



# Teaching Council (Scotland) Act 1965 (repealed)

## 1965 CHAPTER 19

### *Disciplinary Provisions*

#### **[<sup>F1</sup>10 Constitution of Professional Conduct Committee and Investigating and Disciplinary Sub-committees**

- (1) The Council shall set up from their own number a committee, to be known as the Professional Conduct Committee; and that committee shall have two sub-committees, to be known respectively as the Investigating Sub-committee and the Disciplinary Sub-committee.
- (2) The members of either sub-committee may include persons who, though members of the Council, are not members of the Professional Conduct Committee.
- (3) A majority of the members of the Council appointed to—
  - (a) the Professional Conduct Committee;
  - (b) each of the sub-committees, shall be registered teachers.
- (4) No member of the Council shall be a member of both sub-committees in their consideration of any one case.
- (5) The Council shall make rules regulating—
  - (a) subject to the provisions of this section, the membership of the committee and of each of the sub-committees; and
  - (b) the times and places of meetings, the quorum and the method of summoning the members of the Disciplinary Sub-committee.
- (6) The provisions of Schedule 2 to this Act shall have effect with regard to the procedure of the Disciplinary Sub-committee.]

*Status: Point in time view as at 01/11/2001.*

*Changes to legislation: There are currently no known outstanding effects for the Teaching Council (Scotland) Act 1965 (repealed), Cross Heading: Disciplinary Provisions. (See end of Document for details)*

### Textual Amendments

**F1** Ss. 10-11B substituted for ss. 10, 11 (1.11.2001 for specified purposes and otherwise *prosp.*) by 2000 asp 6, s. 50; S.S.I. 2000/361, art. 3(2), **Sch. Pt. II** (subject to transitional provisions in art. 4)

## [<sup>F2</sup>10A The Professional Conduct Committee

- (1) Without prejudice to subsections (2) and (3) below, the Professional Conduct Committee shall have the functions of—
  - (a) formulating and keeping under review the policy of the Council as respects the professional conduct of teachers; and
  - (b) overseeing the actings of its own sub-committees.
- (2) Where the Professional Conduct Committee has been notified by—
  - (a) a person’s employer (or former employer if the person is for the time being unemployed); or
  - (b) the Scottish Ministers,
 that the person has an illness or some other medical condition and after due inquiry the committee is satisfied that that is so and that the nature of the illness, or condition, and its effect on the person are such as to warrant a direction that the person’s name be removed from the register, the committee may so direct.
- (3) The Professional Conduct Committee shall be charged with the duty of considering and determining any application for re-registration of a name in the register where the name was removed by virtue of subsection (2) above.
- (4) Schedule 2 to this Act shall apply in relation to proceedings under subsection (2) above before the Professional Conduct Committee as it applies in relation to any proceedings before the Disciplinary Sub-committee; except that in so applying paragraph 2 of that Schedule that paragraph shall be modified as follows—
  - (a) in sub-paragraph (1)—
    - (i) in head (a), the words “under section 10B(2) of this Act” shall be disregarded; and
    - (ii) head (g) shall be disregarded; and
  - (b) in sub-paragraph (2), heads (b) and (c) shall be disregarded,
 and such rules as are, for the purposes of that application, made under the said paragraph 2 shall include rules relating to any need for the person to submit himself for examination by an appropriately qualified practitioner appointed by the committee and permitting the attendance at any such examination of a qualified medical practitioner appointed for that purpose by the person.
- (5) When the Professional Conduct Committee directs—
  - (a) that a person’s name be removed from the register; or
  - (b) that an application for re-registration be refused,
 the committee shall serve on the person notice of the direction; and any such notice shall include a statement of the reasons for the direction.]

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#### Textual Amendments

**F2** Ss. 10-11B substituted for ss. 10, 11 (1.11.2001 for specified purposes and otherwise *prosp.*) by 2000 asp 6, s. 50; S.S.I. 2000/361, art. 3(2), **Sch. Pt. II** (subject to transitional provisions in art. 4)

