the independent Council is provided with appropriate functions and is supported by improved governance arrangements.

4. New functions include full responsibility for the development and maintenance of teacher standards and the ability to set requirements for courses of initial teacher education for primary and secondary education. The Order also places the Council under a duty to bring forward a system of re-accreditation for Scotland’s teachers. Governance arrangements have been amended and the Order will provide the Council will an increased level of flexibility in relation to the way in which it undertakes its business. For example, GTCS will be able to set its own committee structure, populate committees as it sees fit and decide from which sectors elected teacher representatives are drawn from. The overall size of Council is also being reduced and the composition of members amended.

ANNEX C

Consultation

5. A Scottish Government consultation “Towards an Independent General Teaching Council for Scotland: Consultation on the Future Status of the GTCS” took place between 2 April 2009 and 26 June 2009. This consultation asked stakeholders for their views as to the future role and governance arrangements for an independent GTCS. A wide group of stakeholders with an interest in the GTCS were consulted; this included local authorities, Universities, Colleges, COSLA and the Teacher Unions. 223 responses were received. These responses were taken into account in preparing the Analysis of the Consultation and Scottish Government Response, published in February 2010, which set out the proposed way forward for the independent GTCS.

6. The proposed draft Order and its accompanying proposed Explanatory Document, prepared following this consultation, are now themselves beginning a 60-day consultation period, in accordance with section 26 of the 2010 Act.

Financial Effects

7. The GTCS is entirely self-funded by teachers’ registration fees so there will be no cost implications for the Scottish Government as a result of the Order. The GTCS have, and will continue to have the power to set the level of registration fee (currently £45 per annum) and it will be a decision for them as to whether this needs to change. The GTCS themselves may take decisions facilitated by the Order, such as changing the way committees are populated or through paying members an allowance, that might slightly increase the fee. In addition the Order places the GTCS under a duty to introduce a system of re-accreditation for teachers in Scotland. Our understanding is that these changes are likely to result in a small increase of a few pounds to the registration fee.

Scottish Government Learning Directorate
September 2010

ANNEX C

ANNEX A: LIST OF CONSULTEES

This consultation has been issued to a wide range of groups and individuals with an interest in this area. The organisations and groups of individuals consulted include:

- Association of Directors of Education Scotland
- Association of Directors of Social Work Scotland
- Convention of Scottish Local Authorities
- Equality and Human Rights Commission
- Faith Groups
- General Medical Council
- General Teaching Council for Scotland
- Her Majesty's Inspector of Education
- Learning Teaching Scotland
- Local Authority Chief Executives
- Local Authority Directors of Education
- Office of the Commissioner for Public Appointments Scotland
- Office of the Scottish Public Service Ombudsman
- Office of the Lord President
- Parents Groups
- Political Parties
- Scotland's Commissioner for Children and Young People
- Scottish Council for Independent Schools
- Scottish Further Education Colleges
- Scottish Higher Education Institutes
- Scottish Local Authorities
- Scottish Youth Parliament
- Scottish Qualifications Authority
- Teacher Unions and Professional Bodies
- UK General Teaching Councils

ANNEX D

Draft Order laid before the Scottish Parliament under section 25(2)(b)(i) of the Public Services Reform (Scotland) Act 2010 for approval by resolution of the Scottish Parliament.

SCOTTISH STATUTORY INSTRUMENTS

2011 No.

PUBLIC SERVICES REFORM

EDUCATION

The Public Services Reform (General Teaching Council for Scotland) Order 2011

Made - - - - - *2011*

*Coming into force in accordance with article 2 and
Schedule 1*

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The Scottish Ministers make the following Order in exercise of the powers conferred by sections 14(1), (3)(a) and (b), and (7)(a) and (b)) of the Public Services Reform (Scotland) Act 2010(a) (“the Act”) and all other powers enabling them to do so.

The Scottish Ministers consider that the conditions in section 16(2) and (10) of the Act are satisfied.

The Scottish Ministers have consulted in accordance with section 26 of the Act.

The Scottish Ministers have laid a draft of this Order and an explanatory document before the Scottish Parliament in accordance with section 25(2)(b) of the Act.

In accordance with section 25(2)(c) of the Act, the draft of this Order has been approved by resolution of the Scottish Parliament.

PART 1 INTRODUCTORY

Citation

1. This Order may be cited as the Public Services Reform (General Teaching Council for Scotland) Order 2011.

Commencement

2.—(1) The following provisions of this Order come into force on 4th April 2011—

- (a) articles 1, 2 and 3 (in so far as article 3 relates to the other provisions coming into force on that day); and
- (b) the provisions of this Order specified in column 1 of Schedule 1 to this Order and described by reference to the subject matter in column 2 of that Schedule but, where a particular purpose is specified in relation to any provision in column 3 of that Schedule, that provision shall come into force on that day for that purpose only.

(2) All the provisions of this Order, in so far as not already in force, come into force on 2nd April 2012.

(3) This article is subject to article 32 (transitional and savings provision) and Schedule 5.

(4) Where—

- (a) consultation is required to take place under a provision of this Order; and
- (b) before the provision comes into force, consultation takes place which would have satisfied the requirements of the provision to any extent if it had been in force,

those requirements are to be taken to have been satisfied to that extent.

Interpretation

3. In this Order—

“the 1980 Act” means the Education (Scotland) Act 1980(b);

(a) 2010 asp 8.
(b) 1980 c.44.

“the 1965 Act” means the Teaching Council (Scotland) Act 1965(a);
“educational establishment” has the same meaning as in the 1980 Act;
“further education institution” means a body listed under the heading “Institutions formerly eligible for funding by the Scottish Further Education Funding Council” in schedule 2 to the Further and Higher Education (Scotland) Act 2005(b);
“the GTCS” has the meaning given by article 4;
“the GTCS rules” has the meaning given by article 15;
“recognised teaching qualification” is to be construed in accordance with articles 29 and 30;
“the register” means the register of teachers kept by the GTCS in accordance with this Order and “registered” and “registration” are to be construed accordingly;
“registration criteria” means the criteria for registration set out in the GTCS rules which are to be met by individuals seeking registration;
“school” has the same meaning as in the 1980 Act and “school teacher” is to be construed accordingly;
“unfit to teach” has the meaning given by article 18(3).

PART 2

THE GENERAL TEACHING COUNCIL FOR SCOTLAND

General Teaching Council for Scotland

4.—(1) There is to continue to be a body corporate known as the General Teaching Council for Scotland (“the GTCS”).

