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SCOTTISH STATUTORY INSTRUMENTS

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**2011 No. 215**

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

**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 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 on 2nd April 2012, come into force on that date.

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

(4) Where a provision of this Order requires consultation to take place and, before that provision comes into force, consultation takes place which would have satisfied the requirements to any extent had the provision been in force, the requirement is to be taken to have been satisfied to that extent.

**Interpretation**

3. In this Order—

“the 1980 Act” means the Education (Scotland) Act 1980(1);

“the 1965 Act” means the Teaching Council (Scotland) Act 1965(2);

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(1) 1980 c.44; section 135 (interpretation) of this Act is relevant to this Order; the relevant definitions have been amended by section 2(2) of the Registered Establishments (Scotland) Act 1987 (c.40), section 82(1) and (2) of and Schedules 10 and 11 to the Self-Governing Schools etc. (Scotland) Act 1989 (c.39) and section 62(2) and (3) of and Schedules 9 and 10 to the Further and Higher Education (Scotland) Act 1992 (c.37).

(2) 1965 c.19; as amended by Schedules 2 and 3 to the Education (Scotland) Act 1969 (c.49), Schedule 1 to the Teaching Council (Scotland) Act 1971 (c.2), sections 289F and 289G of the Criminal Procedure (Scotland) Act 1975 (c.21), Schedule 6 to the Local Government (Scotland) Act 1975 (c.30), section 21 of and Schedule 7 to the Education (Scotland) Act 1981 (c.58), section 82 of and Schedule 10 to the Self-Governing Schools etc. (Scotland) Act 1989 (c.39), section 55 of and Schedule 9 to the Further and Higher Education (Scotland) Act 1992 (c.37), section 16 of the Teaching and Higher Education Act 1998 (c.30), sections 45 to 54 of and schedules 2 and 3 to the Standards in Scotland's Schools etc. Act 2000 (asp 6), section 13 of the Protection of Children (Scotland) Act 2003 (asp 5), schedule 3 to the Education (Additional Support for Learning) (Scotland)

- “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(3) and “further education teacher” is to be construed accordingly;
- “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;
- “teacher” means an individual who has either obtained a recognised teaching qualification, or who has satisfied the GTCS that they have adequate education, training or experience to warrant registration;
- “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 the register;
  - (b) to establish (and to review and change as necessary)—
    - (i) the standards of education and training appropriate to school teachers;

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Act 2004 (asp 4) and schedule 4 to the Protection of Vulnerable Groups (Scotland) Act 2007 (asp 14); also as amended by S.I. 1969/586, 1970/523, 1991/1997, 1997/207, 1999/1820, 2008/948 and S.S.I. 2009/386.

(3) 2005 asp 6; schedule 2 to this Act has been relevantly amended by S.S.I. 2005/660, 2006/480, 2007/255 and 524 and 2008/241 and 412.

- (ii) the standards of conduct and professional competence expected of a registered teacher;
- (c) to investigate the fitness to teach of individuals who are, or who are seeking to be, registered;
- (d) to keep itself informed of the education and training of individuals undertaking courses for the education and training of teachers;
- (e) 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
- (f) to keep such other registers of other individuals working in educational settings 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 (as it thinks fit)—
  - (a) give to any person, or publish, any advice relating to its functions;
  - (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 the GTCS considers 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;
- (c) the General Teaching Council for Northern Ireland; and
- (d) any successor body or person which takes over all or any of the functions of the councils listed in sub-paragraphs (a) to (c).

### **Employers' duty to provide information about teachers**

13. A person who employs a registered teacher to work in an educational establishment must provide the GTCS with—

- (a) the name 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; and
  - (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) the charging of fees in relation to registration;
  - (e) making entries provisional on the GTCS being satisfied that conditions are met;
  - (f) the provision of information to the GTCS by or about individuals who are registered or who are seeking registration;
  - (g) removing individuals from the register;
  - (h) restricting and cancelling entries in the register;
  - (i) circumstances in which registration may lapse;
  - (j) re-registering individuals or otherwise restoring entries to the register;
  - (k) the issuing of registration certificates; and
  - (l) 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; 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; and
  - (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 warrants 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 significantly short of the standards expected of a registered teacher (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, on being notified that an individual is barred from regulated work with children by virtue of the Protection of Vulnerable Groups (Scotland) Act 2007(4)—

- (a) refuse to register that individual; or, as the case may be
- (b) remove that individual from the register.

### 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 work in an educational establishment must (if required to do so by the GTCS rules)—

- (a) deduct amounts in respect of registration fees from the registered teacher’s salary; and
- (b) remit those amounts to the GTCS.

(4) The GTCS rules may make different rules in relation to fees for different circumstances.

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(4) 2007 asp 14. Part 1 of that Act makes provision as to the operation of the lists of those individuals who are barred from working with children. Relevant amendments are to be made to Part 1 by schedule 14 of the [Public Services Reform \(Scotland\) Act 2010](#) (asp 8), schedule 7 of the [Criminal Justice and Licensing \(Scotland\) Act 2010](#) (asp 13) and S.I. 2009/1182.

### **Temporary restriction**

21. The GTCS rules may make provision to restrict 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;
  - (ii) is barred from regulated work with children by virtue of the Protection of Vulnerable Groups (Scotland) Act 2007; or
  - (iii) does not otherwise meet the registration criteria;
- (b) to restrict an individual's registration under any rule made by virtue of article 21; or
- (c) to remove the individual from the register, other than in accordance with any rule made by virtue of article 22, because the GTCS considers that the individual—
  - (i) is unfit to teach;
  - (ii) is barred from regulated work with children by virtue of the Protection of Vulnerable Groups (Scotland) Act 2007; or
  - (iii) no longer meets the registration criteria.

(2) The notice must—

- (a) explain why the decision was made; and
- (b) advise the individual of the right to appeal the decision under article 24.

(3) The GTCS must advise any person whom it knows employs the individual to work in an educational establishment of the decision.

### **Appeals**

24.—(1) Subject to paragraph (6), 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—

- (a) the decision; or
- (b) the outcome of any review of the decision carried out in pursuance of GTCS rules made under paragraph 1(2)(b)(ii) of Schedule 4.

(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 restrict an individual's registration under any rule made by virtue of 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.

(6) No appeal may be made where the refusal of an individual's registration or the removal of an individual from the register is in consequence of article 19.

### **Employers: duty to report misconduct or incompetence**

**25.**—(1) A person who employs a registered teacher to work in an educational establishment must immediately notify the GTCS if—

(a) they dismiss the registered teacher on grounds of misconduct or incompetence; or

(b) the registered teacher resigns or otherwise stops working for the person in circumstances in which the person, but for that fact, would have or might have dismissed the registered teacher on such grounds.

(2) Such a notice to the GTCS must explain the circumstances which caused the person to dismiss, or to conclude that they would have or might have dismissed, the registered teacher.

### *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 any such 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 or in any other register of individuals working in educational settings kept by the GTCS under article 26 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.** Before establishing new standards, or changing existing standards, of education, training, conduct or professional competence appropriate to teachers, 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.

#### 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) A determination may, in particular, make provision about—

- (a) institutions providing courses of education and training for teachers;
- (b) the qualifications of persons employed by institutions 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 determinations.

#### 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) A 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 them to have an interest; and
  - (b) have regard to any views expressed by those consulted.
- (6) The Scottish Ministers must publish determinations.

#### **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 registered teachers;
  - (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 provisions**

- 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 or revoked to the extent specified.

St Andrew's House,  
Edinburgh  
17th March 2011

*MICHAEL W RUSSELL*  
A member of the Scottish Executive