

EXECUTIVE NOTE

THE SCOTTISH PUBLIC SERVICES OMBUDSMAN ACT 2002 AMENDMENT (No. 2) ORDER 2012

SSI 2012/XXX

Powers under which the Instrument is made

1. The Scottish Public Services Ombudsman Act 2002 Amendment (No. 2) Order 2012 (“the Order”) is made in exercise of powers conferred by section 3(2)(b) of the Scottish Public Services Ombudsman Act 2002 (“the 2002 Act”) and all other powers enabling Her Majesty to do so.

Parliamentary procedure

2. The Order is subject to the draft affirmative procedure in the Scottish Parliament. After laying in draft, and following approval by resolution of the Parliament, the Order will be made by Her Majesty in Council.

Legislative background

3. Schedule 2 of the 2002 Act lists the persons that are liable to investigation by the Scottish Public Services Ombudsman (“the SPSO”). The General Teaching Council for Scotland (“the GTCS”) is included in Part 2 of Schedule 2 as one of the Scottish public authorities whose entry in the list is amendable by Order in Council.

4. The Scottish Government used legislative powers under the Public Services Reform (Scotland) Act 2010 to establish the GTCS as an independent, profession-led, regulatory body from 2 April 2012. To that end, the Public Services Reform (General Teaching Council for Scotland) Order 2011 (“the 2011 Order”), which was approved by Parliament on 17 March 2011, comes fully into effect on 2 April 2012.

5. By virtue of the 2011 Order, the future functions and governance arrangements of the GTCS will be amended from April 2012 to reflect its new independent status. At the time of the original consultation on the 2011 Order, the SPSO wrote to the Scottish Government suggesting that following its change in status the GTCS should no longer fall within the remit of the SPSO.

Summary of policy objectives

6. The Government concurs with the view that as the independent regulator for the teaching profession in Scotland, it would not be appropriate for the GTCS to remain within the remit of the SPSO on the grounds that any issues relating to teacher professionalism (e.g. decisions taken on awarding teaching standards) should rightly be dealt with by the GTCS without potential recourse to the Ombudsman. Complaints about the behaviour or conduct of a teacher could still be routed to the Ombudsman through the local authority as the teacher’s employer and a teacher

would retain a right of appeal to the Court of Session against any decision of the GTCS to his or her registration status.

Consultation

7. There is no statutory requirement to consult when using the enabling powers referred to above. However, all relevant organisations were written to by way of informal consultation. The consultation responses either supported the proposal to remove the GTCS from the remit of the SPSO or acknowledged the proposal without comment. One response, however, suggested that the proposal left matters unclear as to whether a complaint about a teacher should be referred to the GTCS or to the SPSO.

8. The Government has written to the stakeholder who raised this matter to clarify the position as set out in paragraph 6 above.

Impact assessments

10. The policy objective underlying the Order is to bring the GTCS into line with other bodies that are independent of Government and therefore do not appear in Schedule 2 of the 2002 Act as public bodies which are liable to be investigated by the SPSO. There is no potential for discrimination or adverse impact on the nine protected characteristics in this policy and it does not lead to different consequences or outcomes for particular groups. There is also no evidence this could discriminate unlawfully directly, or indirectly, against people from particular groups. Therefore an Equality Impact Assessment is not required.

Financial effects

11. The Order will have no financial effects on the Government, local government, business or the GTCS.

Scottish Government
Learning Directorate