(2) Schedule 2 makes provision about the membership of the GTCS.

(3) Schedule 3 makes further provision about the GTCS’s status, proceedings, staff and other matters.

Principal aims

5. The GTCS’s principal aims are—

- (a) to contribute to improving the quality of teaching and learning; and
- (b) to maintain and improve teachers’ professional standards.

General functions

6. The GTCS’s general functions are—

- (a) to keep a register of teachers (“the register”);
- (b) to establish (and to review and change as necessary)—
 - (i) the standards of education and training appropriate to school teachers;
 - (ii) the standards of conduct and professional competence expected of a registered teacher;
 - (iii) to investigate the fitness to teach of individuals who are, or who are seeking to be, registered;
- (c) to keep itself informed of the education and training of individuals undertaking courses for the education and training of teachers provided by further education institutions;

(a) 1965 c.19.

(b) 2005 asp 6.

- (d) to consider, and to make recommendations to the Scottish Ministers about, matters relating to—
 - (i) teachers' education, training, career development and fitness to teach; and
 - (ii) the supply of teachers (except matters of remuneration or conditions of service); and
- (e) to keep such registers of other educational professionals as it thinks fit.

Public interest

7. The GTCS must have regard to the interests of the public when performing its functions.

Best regulatory practice

8. The GTCS must perform its functions in a way which—
- (a) is proportionate, accountable, transparent and consistent;
 - (b) is targeted only where action is needed;
 - (c) encourages equal opportunities and in particular the observance of the requirements of the law for the time being relating to equal opportunities; and
 - (d) is consistent with any other principle which appears to it to represent best regulatory practice.

General powers

9.—(1) The GTCS may do anything which appears to it to be appropriate for the purposes of, or in connection with, the performance of its functions.

- (2) The GTCS may, in particular—
- (a) acquire and dispose of land and other property;
 - (b) enter into contracts;
 - (c) borrow money;
 - (d) charge fees for providing services.

Advice, research, publication and promotion

10. The GTCS may—
- (a) give to any person, or publish, any advice relating to its functions as it thinks fit;
 - (b) carry out or commission research to inform its approach towards performing its functions;
 - (c) publish, or assist in publishing, any information or advice relating to its functions;
 - (d) publicise, or assist in publicising, any matter relating to its functions.

Recommendations to the Scottish Ministers

11. The Scottish Ministers must, when performing functions relating to education, have regard to any relevant recommendations made by the GTCS.

Co-operation with other teaching councils

- 12.—(1) The GTCS must—
- (a) provide the other UK teaching councils with such information as it is necessary or desirable for those councils to have for the purposes of performing their statutory functions; and
 - (b) so far as consistent with the proper performance of its functions, otherwise seek to secure co-operation between it and the other UK teaching councils.

- (2) The other UK teaching councils are—
- (a) the General Teaching Council for England;
 - (b) the General Teaching Council for Wales; and
 - (c) the General Teaching Council for Northern Ireland.

Employers' duty to provide information about teachers

- 13.** A person who employs a registered teacher must provide the GTCS with—
- (a) the names of the individual so employed; and
 - (b) such other information about that individual as the GTCS may reasonably require in connection with the performance of its functions.

PART 3

THE REGISTER

The Register of Teachers

The register of teachers

14.—(1) It is for the GTCS to sub-divide or otherwise organise entries in the register in such manner as it thinks fit.

- (2) For example, the register may have separate parts for—
- (a) individuals registered to teach in primary schools;
 - (b) individuals registered to teach in secondary schools; and
 - (c) individuals registered to teach in further education institutions.
- (3) The GTCS must make the register available for inspection by the public.

GTCS rules

15.—(1) The GTCS must make and publish rules (“the GTCS rules”)—

- (a) setting out the procedure for inclusion in the register;
 - (b) setting out registration criteria;
 - (c) otherwise governing the operation of the register.
- (2) The GTCS rules may set different procedures, or different registration criteria, for different types of teacher or otherwise for different purposes.
- (3) The GTCS rules may, in particular, make provision about—
- (a) the form and keeping of the register;
 - (b) the making of entries in the register and alterations to those entries;
 - (c) the keeping of different categories of registration;
 - (d) making entries provisional on the GTCS being satisfied that conditions are met;
 - (e) the provision of information to the GTCS by or about individuals who are registered or who are seeking registration;
 - (f) removing individuals from the register;
 - (g) suspending and cancelling entries in the register;
 - (h) circumstances in which registration may lapse;
 - (i) re-registering individuals or otherwise restoring entries to the register;
 - (j) the issuing of registration certificates; and

- (k) such other matters relating to registration as the GTCS thinks fit.
- (4) Before making or varying the GTCS rules, the GTCS must—
 - (a) consult—
 - (i) teachers or their representatives;
 - (ii) employers of teachers or their representatives; and
 - (iii) such other persons appearing to it to have an interest; and
 - (b) have regard to any views expressed by those consulted.

Entry in the register of teachers

- 16.**—(1) The GTCS must include an individual in the register if—
- (a) it is satisfied—
 - (i) that the registration criteria are met in relation to the individual;
 - (ii) that the individual is not unfit to teach (see article 18); and
 - (iii) that the GTCS rules do not otherwise prevent the individual from being registered; and
 - (b) article 19 does not prevent the GTCS from registering the individual.
- (2) The register must contain an entry for each individual included in it setting out—
- (a) the individual’s name and address;
 - (b) such other information about the individual’s qualifications and other particulars as may be specified in the GTCS rules.

Recognised teaching qualifications

- 17.** The registration criteria set out in the GTCS rules must provide that an individual may be registered only if—
- (a) the individual has obtained a recognised teaching qualification; or
 - (b) the GTCS is otherwise satisfied that the individual’s education, training or experience warrant the individual’s registration.

Fitness to teach

- 18.**—(1) The GTCS—
- (a) must investigate the fitness to teach of any individual seeking registration; and
 - (b) may investigate any registered teacher’s fitness to teach where it becomes aware of circumstances which it considers justify such an investigation.
- (2) The GTCS must—
- (a) refuse to register any individual seeking registration whom it considers to be unfit to teach; and
 - (b) remove from the register any registered teacher whom it subsequently considers to be unfit to teach.
- (3) An individual is “unfit to teach” for the purposes of this Order if the GTCS considers that the individual’s conduct or professional competence falls short of the standard expected of an individual teaching in an educational establishment (and “fitness to teach” is to be construed accordingly).
- (4) Schedule 4 makes further provision regarding individuals’ fitness to teach.

