

SPICe Briefing

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

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The Public Services Reform (General Teaching Council for Scotland) Order 2011 will replace the existing legislation relating to the constitution and functions of the General Teaching Council Scotland (GTCS). It is subject to 'super-affirmative' procedure which means that a consultation draft must be laid in the Parliament and consulted on before the actual draft order is laid. This note looks at both the procedure and the substantive changes which would be introduced by this order.



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EXECUTIVE SUMMARY

The General Teaching Council Scotland (GTCS) was established in 1965 and was one of the first teaching councils in the world. Proposals for change were issued for consultation 2009 (Scottish Government, 2009a) and a proposed draft Order was laid in the Parliament on 6 September 2010 (Scottish Government, 2010a). Further consultations were held in 2010 and the actual draft Order will be laid in the Parliament towards the end of January 2011. The Education, Culture and Lifelong Learning Committee are due to consider the order in February.

The regulations replace the Teaching Council (Scotland) Act 1965 and are subject to a 'super affirmative' procedure under the Public Services Reform (Scotland) Act 2010. Requirements include that the Explanatory Note lodged with the draft order includes an explanation of how the proposals are: proportionate, do not remove a necessary protection, are within the general purpose of the organisation and improve public functions. It also requires an explanation of how consultation responses have been taken into account.

The core functions of the GTCS will not change. Key changes are:

- The GTCS will be wholly independent rather than an advisory NDPB.
- Council membership will be reduced from 50 to 37 members to be made up of 19 elected teachers, 11 seats nominated by key educational interests (including one from parent councils who Ministers expect will be drawn from the National Parents Forum) and 7 members appointed by the GTCS. Members will serve for a maximum of 8 years out of 20.
- The GTCS will have more flexibility to organise its structure and finance, as many of the specific requirements currently set out in legislation (such as the membership of committees and process for electing teachers) will be removed.
- The GTCS will have a slightly expanded responsibility for teaching standards and initial teacher education (ITE) courses by having direct oversight of these rather than sharing leadership with the Scottish Government. This is described in the draft Explanatory Note as "really a formalisation of their current role" (Scottish Government, 2010a). Scottish Ministers retain their current role in relation to training for further education.
- The GTCS will be under a new duty to develop a re-accreditation scheme (art 31) and will have the ability to register other educational professionals (art 26).
- Employers will be required to refer to the GTCS any teacher whom they have dismissed, or would have considered dismissing on grounds of misconduct or incompetence (art 25).
- The GTCS will be able to register other education professionals

In the consultations there was general agreement with the proposals, although some respondents had concerns about the re-accreditation scheme. It is expected that the changes will come into full effect in April 2012.

INTRODUCTION

The GTCS was established by the Teaching Council (Scotland) Act 1965 and was one of the first teaching councils in the world (Scottish Government, 2009a). In January 2008, the First Minister announced that it would be changed from an NDPB to “a self regulating, profession-led body, along the lines of the General Medical Council” (Scottish Parliament, 2009). The draft Explanatory Note accompanying the proposed draft Order described the policy objective as being to improve the exercise of public functions by making the GTCS fully independent and more flexible in its operations.

[Towards an Independent GTC for Scotland](#) was published in April 2009 (Scottish Government, 2009a), with responses to this consultation published in the August (Scottish Government 2009b). There were 223 responses, mostly from individuals (156). There were 21 responses from local authorities, 10 from unions and professional bodies, 12 from the college sector and 8 from the university sector. The Government published its proposals for action in February 2010 (Scottish Government 2010b) and laid a proposed draft Order in the Parliament on 6 September which was consulted on until 22 November 2010 (Scottish Government, 2010a). The Government’s response to this consultation was published on 15 December 2010 along with a revised proposed draft order. Changes made following this consultation were generally of a technical nature. A further consultation on these changes ran from 15 December to 10 January 2011 and the actual draft order is expected to be laid towards the end of January. Some elements will come into force in April 2011 (Scottish Parliament, 2011a) but most changes are expected to come into full effect in April 2012.

The general functions of the GTCS will not change. These are set out in article 6 of the draft Order as:

- To keep a register of teachers
- To establish, review and change standards of education and training for school teachers; standards of conduct and professional competence of registered teachers,
- To investigate fitness to teach or those who are, or who are seeking to be registered
- To keep informed of teacher education
- To make recommendations to Scottish Ministers relating to teacher education, training, career development, fitness to teach and the supply of teachers.