### [<sup>F3</sup>10B The Investigating Sub-committee

- (1) The Investigating Sub-committee shall be charged with the duty of conducting a preliminary investigation into any case where it appears—
  - (a) that a registered person may be liable, under or by virtue of any of the provisions of this Act (other than section 10A(2)), to have his name removed from the register; or
  - (b) that a person who—
    - (i) has been duly recommended for registration;
    - (ii) fulfils requirements prescribed under paragraph (ba) of subsection (2) of section 6 of this Act; or
    - (iii) in the opinion of the Council is a person whose registration is warranted in terms of paragraph (c) of that subsection,and has applied to be registered may have been convicted of a relevant offence or may otherwise have been guilty of relevant misconduct (irrespective of whether the offence or misconduct took place in Scotland).
- (2) If, after fulfilling its duty under subsection (1) above, the Investigating Sub-committee considers it just to do so it shall refer the case to the Disciplinary Sub-committee.
- (3) In subsection (1)(b) above—

“relevant misconduct” means conduct which falls short of the standard expected of a registered teacher; and

“relevant offence” means an offence other than one having no material relevance to the fitness of the perpetrator to be a registered teacher.]

#### Textual Amendments

**F3** Ss. 10-11B substituted for ss. 10, 11 (1.11.2001 for specified purposes and otherwise *prosp.*) by 2000 asp 6, s. 50; S.S.I. 2000/361, art. 3(2), **Sch. Pt. II** (subject to transitional provisions in art. 4)

### [<sup>F4</sup>10C The Disciplinary Sub-committee

- (1) The Disciplinary Sub-committee shall be charged with the duty of considering and determining—
  - (a) any case referred to it by the Investigating Sub-committee;
  - (b) any application for re-registration of a name in the register;
  - (c) any second or subsequent application for registration by a person whose original application has been refused in pursuance of its direction under section 11(8) of this Act; and
  - (d) any application for registration by any person who has been a certificated teacher but whose certificate has been withdrawn on the ground of misconduct, or suspended on that ground, and not restored under any enactment in force before the commencement of this Act.

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- (2) Subsection (1)(b) above does not apply in respect of—
- (a) an application made by virtue of section 6(4)(c) of this Act; or
  - (b) a name removed by virtue of section 10A(2) of this Act.]

#### Textual Amendments

- F4** Ss. 10-11B substituted for ss. 10, 11 (1.11.2001 for specified purposes and otherwise *prosp.*) by 2000 asp 6, s. 50; S.S.I. 2000/361, art. 3(2), **Sch. Pt. II** (subject to transitional provisions in art. 4)

#### [<sup>F5</sup>11 Decisions of the Disciplinary Sub-committee

- (1) Where a registered person—
  - (a) has been convicted (whether in Scotland or elsewhere and irrespective of whether the person was a registered person at the time of conviction) of a relevant offence; or
  - (b) is judged by the Disciplinary Sub-committee to have been guilty of relevant misconduct,
 or where the Disciplinary Sub-committee is satisfied that the name of such a person has been registered in error in consequence of any false or fraudulent declaration or representation then the sub-committee may, if it thinks fit, direct that—
  - (i) the person's name be removed from the register;
  - (ii) the person shall be subject to a conditional registration order; or
  - (iii) a reprimand shall be recorded against the person's name in the register.
- (2) Where a registered person of whom the Council have received notification under section 9B(a)(ii) or (c) of this Act is judged by the Disciplinary Sub-committee to have been guilty of serious professional incompetence and the Sub-committee is satisfied that the nature of the incompetence is such as to warrant the removal of that person's name from the register, the Sub-committee may direct that it be removed accordingly.
- (3) In subsection (1)(ii) above, the reference to a conditional registration order is to an order of the Disciplinary Sub-committee that the person shall continue to be eligible for registration under section 6(2) of this Act but, for such period as may be specified in the order or for an unlimited time, shall comply with such conditions as to employment as a teacher as may be so specified; and if there is a failure so to comply, the Disciplinary Sub-committee may direct that the person's name be removed from the register.
- (4) A person in relation to whom a conditional registration order has been made may apply to the Professional Conduct Committee for variation or revocation of a condition specified in the order; and the committee shall, in determining that application, cause notice of its determination to be served on the person and in relation to any such application no person who was a member of the Disciplinary Sub-committee at the time the condition was imposed shall be entitled to take part in the proceedings of the Professional Conduct Committee.
- (5) A notice under subsection (4) above shall include a statement of the sub-committee's reasons for its determination.
- (6) Schedule 2 to this Act shall apply in relation to proceedings under subsection (4) above before the Professional Conduct Committee as it applies to any proceedings before the

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Disciplinary Sub-committee; except that in so applying paragraph 2 of that Schedule the provisions of that paragraph shall be modified as follows—