Barred individuals

19. The GTCS must—

- (a) refuse to register any individual seeking registration who is barred from regulated work with children by virtue of the Protection of Vulnerable Groups (Scotland) Act 2007^(a); and
- (b) remove from the register any registered teacher who is subsequently barred from regulated work with children by virtue of that Act.

Registration fees

20.—(1) The GTCS may charge fees in relation to registration.

(2) The GTCS rules may make provision about—

- (a) when registration fees are payable;
- (b) by whom registration fees are to be paid;
- (c) arrangements in accordance with which registration fees are to be paid; and
- (d) circumstances in which registration fees may be reduced, waived or refunded.

(3) A person who employs a registered teacher to teach in an educational establishment must (if required to do so by the GTCS)—

- (a) deduct amounts in respect of registration fees from the individual's salary;
- (b) remit those amounts to the GTCS.

(4) Different rules in relation to fees may be made for different circumstances.

Temporary suspension

21. The GTCS may suspend an individual's registration pending conclusion of its investigation into any circumstances which on the face of it might cause it to remove the individual from the register.

Removal from register

22.—(1) The GTCS rules may set out circumstances (other than those mentioned in articles 18 and 19) in which it may remove an individual from the register.

(2) Those circumstances may, in particular, include—

- (a) failure to pay any fee due in respect of the individual's registration;
- (b) failure to notify the GTCS of any change of information recorded in the individual's entry.

(3) If the GTCS rules set out any such circumstance, they must also require the GTCS to review any decision to remove an individual in that circumstance if requested to do so by the individual affected.

Notices

23.—(1) The GTCS must notify an individual of a decision—

- (a) to refuse to register the individual because the GTCS considers that the individual—
 - (i) is unfit to teach; or
 - (ii) does not otherwise meet the registration criteria;

(a) 2007 asp 14.

- (b) to suspend the individual under article 21;
- (c) to remove the individual from the register because it considers that the individual—
 - (i) is unfit to teach; or
 - (ii) no longer meets the registration criteria.
- (2) The notice must—
 - (a) explain why the decision was made;
 - (b) advise the individual of the right to appeal the decision under article 24.
- (3) The GTCS must send a copy of the notice to any person whom it knows employs the individual to teach in an educational establishment.

Appeals

24.—(1) An individual may appeal to the Court of Session against any decision of the GTCS in respect of which notification is required under article 23.

(2) An appeal must be made no later than 28 days after the individual receives notice of the decision.

(3) The Court of Session may determine an appeal giving such directions as it thinks fit (including directions as to the expenses of the appeal).

(4) The Court of Session's decision is final.

(5) A decision which may be appealed under this article, other than a decision to suspend an individual under article 21, does not have effect until—

- (a) the period for making the appeal has ended; or
- (b) where an appeal is made, it is withdrawn or finally determined.

Employers: duty to report misconduct or incompetence

25.—(1) A person who employs a registered teacher must immediately notify the GTCS if—

- (a) it dismisses the individual on grounds of misconduct or incompetence; or
- (b) the individual resigns or otherwise stops working for the person in circumstances in which the person, but for that fact, would or might have dismissed the individual on such grounds.

(2) Such a notice must explain the circumstances which caused it to dismiss, or to conclude that it would or might dismiss, the individual.

Register of other education professionals

Register of other education professionals

26.—(1) The GTCS may keep such other registers of other individuals working in educational settings as it thinks fit.

(2) The GTCS must make and publish a scheme governing the operation of any such register.

(3) Such a scheme may make such provision about the register as the GTCS thinks fit and may, in particular, include provisions equivalent to provisions made by or under this Order in relation to the register of teachers.

Offences

Offences

27.—(1) It is an offence for a person to provide the GTCS or any other person with information if the person—

- (a) knows that the information is false or misleading in a material respect; and
- (b) knows, or could reasonably be expected to know that the GTCS may use the information in connection with the performance of its functions.

(2) It is an offence for a person to pretend, with fraudulent intent, to be registered in the register of teachers or in any other register of education professionals kept by the GTCS when the person is not so registered.

(3) A person who commits an offence under this article is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

PART 4

STANDARDS OF EDUCATION, TRAINING ETC.

Consultation

28.—(1) Before establishing new standards, or changing existing standards, of education, training or fitness to teach appropriate to school teachers, the GTCS must—

- (a) consult—
 - (i) school teachers or their representatives;
 - (ii) employers of school teachers or their representatives; and
 - (iii) such other persons appearing to it to have an interest; and
- (b) have regard to any views expressed by those consulted.

Teaching qualifications: primary and secondary education

29.—(1) It is for the GTCS to determine what constitutes a recognised teaching qualification for individuals seeking registration as a school teacher.

(2) A determination may make such provision about the education and training required to attain such a qualification as the GTCS thinks fit.

(3) The determination may, in particular, make provision about—

- (a) institutions providing courses of education and training for teachers;
- (b) the qualifications of persons providing courses of education and training for teachers;
- (c) the admission of individuals to such courses;
- (d) the content, nature and duration of such courses;
- (e) the assessment of individuals undertaking such courses;
- (f) the functions of the governing bodies, principals and members of staff of institutions providing those courses.

(4) A determination may make different provision for different types of school teachers or institutions or otherwise for different purposes.

(5) Before making or varying a determination, the GTCS must—

- (a) consult—
 - (i) institutions providing courses of education and training for teachers or their representatives;

- (ii) the Scottish Ministers; and
- (iii) such other persons appearing to it to have an interest; and
- (b) have regard to any views expressed by those consulted.
- (6) The GTCS must publish its determination.

Teaching qualifications: further education

30.—(1) It is for the Scottish Ministers to determine what constitutes a recognised teaching qualification for individuals seeking registration as a further education teacher.

(2) A determination may make such provision about the education and training required to attain such a qualification as the Scottish Ministers think fit.

(3) The determination may, in particular, make provision about—

- (a) institutions providing courses of education and training for teachers;
- (b) the admission of individuals to such courses;
- (c) the content, nature and duration of such courses;
- (d) the assessment of individuals undertaking such courses;
- (e) the functions of the governing bodies, principals and members of staff of institutions providing those courses.

(4) A determination may make different provision for different types of further education teachers or institutions or otherwise for different purposes.

(5) Before making or varying a determination, the Scottish Ministers must—

- (a) consult—
 - (i) further education institutions or their representatives;
 - (ii) the GTCS; and
 - (iii) such other persons appearing to it to have an interest; and
- (b) have regard to any views expressed by those consulted.