There is however, one addition which is a power to keep a register of other education professionals.

LEGISLATIVE PROCEDURE

This draft order is introduced under the [Public Services Reform \(Scotland\) Act 2010](#) (the 2010 Act) and is the first to be made under the ‘super-affirmative’ requirements of that Act. Section 16 of the 2010 Act enables Ministers to bring forward regulations to alter the functions of certain public bodies, including the GTCS. However, Ministers may do so only if:

- It is proportionate
- It does not remove any necessary protection
- Any modifications are broadly consistent with the organisation’s general purpose

The Explanatory Note for the proposed Order must explain how the above issues are satisfied (where relevant), how the changes would improve the exercise of public functions and how any consultation responses have been taken into account.

Ministers are required to allow 60 days for consultation with relevant organisations and this consultation must include laying a proposed draft Order before the Parliament and sending copies to relevant organisations. Ministers must take into account submissions received within 60 days before laying a draft Order before the Parliament under affirmative procedure. This allows a 40 day period for committees to consider and report on affirmative instruments. The Scottish Government must lodge a motion that the committee recommend approval of the instrument to the Parliament. A committee can take evidence and debate the order. As instruments can only be approved or rejected in their entirety, an amendment seeking to alter the wording of the instrument is inadmissible.

The ability to change or abolish public bodies through regulations rather than primary legislation proved to be controversial during the passage of the 2010 Act. The Finance Committee's stage 1 report noted that similar powers in Westminster had also been contentious:

“The Committee notes the views expressed regarding whether the power in section 13 is desirable or necessary, and that the equivalent power at Westminster was extremely controversial when going through Parliament and has rarely been used” (Finance Committee, 2009 para 85).

At stage 1, both the Rural Affairs and Environment Committee and the Education, Lifelong Learning and Culture Committee recommended (by majority) that the powers be removed from the Bill and there was also an unsuccessful attempt to do so in the Finance Committee (Scottish Parliament Finance Committee, 2009). In response to these concerns, amendments at stages 2 and 3 introduced the ‘super-affirmative’ procedure described above (Burnside, R. 2009).

COUNCIL SIZE AND MEMBERSHIP

There are 26 seats specifically set aside for teachers to be elected to the GTCS Council. In addition, many organisations also appoint teachers to the council. As a result, there are, in total, 37 registered teachers serving on the current Council (Scottish Government, 2009a). The strengths of the current model, as noted in the 2009 consultation, are that a wide range of interests is represented and a majority of members are elected teachers. Potential weaknesses mentioned are that the number of lay members is low, there is little representation from parents and pupils, and that: “it could be argued that some bodies who appoint members to the council are over-represented” (Scottish Government, 2009a). The following alternative models were suggested:

1. Retain the elected teacher majority but not have any guaranteed seats for any named organisation. Instead, people would be appointed on the basis of their skills.
2. Retain the elected teacher majority and guarantee some seats for particularly relevant organisations
3. Retain teacher majority but appoint all council members. No guaranteed seats for any organisation.

The consultation noted that adopting any of these changes would: “result in a very significant change to the way in which the council is currently established” but referred to other regulatory bodies which were smaller than the current GTCS. The draft Order (Scottish Government, 2010a) reflects the second option.

The table below compares the current and proposed council membership.

Table 1: GTCS Membership

Current		Proposed	
Total members	50	Total members	37
26 elected		19 elected	
Teachers (Primary and Nursery: 4 head teachers, 7 others. Secondary: 3 heads, 8 others. One other nursery, 2 FE, 1 from 'relevant institution')	26	Teachers	19
18 nominated by		11 nominated by	
COSLA	3	COSLA	3
Universities Scotland	3	Universities Scotland (in consultation with universities)	3
Further Education	1	Further Education	1
Independent Schools	1	Independent schools	1
Church of Scotland	1	Church of Scotland	1
Catholic Church	1	Catholic Church	1
Association of Directors of Education	3	Parent Councils	1
Association of Directors of Social Work	1		
Teacher training institutions	4		
6 appointed by Ministers	6	7 appointed by GTCS	7
To represent interests of parents, commerce and industry, additional support needs and the public.		Must be a wide range of applications, but not teachers. Scheme to be developed by GTCS. Must consider best practice on public appointments.	
Appointment term			
No cap on number of terms served	4 yrs	Maximum of 8 years in any 20 year period. 18 members will have an initial term of 2 years.	4 yrs

Source: The General Teaching (Scotland) Act 1965 and Scottish Government 2010a.