- (a) in sub-paragraph (1)—
    - (i) in head (a), the words “under section 10B(2) of this Act” shall be disregarded; and
    - (ii) head (g) shall be disregarded; and
  - (b) sub-paragraph (2) shall be disregarded.
- (7) Where, in the five years which immediately follow the recording, under subsection (1) (iii) above, of a reprimand against a person’s name no further direction is made under this section by the Disciplinary Sub-committee in respect of that person, the reprimand shall be removed from the register; but the sub-committee may have regard to any past reprimand in fulfilling its duty under section 10C(1) of this Act even though the reprimand has been so removed.
- (8) Where a person such as is mentioned in any of sub-paragraphs (i) to (iii) of section 10B(1)(b) of this Act has applied to be registered but is as described in paragraph (a) or (b) of subsection (1) above and, in the opinion of the sub-committee, is in consequence unfit to be registered, the sub-committee may direct that the person’s application be refused.
- (9) A person whose—
  - (a) application for registration has been refused in compliance with a direction—
    - (i) given by virtue of a determination under section 10C(1)(d) of this Act; or
    - (ii) under subsection (8) above; or
  - (b) name is removed from the register in compliance with a direction under subsection (1)(i) or (2) above,shall not be entitled to be registered, or as the case may be re-registered, except in compliance with a direction of the Disciplinary Sub-committee.
- (10) The Disciplinary Sub-committee, in directing that a person’s application for registration, or re-registration, be refused or that a person’s name be removed from the register, may in the direction prohibit the person from applying or, as the case may be, applying again, for a direction under subsection (9) above until the expiration of such period, not exceeding twelve months from the date of the direction, as may be specified in the prohibition.
- (11) When the Disciplinary Sub-committee directs that a person’s application for registration or re-registration be refused, or that a person’s name be removed from the register, the sub-committee shall serve on the person notice of the direction; and any such notice shall include a statement of—
  - (a) the facts found proven in the proceedings before the sub-committee; and
  - (b) the reasons for the direction.]

#### Textual Amendments

**F5** Ss. 10-11B substituted for ss. 10, 11 (1.11.2001 for specified purposes and otherwise *prosp.*) by 2000 asp 6, s. 50; S.S.I. 2000/361, art. 3(2), **Sch.**, Pt. II (subject to transitional provisions in art. 4)

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## [<sup>F6</sup>11A Temporary suspension

- (1) Where, as respects a registered person—
- (a) a preliminary investigation under section 10B(1) of this Act is pending, the Investigating Sub-committee; or
  - (b) proceedings under section 10C of this Act are pending, the Disciplinary Sub-committee,
- may, if it is satisfied that there is prima facie evidence of circumstances on the basis of which the person's name might come to be removed from the register, direct that, until the date on which the case is finally disposed of, the entry for the person's name shall be marked on the register as suspended; but if in determining the case the Disciplinary Sub-committee makes no direction for the removal of the name from the register, it shall direct that the suspension be cancelled and the mark on the register removed accordingly.
- (2) When the Investigating Sub-committee or the Disciplinary Sub-committee makes a direction under subsection (1) above, it shall serve notice of the direction—
- (a) on the person; and
  - (b) if the person is in employment as a teacher, on the employer.
- (3) Subsections (1) and (2) above shall apply in relation to proceedings under section 10A(2) of this Act and to the Professional Conduct Committee as they apply in relation to proceedings under section 10C of this Act and to the Disciplinary Sub-committee.]

### Textual Amendments

**F6** S. 10-11B substituted for ss. 10, 11 (1.11.2001 for specified purposes and otherwise *prosp.*) by 2000 asp 6, s. 50; S.S.I. 2000/361, art. 3(2), **Sch. Pt. II** (subject to transitional provisions in art. 4)

## [<sup>F7</sup>11B Notification to employer of outcome of disciplinary proceedings

When proceedings in a case such as is mentioned in section 10A(2) or 10C(1)(a) of this Act against a person employed as a teacher are finally disposed of, the Council shall forthwith advise the person's employers of the outcome of those proceedings.]