(6) The Scottish Ministers must publish their determination.

GTCS duty to make re-accreditation scheme

31.—(1) The GTCS must make and publish a scheme setting out measures to be undertaken for the purposes of allowing it to keep itself informed about the standards of education and training of registered teachers.

(2) The scheme may, in particular—

- (a) impose, or allow the GTCS to impose, requirements on—
 - (i) registered teachers;
 - (ii) persons who employ registered teachers to teach in educational establishments;
- (b) make provision with respect to failure to comply with such requirements (including, for example, provision allowing the GTCS to review the registration of any individual by or in respect of whom such a failure is made).

(3) The scheme may make different provision in respect of different types of registered teacher or otherwise for different purposes.

(4) Before making or varying the scheme, the GTCS must—

- (a) consult—
 - (i) registered teachers or their representatives;
 - (ii) employers of registered teachers or their representatives;
 - (iii) the Scottish Ministers; and

- (iv) such other persons appearing to it to have an interest; and
- (b) have regard to any views expressed by those consulted.

PART 5

FINAL PROVISIONS

Transitional and savings provision

32. Schedule 5 contains transitional and savings provisions.

Consequential amendments, repeals and revocations

33.—(1) Schedule 6 contains minor amendments and amendments consequential on the provisions of this Order.

(2) The enactments specified in Schedule 7, which include amendments that are spent, are repealed to the extent specified.

St Andrew's House,
Edinburgh

2011

A member of the Scottish Executive

SCHEDULE 1

Article 2(1)(b)

Provisions of this Order which come into force on 4th April 2011

<i>Column 1</i> <i>Provision of this Order</i>	<i>Column 2</i> <i>Subject matter</i>	<i>Column 3</i> <i>Purpose</i>
Article 15	GTCS rules	Only for the purpose of consulting on, making and publishing rules in accordance with that article prior to 2nd April 2012.
Article 18	Fitness to teach	Only for the purpose of bringing into force the paragraphs of Schedule 4 described below.
Article 20	Registration fees	Only for the purpose of making provision in rules about registration fees prior to 2nd April 2012.
Schedule 2, paragraph 2 paragraph 3 paragraph 4 paragraph 7	Elected members Nominated members Appointed members Membership	Only for the purpose of making and publishing an election scheme, an appointments scheme and a membership scheme and enabling elections to be held and appointments and nominations to be made prior to 2nd April 2012 for the GTCS to be constituted in accordance with Schedule 2; and for the purpose of consulting on the election scheme and the appointments scheme.
Schedule 3, paragraph 3	Committees	Only for the purpose of making a committee scheme and publishing that scheme prior to 2nd April 2012.
Schedule 3, paragraph 6	Standing orders	Only for the purpose of making standing orders and publishing those orders prior to 2nd April 2012; and for the purposes of appointing Committees and Sub-committees prior to 2nd April 2012.

<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>
<i>Provision of this Order</i>	<i>Subject matter</i>	<i>Purpose</i>
Schedule 4, paragraph 1 paragraph 2	GTCS rules on fitness to teach Proceedings	Only for the purpose of making provision for fitness to teach in rules and having those rules approved by the Lord President prior to 2nd April 2012.
Schedule 4, paragraph 3	Legal assessor	Only for the purpose of making rules by statutory instrument prior to 2nd April 2012.

SCHEDULE 2

GTCS Membership

Article 4(2)

Membership

1. The GTCS is to have 37 members (19 elected members, 11 nominated members and 7 appointed members).

Elected members

2.—(1) Only registered teachers are eligible to be elected members.

(2) The GTCS must make and publish an election scheme to govern the election of elected members.

(3) The election scheme may, in particular, make provision about—

- (a) the appointment of a returning officer and of such staff as may be necessary;
- (b) the appointment of an independent scrutineer;
- (c) the powers of a returning officer or independent scrutineer;
- (d) the establishment of a roll of electors consisting of all registered teachers;
- (e) the giving of notice of the holding of an election;
- (f) the eligibility of candidates and electors;
- (g) the nomination of candidates;
- (h) the conduct of an election;
- (i) the election system;
- (j) the election count; and
- (k) the giving of notice of the results of an election.

(4) Before making or varying the election scheme the GTCS must—

- (a) consult—
 - (aa) registered teachers or their representatives; and
 - (bb) those persons appearing to it have an interest; and
- (b) have regard to any views expressed by those consulted.

Nominated members

3. The 11 nominated members are to be comprised of the following—

- (a) 3 individuals nominated by the Convention of Scottish Local Authorities (following consultation with the Association of Directors of Education in Scotland);
- (b) 3 individuals nominated by Universities Scotland;
- (c) 1 individual nominated by the governing bodies of institutions in the further education sector;
- (d) 1 individual nominated by the Scottish Council of Independent Schools;
- (e) 1 individual nominated by the Church and Society Council of the General Assembly of the Church of Scotland;
- (f) 1 individual nominated by the Scottish Hierarchy of the Roman Catholic Church;
- (g) 1 individual nominated by a body representative of Parent Councils and Combined Parent Councils.

Appointed members

4. The 7 appointed members are to be appointed by the GTCS.
- (a) The GTCS must make and publish an appointments scheme to govern the making of such appointments.
 - (b) An individual is not eligible to be appointed if the individual—
 - (i) is, or has been registered, or is eligible to be registered; or
 - (ii) has obtained a recognised teaching qualification.
 - (c) The GTCS must, when making and operating the appointments scheme—
 - (i) otherwise endeavour to ensure that applications to become appointed members are made by as wide a range of applicants as practicable; and
 - (ii) have regard to any principle which appears to it to represent best practice on public appointments (for example, any guidance from the Office of the Commissioner for Public Appointments in Scotland).
 - (d) The appointments scheme may, in particular, make provision about—
 - (i) advertising for applications to become appointed members; and
 - (ii) the timing, procedure and operation of the scheme.
 - (e) Before making or varying the appointments scheme the GTCS must—
 - (i) consult those persons appearing to have an interest; and
 - (ii) have regard to any views expressed by those consulted.

Term of office

- 5.—(1) The duration of the term of office of each member of the GTCS is 4 years.
- (2) No member of the GTCS may hold office for more than an aggregate of 8 years during any period of 20 years.
- (3) For the purposes of the computation of years under sub-paragraph (2), service as a member of the GTCS before the full coming into force of this Order is to be discounted.
- (4) This paragraph is subject to paragraph 6 (initial term of office).