The main differences are: a reduction in the number of teachers represented, no longer requiring a certain mix of teachers, no longer having nominations from ADES or ADSW but including for the first time, representation from parents, through the National Parents Forum. Responsibility for the small number of appointed members moves from Ministers to the GTCS and specifically requires that these members cannot be teachers.

The Government consultation argued the following advantages of a smaller Council:

- More effective in ensuring effective strategic oversight
- More dynamic debate (Scottish Government, 2009a para 42)
- A shift away from large representative body that seeks to include all interests would enable more strategic decision making (Scottish Government, 2009a para 44)

The consultation also noted that in 1999, Deloitte and Touche had recommended that the GTCS should have 39 members.

In response to the 2009 consultation, there was a general recognition that a smaller council might be less cumbersome (ADES, AHDS, COSLA), although it was also noted that a small council was less accountable, less representative (EIS) and might result in increased work for members (GTCS). However, the Government suggested that, given current workload problems

and the proposed smaller Council, “it is likely to be necessary for a smaller Council to operate a system of co-option” (Scottish Government 2010b).

Most organisations responding to the 2009 consultation were against a cap on the number of years served. However, in proposing a cap, the Government argued that this was similar to the situation on other regulatory bodies and that it:

“will strike a balance between allowing existing members to develop experience in working with the GTCS while ensuring that membership of the Council is regularly refreshed and other interested individuals are given the chance to become involved.” (Scottish Government, 2010b).

There was little comment on the change to the membership of the Council. However, the University of the Highlands and Islands would like to ensure that one of the nominations by Universities Scotland is a university which does not provide initial teacher education. Renfrewshire Council would like to see ADES continuing to have a seat and Petition PE1366 was lodged with the Scottish Parliament by James Forbes in September 2010 asking the Scottish Government to remove the seats reserved for the Church of Scotland and the Roman Catholic Church. It should be noted that the draft Order provides for certain organisations to nominate Council members – they do not necessarily have to nominate themselves.

The new proposals also give the GTCS more flexibility in how to organise elections, appointments to and removals from the council and this was generally welcomed in the consultation responses. In anticipation of the changes in this Order, the GTCS is consulting on changes to the election and appointments process for the new council. It is also consulting on the registration and standards rules. These include, the criteria to be met in order to register with the Council and to meet the standards for headship and chartered teachers. The GTCS expects to respond to these consultations in March 2011.

INCREASED FLEXIBILITY

The draft Order is much less prescriptive than the 1965 Act with regard to how the GTCS is to operate. In particular, it does not require particular committees to be established, nor does it give as much detail on the process for dismissal of teachers. Currently, the GTCS is required to establish:

- A committee of one third of the Council to consider exceptional admissions to the register.
- A Professional Conduct Committee with two sub committees with a majority of teacher membership. The sub-committees are:
 - Investigating sub-committee (preliminary investigation whether to refer to disciplinary) and
 - Disciplinary sub-committee

In contrast, the draft Order at Schedule 3, merely requires that the GTCS establish a scheme for committees and enables the GTCS to decide whether any committee is made up wholly, partly or not at all of council members. This flexibility was generally welcomed by consultation respondents.

TEACHING STANDARDS AND INITIAL TEACHER EDUCATION

The draft Order gives the GTCS the lead role in setting entry requirements for Initial Teaching Education (ITE), for accrediting and approving ITE courses and setting standards for the teaching profession.

The 1965 Act requires the GTCS to keep standards of education, training and fitness to teach 'under review' and make recommendations to Ministers. There are currently [standards](#) for initial teacher education, full registration, Chartered Teacher and headship (GTCS on-line). The 2009 consultation observed that it is not explicit who has overall responsibility for setting teaching standards (Scottish Government, 2009a para 25). In practice, the GTCS and Scottish Government manage the standards with input from other stakeholders. The draft Order sets this out more explicitly by making one of the general functions of the GTCS establishing the standards of education and training for school teachers (article 6). The Explanatory Document describes this as formalising current practice (Scottish Government, 2010a).

