

Draft Order laid before the Scottish Parliament under section 103(5) of the Charities and Trustee Investment (Scotland) Act 2005 for approval by resolution of the Scottish Parliament.

DRAFT SCOTTISH STATUTORY INSTRUMENTS

2009 No.

CHARITIES

**The Teaching Council (Scotland)
Act 1965 Modification Order 2009**

*Made - - - - 2009
Coming into force in accordance with article 1*

The Scottish Ministers make the following Order in exercise of the powers conferred by section 102 of the Charities and Trustee Investment (Scotland) Act 2005⁽¹⁾ and all other powers enabling them to do so.

In accordance with section 103(5) of that Act, a draft of this instrument has been laid before, and approved by resolution of, the Scottish Parliament.

Citation and commencement

1. This Order may be cited as the Teaching Council (Scotland) Act 1965 Modification Order 2009 and comes into force on the day after the day on which it was made.

Modification of the Teaching Council (Scotland) Act 1965

- 2.—(1) The following provisions of the Teaching Council (Scotland) Act 1965⁽²⁾ are repealed:—
- (a) section 4A (additional functions)⁽³⁾;
 - (b) section 5(1)(b) (relevant institutions)⁽⁴⁾;
 - (c) section 6A (further provision as to keeping of register)⁽⁵⁾;
 - (d) paragraph 8(2) of Schedule 1 (the council)⁽⁶⁾; and
 - (e) paragraph 16A of that Schedule⁽⁷⁾.

(1) 2005 asp 10.

(2) 1965 c.19.

(3) Section 4A was inserted by the [Standards in Scotland's Schools etc. Act 2000 \(asp 6\)](#) ("the 2000 Act"), section 45(3).

(4) Paragraph (b) was amended by the 2000 Act, schedule 2, paragraph 1(2).

(5) Section 6A was inserted by the 2000 Act, section 47(1).

(6) Paragraph 8 was substituted by the 2000 Act, section 53.

(7) Paragraph 16A was substituted by the 2000 Act, section 54.

(2) In paragraph 17 of Schedule 1(8) to the Teaching Council (Scotland) Act 1965 omit “and 16A”.

St Andrew’s House,
Edinburgh
Date

Authorised to sign by the Scottish Ministers

EXPLANATORY NOTE

(This note is not part of the Order)

Section 7(4)(b) of the Charities and Trustee Investment (Scotland) Act 2005 (“the 2005 Act”) provides that a body which falls within paragraphs (a) and (b) of section 7(1) will not meet the charity test (despite section 7(1)) if its constitution expressly permits the Scottish Ministers or a Minister of the Crown to direct or otherwise control its activities.

Consequently, where provisions of the Teaching Council (Scotland) Act 1965 (“the 1965 Act”) provide a power for Scottish Ministers to control the teaching Council it will result in that body failing to meet the charity test.

Section 102(a) of the 2005 Act empowers the Scottish Ministers, by order, to modify any enactment for the purpose of preventing a body which is established by enactment from failing the charity test.

This Order modifies the 1965 Act by repealing the provisions listed in article 2(1).

These are: section 4A which allows Scottish Ministers to confer additional functions on the General Teaching Council for Scotland (“GTC Scotland”); section 5(1)(b) which places the GTC Scotland under a duty to carry out functions imposed on them under section 4A(1); section 6A which allows the Scottish Ministers to make Regulations governing the form and manner in which the Register of Teachers established under the Act is kept; Schedule 1, paragraph 8(2) which requires the consent of the Scottish Ministers if the GTC Scotland wish to borrow money; and Schedule 1, paragraph 16A which allows Scottish Ministers via Regulations to require the GTC Scotland to set up new committees and allows Ministers to set the committee’s membership.

This Order also removes the reference to paragraph 16A in paragraph 17 of Schedule 1 (article 2(2)).