Initial term of office

- 6.—(1) This paragraph applies to the term of office of each member of the GTCS serving during the period immediately following the full coming into force of this Order (“the initial term”).
- (2) Of the 37 persons referred to in paragraph 1, 18 persons are to hold office for 2 years only during the initial term.
- (3) On the expiration of the 2 year term, such a member is eligible to hold office for a further term of 4 years and paragraph 5(2) applies as if for “8 years” there was substituted “6 years”.
- (4) The GTCS must decide which 18 persons of the 37 persons referred to in paragraph 1 are to hold office for 2 years only in accordance with sub-paragraph (2).

Membership

- 7.—(1) The GTCS must make a scheme (the “membership scheme”) relating to the removal, disqualification and replacement of members of the GTCS.
- (2) The membership scheme may in particular make provision for or in connection with—
 - (a) members vacating office on the expiration of their term of office;
 - (b) the resignation of members;
 - (c) the disqualification of individuals from appointment as members; and

- (d) the removal of members, including if the member—
 - (i) becomes insolvent;
 - (ii) is incapacitated by physical or mental illness;
 - (iii) is absent from meetings of GTCS for a period specified in the scheme;
 - (iv) is otherwise unfit to be a member or unable for any reason to discharge the functions of a member;
 - (v) changes the nature of their employment;
 - (e) the replacement of members who die, resign, are removed from, or otherwise vacate office before the expiration of their term of office; and
 - (f) the term of office of replacement members.
- (3) The GTCS may vary the membership scheme at any time.
- (4) The GTCS must publish the membership scheme in such ways as it thinks fit.

Power to amend schedule

8.—(1) The Scottish Ministers may by order modify this schedule as they think appropriate so as to amend the constitution of the GTCS.

(2) The Scottish Ministers must consult the GTCS and those other persons appearing to have an interest before making such an order.

(3) An order under this paragraph is subject to affirmative procedure.

SCHEDULE 3

Article 4(3)

Further provision about the GTCS

Status

- 1.—(1) The GTCS—
 - (a) is not a servant or agent of the Crown; and
 - (b) does not enjoy any status, immunity or privilege of the Crown.
- (2) The property of the GTCS is not property of, or property held on behalf of, the Crown.

Convener

- 2.—(1) The GTCS must appoint one of its members to chair meetings of the GTCS (the “Convener”).
- (2) The Convener of the GTCS has a casting vote in the proceedings of the GTCS.
- (3) In the absence of the Convener, the GTCS must appoint one of its members to act as the Convener and that individual has a casting vote in the proceedings of the GTCS.

Committees

- 3.—(1) The GTCS may appoint such committees as it thinks fit.
- (2) Any committee so appointed may appoint such sub-committees as it thinks fit.
- (3) Such committees and sub-committees may consist—
 - (a) wholly of members of the GTCS;
 - (b) partly of members of the GTCS and partly of other persons appointed to that committee or sub-committee by the GTCS or, in the case of sub-committees, by the committee which appointed that sub-committee; or
 - (c) wholly of non-members of the GTCS appointed to that committee or sub-committee by GTCS or, in the case of sub-committees, by the committee which appointed that sub-committee.
- (4) The GTCS must make a scheme (the “committee scheme”) relating to the structure, membership, role and operation of its committees and sub-committees.
- (5) The committee scheme may in particular make provision for or in connection with—
 - (a) the number of committees;
 - (b) the functions, duties and powers of committees;
 - (c) the procedure of committees;
 - (d) the regulation of the proceedings of, and the quorum at, committees;
 - (e) the composition of committees; and
 - (f) the membership arrangements for committees, including arrangements for the appointment to committees of persons who are not members of the GTCS.
- (6) In sub-paragraph (5) “committees” includes “sub-committees”.
- (7) The GTCS may vary the committee scheme at any time.
- (8) The GTCS must publish the committee scheme, in such ways as it thinks fit.

Validity of Proceedings and Actions

4.—(1) The validity of proceedings or actions of the GTCS (including proceedings or actions of any of its committees or sub-committees) is not affected by—

- (a) any vacancy in the membership of the GTCS or any of its committees;
- (b) any defect in the election or appointment of a member of the GTCS or any of its committees or
- (c) the disqualification of an individual as a member of the GTCS after appointment or election.

(2) In this paragraph “committees” includes “sub-committees”.

Reports

5.—(1) The GTCS must, as soon as is reasonably practical after the end of each financial year, prepare and lay before the Scottish Parliament a report on the carrying out of its functions during the year.

(2) The GTCS may include in the report any other information that it considers appropriate.

(3) In this paragraph “financial year” means each period of a year ending on 31st March.

(4) The GTCS must periodically prepare and publish, in such ways as it thinks fit, a strategic plan.

(5) The GTCS must periodically prepare and publish, in such ways as it thinks fit, a diversity action plan.

Standing Orders

6. The GTCS may make, and publish, standing orders for—

- (a) the regulation of its proceedings and the quorum at such proceedings;
- (b) the keeping of records;
- (c) the execution of documents; and
- (d) such other matters connected with or related to the conduct of the GTCS’s business as the GTCS thinks fit.

Accounts

7.—(1) The GTCS must—

- (a) keep proper accounts and accounting records;
- (b) prepare for each financial year a statement of accounts;
- (c) publish each statement of accounts in such ways as it thinks fit; and
- (d) have its accounts independently audited each financial year by auditors appointed by the GTCS.

(2) In this paragraph, “financial year” means each period of a year ending on 31st March.

Remuneration, allowances etc.

8.—(1) The GTCS may pay to its members—

- (a) such remuneration as it may determine;
- (b) such allowances in respect of expenses properly incurred by members in the performance of their functions as it may so determine.

(2) The GTCS may pay to members’ employers such allowances as it may determine, in respect of expenses incurred by the employer in consequence of members’ performance of their functions.

- (3) The GTCS may—
- (a) pay to or in respect of any individual who is or has been a member of the GTCS such pension, allowance or gratuity as it may determine; or
 - (b) make such payments as it may determine towards provision for the payment of a pension, allowance or gratuity to or in respect of such an individual.

(4) Where—

- (a) an individual ceases to be a member of the GTCS otherwise than on the expiry of the individual's term of office; and
- (b) it appears to the GTCS that there are circumstances which make it right for the individual to receive compensation,

then the GTCS may make a payment to the individual as it may determine.