The 1965 Act requires the GTCS to 'keep themselves informed of the education and training of teachers in relevant (i.e. teacher training) institutions' by visiting them and reporting to the Council. The GTCS can recommend that the Governing Body of the institution make changes to their teacher training. The current practice is that the GTCS accredits ITE courses and the Scottish Government approves them (Scottish Government, 2009a para 29). Part 4 of the draft Order requires the GTCS to: "determine what constitutes a recognised teaching qualification" and to do so in consultation with governing bodies, Scottish Ministers and others (Scottish Government, 2010a). The teaching institutions which replied to the consultation were comfortable with the proposals, seeing them as confirming current practice. There was however, an emphasis on the need for a partnership approach (Scottish Government, 2010b).

In contrast to school ITE, Scottish Ministers will retain responsibility for teaching qualifications in Further Education (TQFE) and entry requirements. Scotland's Colleges were of the view that:

"Council cannot be given overall responsibility for setting entry requirements without compromising the academic freedom of the Higher Education Institutions delivering these."

The draft Order retains the current requirement that the GTCS keeps itself informed about teacher training in further education (article 6(c)) and its ability to make recommendations to Ministers on teachers' education generally. In its response to the 2009 consultation, the Scottish Government accepted that responsibility for FE teaching qualifications should remain with Ministers at the moment, but noted that:

"It is possible that these questions could be revisited as a result of further discussions and agreement between the Scottish Government, GTCS and the college sector."
(Scottish Government, 2010b).

REGISTERING OTHER EDUCATION STAFF

The Order contains a power to register other education staff at article 2b, but there is no requirement to do so. A number of responses to the 2010 consultation welcomed the extension of the register to other education staff on a voluntary basis including East Ayrshire, Dundee University, Aberdeen University. The EIS Music Instructors Network asked for a specific registration category for 'teachers of instrumental music.' HMIE also supports registration of other education staff, while cautioning that it has: "many challenges of philosophy and

practicality” and that a two tier registration system may be difficult to achieve. One of the few submissions opposing the proposal was the ATL who ‘do not see an appetite’ for the move.

Further education staff who hold a teaching qualification are already eligible to register with the GTCS, although few choose to do so. In 2010 there were 401 FE staff registered (GTCS 2010). The EIS would support a move towards compulsory registration of FE lecturers, but this is opposed by Cardonald College who suggest that it might lead to registration of university lecturers. Similarly, Scotland’s Colleges were not in favour of an expanded role for GTCS in further education:

“The GTCS’s own response to this consultation indicates that the Council has aspirations to extend its role within the College Sector. Scotland’s Colleges would not support any extension of the role of the GTCS with respect to Colleges and their staff, because Colleges do not believe this would add value to the processes already in place and would limit the life-changing opportunities offered to learners of all ages in College.”

However, the Government encourages increasing GTCS registration amongst FE staff.

“The Scottish Government encourages the GTCS and the college sector to continue to develop their relationship and increase the level of registration amongst college lecturers.” (Scottish Government, 2010b).

RE-ACCREDITATION AND CPD

In the Standards in Scotland’s Schools etc Act 2000, the GTCS were given an expanded role in CPD by requiring them to make recommendations to Ministers regarding teachers’ career development in addition to training and standards. Since then the GTCS has:

- Accredited all modules leading to award of the Standards (headship, full registration and chartered teacher)
- Operated the Framework for Professional Recognition/Registration
- Organised the professional interview panel for the Flexible Routes to Headship programme
- Accredited modular Chartered Teacher programmes provided by Universities

The 2009 consultation asked for views on further expanding the GTC’s role in CPD which could include developing a system of professional re-accreditation (Scottish Government, 2009a). This produced mixed views about whether the GTCS should be given more responsibility for CPD (Scottish Government, 2010b). The GTCS noted:

“notwithstanding the quality of CPD provision across Scotland, it is arguable that its coherence, availability and relevance could be improved.”

It proposed an expanded role in relation to:

- Promotion of appropriate issues for CPD activities which are relevant to teachers at different stages of their careers
- Identification of gaps or weaknesses in current or future provision
- Liaison with key providers to assess potential solutions
- Accreditation of courses linked to Standards

The lack of consensus and the complexity of the arrangement of CPD in Scotland led to the Scottish Government proposing only one change; that is, to require the GTCS to establish a re-

accreditation scheme. The Government response to the 2009 consultation explained that such a scheme would build on current good practice:

“It is expected that this system will build on those aspects of current good practice which can help teachers to keep their skills up to date as their careers develop and school curriculum and learning patterns change. For example, a supportive but rigorous system of professional review and development can assist individual teachers to identify constructive ways to update their professional skills.”