### Textual Amendments

**F7** S. 10-11B substituted for ss. 10, 11 (1.11.2001 for specified purposes and otherwise *prosp.*) by 2000 asp 6, s. 50; S.S.I. 2000/361, art. 3(2), **Sch. Pt. II** (subject to transitional provisions in art. 4)

## 12 Appeals.

[<sup>F8</sup>(1) Any—

- (a) such person as is mentioned in section 10A(2) or in paragraph (a) or (b) of section 11(9) of this Act;
- (b) person whose application for re-registration has been refused in compliance with a direction under this Act; or

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- (c) person whose application for registration has been refused in compliance with a direction of the committee appointed under paragraph 16(1) of Part II of Schedule 1 to this Act,

may, within twenty-eight days after the service on him of notice of the direction in question, appeal against—

- (i) that direction; or
- (ii) in the case of a direction by the Disciplinary Sub-committee, any prohibition imposed by virtue of section 11(10) of this Act,

to the Court of Session in accordance with such rules as may be made by Act of Sederunt for the purposes of this subsection; and on any such appeal the Court may give such directions in the matter as it thinks proper, including directions as to the expenses of the appeal.

(1A) Any person—

- (a) in respect of whom a direction has been made by the Disciplinary Sub-committee, the Investigating Sub-committee or the Professional Conduct Committee and who does not have a right of appeal under subsection (1) above; or
- (b) whose application for variation or revocation of a condition specified in a conditional registration order has been refused by the Professional Conduct Committee,

may, within the prescribed number of days after the service on him of notice of the direction or refusal in question, require the Council to review the direction or refusal; and in relation to any such review no person who was a member of the Disciplinary Sub-committee, or as the case may be of the Investigating Sub-committee or the Professional Conduct Committee, at the time the direction, or the decision to refuse the application, was made shall be entitled to take part in the proceedings of the Council.]

(2) No appeal shall lie from a decision of the Court of Session on an appeal under [F9]subsection (1) above].

(3) On an appeal under [F9]subsection (1) above] the Council shall be entitled to appear as respondent; and, whether they so appear or not, the Council shall be deemed for the purposes of any award of expenses in the appeal to be a party thereto.

[F10](4) No direction under section 10A(2), 11(1) or (2) or 11A(1) of this Act (or section 11A(1) as applied in relation to proceedings under section 10A(2) of this Act) shall take effect until—

- (a) where, in accordance with this section, the person concerned—
  - (i) appeals against the direction, the appeal has been withdrawn or dismissed; or
  - (ii) requires the Council to review the direction or refusal, the requirement has been withdrawn or the direction or refusal has been upheld; or
- (b) in any other case, the twenty-eight days mentioned in subsection (1), or as the case may be the prescribed number of days mentioned in subsection (1A), above have elapsed.

(5) The Council shall make rules as respects the procedure to be followed and the rules of evidence to be observed in proceedings in any review required under subsection (1A) above; but such rules shall not come into force until approved by the Lord President of the Court of Session.

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- (6) In subsection (1A) above, “the prescribed number of days” means such number of days as may be prescribed by the Council in rules made under this subsection; and different numbers may be so prescribed for different categories of review.
- (7) For the purposes of advising the Council on questions of law arising in proceedings in any review required under subsection (1A) above, there shall in all such proceedings be an assessor to the Council who shall be an advocate or solicitor of not less than ten years’ standing appointed by them; and sub-paragraph (2) of paragraph 3 of Schedule 2 to this Act shall apply in relation to such proceedings and to the Council as that sub-paragraph applies in relation to proceedings before the Disciplinary Sub-committee and to that sub-committee.
- (8) An assessor may be appointed under this section either generally or for any particular proceedings or class of proceedings and shall hold and vacate office in accordance with the terms of the instrument under which he is appointed.
- (9) The Council shall pay to an assessor appointed under this section remuneration at such rates as may be determined by them with the consent of the Lord President of the Court of Session.]

#### Textual Amendments

- F8** S. 12(1)(1A) substituted for s. 12(1) (13.10.2000 for certain purposes and otherwise 1.11.2001) by 2000 asp 6, s. 51(1); S.S.I. 2000/361, art. 3, Sch. (subject to transitional provisions in art. 4)
- F9** Words in s. 12(2)(3) substituted (1.11.2001) by 2000 asp 6, s. 51(2); S.S.I. 2000/361, art. 3(2), Sch. Pt. II (subject to transitional provisions in art. 4)
- F10** S. 12(4)-(9) substituted for s. 12(4) (1.11.2001) by 2000 asp 6, s. 51(2); S.S.I. 2000/361, art. 3(2), Sch. Pt. II (subject to transitional provisions in art. 4)



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