(5) In sub-paragraphs (1) and (2) “members” includes individuals who are appointed to committees or sub-committees under paragraph 3(3)(b).

Staff

9.—(1) The GTCS may employ any staff necessary to ensure the carrying out of the GTCS's functions.

(2) Staff are employed on terms and conditions determined by the GTCS.

(3) GTCS may—

- (a) pay a pension, allowance or gratuity, including by way of compensation for loss of employment, to or in respect of an eligible individual;
- (b) make payments towards the provision of a pension, allowance or gratuity, including by way of compensation for loss of employment, to or in respect of an eligible individual;
- (c) provide and maintain schemes (whether contributory or not) for the payment of a pension, allowance or gratuity, including by way of compensation for loss of employment, to or in respect of an eligible individual.

(4) The GTCS may determine—

- (a) who, of the individuals who are or have ceased to be employees of the GTCS, are to be eligible individuals; and
- (b) the amount that may be paid or provided for.

Grants and loans

10.—(1) The Scottish Ministers may make grants to the GTCS that they determine.

(2) A grant is made subject to any conditions specified by the Scottish Ministers (including conditions about repayment).

(3) The Scottish Ministers may make loans to the GTCS that they determine.

(4) A loan is made subject to any conditions specified by the Scottish Ministers (including conditions about repayment).

Delegation of the GTCS's functions

11.—(1) Any function of the GTCS (whether conferred by virtue of this Order or any other enactment) may be carried out on its behalf by—

- (a) a member of the GTCS;
- (b) a committee or sub-committee of the GTCS;
- (c) an individual employed by the GTCS;
- (d) any other person authorised (whether specially or generally) by the GTCS for the purpose.

(2) Nothing in sub-paragraph (1) prevents the GTCS from carrying out any function delegated under that sub-paragraph.

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 to review any decision to act as mentioned in paragraph (a) if requested to do so by the individual affected;

(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) GTCS rules relating to fitness to teach have effect only if approved by the Lord President of the Court of Session ("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 of a decision to act as mentioned in paragraph 1(2)(a).

(2) The GTCS rules must—

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

(b) specify any exceptional circumstances in which such proceedings are not to be held in public.

(3) The GTCS may administer oaths for the purposes of such proceedings.

(4) 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.

(5) But the Court 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.

(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^(a) applies to any such statutory instrument as if the instrument had been made by a Minister of the Crown.

^(a) 1946 c.36.

SCHEDULE 5

Article 32

Transitional and savings provisions

CHAPTER 1

Registration

The Teachers (Education, Training and Recommendation for Registration) (Scotland) Regulations 1993

1. Despite the revocation of regulation 3 of the Teachers (Education Training and Recommendation for Registration) (Scotland) Regulations 1993(a) (“the 1993 Regulations”), any determination made under regulation 3 continues to have effect until the GTCS makes a corresponding determination under article 29 of this Order or the Scottish Ministers make a corresponding determination under article 30 of this Order.

2. Despite the revocation of regulation 4 of the 1993 Regulations, any determination and approval made under regulation 4 continues to have effect until the GTCS makes a corresponding determination under article 29 of this Order or the Scottish Ministers make a corresponding determination under article 30 of this Order.

3. Despite the revocation of regulation 5 of the 1993 Regulations, regulation 5 continues to have effect in relation to persons who have performed the work of a course complying with the requirements of regulation 4 of those regulations.

4. Despite the revocation of regulation 6 of the 1993 Regulations, regulation 6 continues to have effect in relation to the requirements for recommendation for registration until such time as the GTCS sets corresponding requirements in the GTCS rules.

CHAPTER 2

Fitness to teach

Investigations in progress under section 10B of the 1965 Act

5.—(1) This paragraph applies to a preliminary investigation under section 10B of the 1965 Act that is still in progress on 2nd April 2012.

(2) Any action or decision taken by the Investigating Sub-committee prior to 2nd April 2012, will, on and after 2nd April 2012, be treated as if it were an action or decision by the GTCS under Schedule 4 to this Order.

Cases in progress before the Disciplinary Sub-committee

6.—(1) This paragraph applies where a case is still in progress on 2nd April 2012 under section 10C or 11 of the 1965 Act.

(2) Where a case is, prior to 2nd April 2012, being considered by the Disciplinary Sub-committee under section 10C, 11(1) or (2) of the 1965 Act, that case must, on and after 2nd April 2012, be considered by the GTCS under Schedule 4 of this Order.

(a) S.I. 1993/2732.

Persons with right to apply for variation on revocation of conditions under section 11(4) of 1965 Act

7.—(1) This paragraph applies to a person in relation to whom a conditional registration order has been made and who has, prior to 2nd April 2012, a right to apply to the Professional Conduct Committee for a determination under section 11(4) of the 1965 Act.

(2) Despite the repeal of section 11(4), that person will, on and after 2nd April 2012, have a right to apply to the GTCS for a determination.

(3) The GTCS is to determine an application and must give notice of the determination to the person concerned.

(4) A notice under paragraph (3) must include a statement of the reasons for the determination.

Persons to whom section 11(7) of the 1965 Act applies

8.—(1) This paragraph applies to a person in respect of whom a reprimand is marked against that person's name in the register prior to 2nd April 2012.

(2) Despite the repeal of section 11(7), that section will continue to apply in relation to the removal of a reprimand after the five year period referred to in that section..

Persons to whom section 11(9) of the 1965 Act applies

9.—(1) This paragraph applies to a person to whom section 11(9) of the 1965 Act applies immediately prior to 2nd April 2012 and who is not entitled to be registered or re-registered except in compliance with a direction of the Disciplinary Sub-committee.

(2) Despite the repeal of section 11(9), that section continues to apply to such a person as if the reference to the Disciplinary Sub-committee was a reference to the GTCS.

(3) The GTCS, in considering a direction in the circumstances described in section 11(9), is to take into account any existing prohibition imposed by the Disciplinary Sub-committee under section 11(10).

Entries to which section 11A of the 1965 Act applies

10.—(1) This paragraph applies to an entry in the register which is marked as suspended before 2nd April 2012.

(2) Despite the repeal of section 11A of the 1965 Act, that section continues to apply in relation to the cancellation of the suspension where there is no direction for the removal of the entry from the register following the conclusion of the case to which that suspension relates.

(3) For the purposes of this paragraph, any reference to a Committee or Sub-committee, where relevant to the cancellation of the suspension, is to be read as a reference to the GTCS and the requirements to serve a notice under section 11A(2) apply to the GTCS.