Article 31 of the draft Order requires the GTCS to establish a re-accreditation scheme following consultation. The draft Order would enable the scheme to impose requirements on teachers and could include penalties for failure to comply. These might include reviewing a person’s registration. However, the actual terms of the scheme will be developed by the GTCS and will not have to include these elements.

The idea of a reaccreditation scheme was given a cautious welcome by many responding to the 2010 consultation. Perth and Kinross Council were concerned that it should not create additional administrative burdens on local authorities; the Scottish Parent Teacher Council would want to see it supported by a duty on local authorities to provide high quality CPD and East Ayrshire Council were concerned that it would not mean teachers having to pay for another qualification. A few responses were however, very negative. The EIS passed a motion at its AGM that it: “totally opposes re-accreditation” but noted that the GTCS scheme is not likely to be the ‘re-licensing’ approach proposed in England. The Association of Teachers and Lecturers considered that it is: “a flawed initiative driven by political dogma” and the NASUWT think that, “a teacher re-accreditation process represents an implicit criticism of teacher competence.”

Responding to the laying of the draft Order, the GTCS emphasised the need to achieve a consensus on re-accreditation, and stated that:

“we would certainly not wish to follow the re-licensing idea previously mooted in England. A Scottish model would focus on improvement of teachers’ skills rather than on determining standards of competence.”

The GTCS explain on their web site that stakeholders will be fully consulted on proposals for the scheme, that it does not imply existing poor standards and that, in time, it will develop a balance between support for teachers and the means of achieving expected standards.

“It is important to say that teachers in Scotland are highly trained and, consequently, the overwhelming majority of teachers already work to high standards. Any work that might be done in the future to introduce re-accreditation should serve to confirm the already high standard of teaching in schools in Scotland and to support teachers in updating their professional skills in an environment in which change is now a constant.

Finally, any system of re-accreditation would, in time, require GTC Scotland, in partnership with other stakeholders, to consider how best to promote a balance between the entitlement of teachers to appropriate advice, guidance and opportunities to maintain and improve standards of teaching and the availability of suitable means of achieving these expectations” (GTCS, online).

TEACHER COMPETENCE AND MISCONDUCT

The press release on the announcement of the draft Order emphasised the fact that it will give the GTCS extra powers relating to the dismissal of teachers. The Order “will give the General Teaching Council Scotland (GTCS) the right to examine competence cases even if a teacher has already resigned from their post” (Scottish Government, 2010c).

Currently the GTCS has slightly more powers with regard to misconduct cases than for incompetence cases and the current legislation also includes more detail about the investigative process and outcomes than the proposed draft Order. The 1965 Act requires an employer to inform the GTCS if they have:

- Dismissed a teacher on grounds of gross misconduct or would have done so had he or she not resigned
- Dismissed a teacher on grounds of incompetence or a teacher resigns before the date set for a dismissal hearing

Currently, the GTCS must establish a professional conduct committee with an investigating subcommittee and a disciplinary subcommittee. The investigating subcommittee conducts a preliminary investigation and if necessary, hand the case to the disciplinary sub committee. After investigation, the disciplinary subcommittee can:

- Remove a person’s name from the register
- Issue a conditional registration order
- Issue a reprimand (removed from the record after 5 years)
- Take no action

There is an appeal to the Court of Session. These provisions were last amended in 2000 and 2006.

The main differences in the draft Order are that no committee structure is laid down and the threshold for employer referral has been slightly lowered. The draft Order proposes that an employer must notify the GTCS if it dismisses a teacher, or if a teacher resigns before they would have been dismissed for either gross misconduct or incompetence (art 25). Schedule 4 provides that GTCS may hold proceedings regarding fitness to teach with the detail left to Rules. Article 24 provides for an appeal to the Court of Session.

Responses to the consultations generally approved of these provisions. There was however some concern expressed by the EIS and NASUWT who think that the threshold for referral may be too low. They consider that the provision that a teacher can be removed from the register if they might have been dismissed is too broad and could lead to unnecessary referrals to the GTCS.

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