Appeals

11.—(1) Where, before 2nd April 2012, a person has a right to appeal under section 12(1) of the 1965 Act, but has not yet lodged an appeal, that person will, on and after 2nd April 2012, have a right to appeal under article 24 of this Order.

(2) The right to appeal in circumstances described in sub-paragraph (2) may only be exercised within the period of twenty-eight days after the service of notice of the direction in question.

Review

12.—(1) Despite the repeal of section 12(1A) of the 1965 Act, a person with a right to require a review under that sub-section immediately prior to 2nd April 2012, will, on and after 2nd April 2012, have a right to require the GTCS to carry out a review.

(2) The right to require the GTCS to carry out a review is to be exercised within the prescribed number of days referred to in section 12(1A) of the 1965 Act.

The Teaching Council (Scotland) (Legal Assessor) Rules 2006

13.—(1) Despite the revocation of the Teaching Council (Scotland) (Legal Assessor) Rules 2006 (“the 2006 Rules”)(a), those rules continue to apply to proceedings under this Order as they applied to proceedings under the 1965 Act until the Lord President makes rules relating to the function of legal assessors under paragraph 3 of Schedule 4 to this Order.

(2) In the 2006 Rules, any reference to a Committee of the GTCS is to be read as a reference to the GTCS.

(a) S.S.I. 2006/455.

SCHEDULE 6

Article 33(1)

Minor and Consequential Amendments

Primary legislation

Education (Scotland) Act 1980

1.—(1) The Education (Scotland) Act 1980(**a**) is amended as follows.

(2) In paragraph (a) of sub-section (6) of section 105 of the Education (Scotland) Act 1980 (schemes for reorganisation of educational endowments) for “Teaching Council (Scotland) Act 1965” substitute “Public Services Reform (General Teaching Council for Scotland) Order 2011”.

(3) In the definition of “registered teacher” in sub-section (1) of section 135 (interpretation) for “Teaching Council (Scotland) Act 1965” substitute “Public Services Reform (General Teaching Council for Scotland) Order 2011”.

Standards in Scotland’s Schools etc. Act 2000

2. In sub-section (1) of section 58 of the Standards in Scotland’s Schools etc. Act 2000(**b**) (interpretation) omit the definition of “the 1965 Act”.

Protection of Vulnerable Groups (Scotland) Act 2007

3.—(1) The Protection of Vulnerable Groups (Scotland) Act 2007(**c**) is amended as follows.

(2) In paragraph (a) of sub-section (3) of section 8 (meaning of “relevant functions”) for “Teaching Council (Scotland) Act 1965 (c.19)” substitute “Public Services Reform (General Teaching Council for Scotland) Order 2011”.

(3) In sub-section (c) of section 73 (consideration of suitability) for “section 6 of the Teaching Council (Scotland) Act 1965 (c.19)” substitute “registration under the Public Services Reform (General Teaching Council for Scotland) Order 2011”.

Secondary legislation

The Colleges of Education (Scotland) Regulations

4. In regulation 25(7) of the Colleges of Education (Scotland) Regulations 1987(**d**) (employment of staff) for “under section 6 of the Teaching Council (Scotland) Act 1965” substitute “in the register of teachers kept under the Public Services Reform (General Teaching Council for Scotland) Order 2011”.

The Scottish Social Services Council (Consultation on Codes of Practice) Order 2001

5. In article 2(j) of the Scottish Social Services Council (Consultation on Codes of Practice) Order 2001(**e**) (consultation on codes of practice) for “section 1 of the Teaching Council (Scotland) Act 1965” substitute “the Public Services Reform (General Teaching Council for Scotland) Order 2011”.

The Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Order 2003

(a) 1980 c.44.
(b) 2000 asp 6.
(c) 2007 asp 14.
(d) S.I. 1987/309.
(e) S.S.I. 2001/424.

6. In the definition of “registered teacher” in Part 4 of Schedule 4 to the Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Order 2003**(a)** (interpretation) for “Teaching Council (Scotland) Act 1965” substitute “Public Services Reform (General Teaching Council for Scotland) Order 2011”.

The Requirements for Teachers (Scotland) Regulations 2005

7. In regulation 4(2) of the Requirements for Teachers (Scotland) Regulations 2005**(b)** (requirement to employ registered teachers) for the words “section 6 of the Teaching Council (Scotland) Act 1965” substitute “the Public Services Reform (General Teaching Council for Scotland) Order 2011”.

(a) S.S.I. 2003/231.

(b) S.S.I. 2005/355.

SCHEDULE 7

Article 33(2)

Repeals and Revocations

Repeals of primary legislation

<i>Enactment</i>	<i>Extent of repeal</i>
The Teaching Council (Scotland) Act 1965 (c.19)	The whole Act.
The Teaching Council (Scotland) Act 1971 (c.2)	The whole Act.
Local Government (Scotland) Act 1975 (c.30)	Schedule 6, Part II, paragraph 29
Education (Scotland) Act 1981 (c.58)	Section 17. Schedule 7, paragraphs 1 and 2.
Self-Governing Schools etc. (Scotland) Act 1989 (c.39)	Schedule 10, paragraph 2.
Further and Higher Education (Scotland) Act 1992 (c.37)	Section 55. Schedule 9, paragraph 1.
Teaching and Higher Education Act 1998 (c.30)	Sections 16 and 17.
The Standards in Scotland's Schools etc. Act 2000 (asp 6)	Sections 45 to 54. Schedule 2, paragraph 1. Schedule 3, entries in the table relating to the Teaching Council (Scotland) Act 1965.
Protection of Children (Scotland) Act 2003 (asp 5)	Section 13.
Education (Additional Support for Learning) (Scotland) Act 2004 (asp 4)	Schedule 3, paragraph 1.
Protection of Vulnerable Groups (Scotland) Act 2007 (asp 14)	Schedule 4, paragraphs 1 to 4.

Revocations of secondary legislation

<i>Regulations</i>	<i>Reference</i>	<i>Extent of revocation</i>
The General Teaching Council (Deduction of Fees for Renewal of Registration) (Scotland) Regulations 1971	S.I. 1971/296	The whole regulations.
The Teachers (Entitlement to Registration) (Scotland) Regulations 1991	S.I. 1991/1136	The whole regulations.
The Teachers (Education, Training and Recommendation for Registration) (Scotland) Regulations 1993	S.I. 1993/2732	The whole regulations subject to the saving made in Schedule 5 to this Order.
The General Teaching Council for Scotland (Amendment of Constitution) Order 1997	S.I. 1997/207	The whole regulations.
The Teachers (Medical Requirements for Admission to Training and Registration) (Scotland) Amendment Regulations 2004	S.S.I. 2004/390	The whole regulations.
The General Teaching Council for Scotland Election Scheme 2004 Approval Order 2004	S.S.I. 2004/542	The whole regulations.

<i>Regulations</i>	<i>Reference</i>	<i>Extent of revocation</i>
The Teaching Council (Scotland) (Legal Assessor) Rules 2006	S.S.I. 2006/455	The whole regulations subject to the saving made in Schedule 5 to this Order.
The Teaching Council (Scotland) Act 1965 Modification Order 2009	S.S.I. 2009/386	The whole regulations.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order repeals the Teaching Council (Scotland) Act 1965 and the Teaching Council (Scotland) Act 1971, which establish the General Teaching Council for Scotland (“the GTCS”). The Order provides for the continuation of the GTCS with amendments to its functions, constitution and governance arrangements under powers in the Public Services Reform (Scotland) Act 2010 (asp 8).

Article 4 provides for the continuation of the GTCS, makes provision for its membership (Schedule 2) and makes further related provision about the GTCS (Schedule 3). Article 5 sets out the principal aims of the GTCS.

Article 6 confers on the GTCS functions in relation to keeping a register of teachers, standards of education and training appropriate to school teachers, standards of conduct and professional competence expected of a registered teacher, investigating fitness to teach of individuals either registered or seeking registration, keeping itself informed of the education and training of individuals training as teachers, making recommendations to Scottish Ministers on matters relating to teachers’ education, training, career development and fitness to teach, and the supply of teachers, and keeping registers of other educational professionals. Article 7 requires the GTCS to have regard to the interests of the public when performing its functions.

The GTCS is required to perform its functions in a way which is proportionate, accountable, transparent and consistent, is targeted only where action is needed, encourages equal opportunities and is consistent with any other principles of best regulatory practice (article 8).

Article 9 grants the GTCS power to do anything appropriate for the purposes of, or in connection with, the performance of its functions.

The GTCS may give advice relating to its functions, carry out research, publish information or advice relating to its functions, and publicise matters relating to its functions (article 10).

Article 11 requires Scottish Ministers to have regard to relevant recommendations made by the GTCS when performing their functions relating to education.

Under article 12, the GTCS must supply to the General Teaching Councils for England, Wales and Northern Ireland such information as is necessary or desirable for those Councils to have for the purposes of their statutory functions, and otherwise seek to secure co-operation with those councils so far as consistent with its functions.

Article 13 obliges those who employ registered teachers to teach in an educational establishment to provide the GTCS with their names and such other information as may be reasonably required.

Article 14 enables the GTCS to organise the register in such manner as it thinks fit, and article 15 obliges the GTCS to make and publish rules governing the operation of the register, in particular in relation to the procedure for inclusion in the register and setting out registration criteria.

Article 16 provides that the GTCS must include individuals in the register if satisfied that the registration criteria are met, that the individual is not unfit to teach and that the GTCS rules, or the provision on barred individuals (article 19), do not otherwise prevent the individual from being registered.

Article 17 requires the GTCS rules on registration to make registration dependent on an individual either obtaining a recognised teaching qualification (defined in article 3), or satisfying the GTCS that the individual in question has the education, training or experience to warrant registration.

Article 18 sets out the circumstances in which GTCS must investigate fitness to teach, and those in which it has a discretion to investigate. Where an individual is considered unfit to teach, their

registration must either be refused, or they must be removed from the register. Schedule 4 makes further provision regarding fitness to teach.

An individual may not be registered if that individual is barred from regulated work with children. If a registered individual becomes barred from such work they must be removed from the register (article 19).

The GTCS has power to charge fees in relation to registration, and may make rules as to when, by whom and how fees are to be payable. They may also reduce, waive or refund fees in circumstances set out in rules. Employers of registered teachers in educational establishments must, if required by the GTCS, deduct from the salary of a registered employee amounts in respect of fees, and remit those amounts to the GTCS (article 20).

Article 21 enables the GTCS to suspend temporarily an individual's registration pending conclusion of an investigation into any circumstances which on the face of it might result in removal of that individual from the register.

Article 22 allows the GTCS to make rules setting out circumstances in which an individual may be removed from the register, including failure to pay a fee and failure to notify the GTCS of a change in information. Such rules must, however, include a facility requiring the GTCS to review a decision to remove an individual from the register in these circumstances.

The GTCS is required by article 23 to notify an individual where registration has been refused because the GTCS considers them unfit to teach or considers that they otherwise fail to meet the registration criteria, or where the individual's registration has been temporarily suspended, or where that individual has been removed from the register because the GTCS considers them unfit to teach or considers that they no longer meet the registration criteria. The notice must provide reasons and advise the individual of their right of appeal.

Article 24 provides that an individual may appeal to the Court of Session against any decision of the GTCS in respect of which notification is required under article 23.

Article 25 places employers of registered teachers under a duty to notify the GTCS of that individual's dismissal on grounds of misconduct, incompetence, or of that individual's resignation etc. where they were at risk of dismissal on those grounds.

Article 26 grants the GTCS the power to keep other registers of other individuals working in educational settings.

Article 27 provides that it is an offence for a person knowingly to provide the GTCS or any other person with information that is false or materially misleading, where that person knows, or could reasonably be expected to know that the GTCS may use the information in connection with its functions. It is also an offence for a person to pretend with fraudulent intent to be registered. Commission of an offence attracts, on summary conviction, a fine not exceeding level 4 on the standard scale.

Article 28 requires the GTCS to consult, and have regard to the views of, a number of interest groups before establishing new standards, or changing existing standards, of education, training or fitness to teach appropriate to school teachers.

The GTCS has responsibility for determining what constitutes a recognised teaching qualification for those seeking registration as a school teacher (article 29). The Scottish Ministers have responsibility for determining what constitutes a recognised teaching qualification for those seeking registration as a further education teacher (article 30).

Article 31 requires the GTCS to make a scheme by which it may keep itself informed about standards of education and training of registered teachers. Such a scheme may impose requirements on registered teachers or their employers, and make provision for failure to comply with such requirements.

Schedule 1 contains commencement provisions. Schedule 5 makes transitional and savings provisions. Schedules 6 and 7 contain minor and consequential amendments, and repeals and revocations, respectively.



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