EDUCATION, LIFELONG LEARNING AND CULTURE COMMITTEE

AGENDA

27th Meeting, 2009 (Session 3)

Wednesday 7 October 2009

The Committee will meet at 10.00 am in Committee Room 4.

1. **Subordinate legislation:** The Committee will take evidence on the draft Teaching Council (Scotland) Act 1965 Modification Order 2009 from—

   Keith Brown MSP, Minister for Schools and Skills, David Roy, Policy Officer, Teacher Development Team, Schools Directorate, and Neel Mojee, Principal Legal Officer, Solicitors Childrens, Education, Enterprise and Pensions Division, Scottish Government.

2. **Subordinate legislation:** Keith Brown MSP (Minister for Schools and Skills) to move S3M-4959—

   That the Education, Lifelong Learning and Culture Committee recommends that the draft Teaching Council (Scotland) Act 1965 Modification Order 2009 be approved.

3. **Public Services Reform (Scotland) Bill (in private):** The Committee will consider a draft report to the Finance Committee.

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The papers for this meeting are as follows—

**Agenda items 1 and 2**

Paper by the Clerk

**Agenda item 3**

Draft report
Education, Lifelong Learning and Culture Committee

27th Meeting, 2009 (Session 3), Wednesday, 7 October 2009

Subordinate legislation

Introduction

1. This paper seeks to inform members’ consideration of the Teaching Council (Scotland) Act 1965 Modification Order 2009 (SSI 2009/draft).

2. Copies of the SSI, explanatory notes and Executive Note are provided to members in hard copy only.\(^1\)

3. The instrument is subject to the affirmative procedure and a procedural note on this is attached at Annexe A.

Teaching Council (Scotland) Act 1965 Modification Order 2009 (SSI 2009/draft)

Background

4. This Order was laid on 9 September 2009 and the lead committee must report by 26 October 2009. The Education, Lifelong Learning and Culture Committee was designated the lead committee. Keith Brown MSP, Minister for Schools and Skills, is the Minister responsible for the instrument.

5. This instrument is made in exercise of powers conferred in the Charities and Trustee Investment (Scotland) Act 2005.

Policy objectives

6. The Executive Note states that the purpose of the instrument is to repeal the powers granted to Scottish Ministers under the Teaching Council (Scotland) Act 1965. These powers allow Ministers to confer additional functions to the General Teaching Council for Scotland (GTCS) and govern aspects of its work.

7. The Note goes on to state that Ministers believe that these powers currently prevent the GTCS from meeting the charity test set out in the 2005 Act. Section 7(4)(b) of the 2005 Act provides that a body does not meet the charity test if its constitution expressly permits the Scottish Ministers to direct or otherwise control its activities.

8. The Note states that the instrument gives effect to the Scottish Government’s commitment to changing the status of the GTCS from being an advisory NDPB to a fully independent body and its policy that bodies should not lose their charitable status on account of failing to meet the requirements of Section 7(4)(b).

\(^1\) Electronic copies are available on the website of the Office of Public Sector Information. [http://www.opsi.gov.uk/legislation/scotland/s-20090201](http://www.opsi.gov.uk/legislation/scotland/s-20090201)
Issues the Committee may wish to consider

9. The Executive Note states that the Order will not have any financial effect. It goes on to state that charity status is worth approximately £100,000 per annum to the GTCS.

10. The Subordinate Legislation Committee (SLC) considered the instrument at its meeting on 22 September 2009. The SLC had identified that repealing the relevant sections of the 1965 Act rendered various sections of the Standards in Scotland’s Schools etc. Act 2000 redundant. The Committee had sought clarification from the Scottish Government as to why these sections had not been repealed by subordinate legislation at the same time. In its response, the Scottish Government agreed that various sections of the 2000 Act were redundant. The Scottish Government stated that it intended to undertake a major reform of the 1965 Act in due course and would address this issue at that time. The SLC accepted the Scottish Government’s response, but concluded that “it would have been preferable to have done this in this instrument given the minimal amount of time that it would have taken to identify the loose ends that required to be tidied up”. The relevant sections of the SLC’s report are attached at Annexe B.

Action

11. The Committee is invited to take oral evidence from the Minister for Schools and Skills and then consider whether it wishes to recommend approval of the motion S3M-4959—

    That the Education, Lifelong Learning and Culture Committee recommends that the draft Teaching Council (Scotland) Act 1965 Modification Order 2009 be approved.

Emma Berry
Assistant Clerk
Education, Lifelong Learning and Culture Committee
Procedural note

Standing Orders

1. The procedures for dealing with Scottish Statutory Instruments (SSIs) are covered by Chapter 10 of Standing Orders. SSIs are laid by being lodged with the chamber clerks, and are published in the Business Bulletin. They are referred to the Subordinate Legislation Committee, the appropriate subject committee (the ‘lead committee’), and, where relevant, any other committee.

SSIs subject to approval: ‘affirmative instruments’

2. Under Rule 10.6.1, the lead committee “shall decide whether to recommend that the instrument or draft instrument be approved”.

3. The lead committee, by virtue of Rule 10.6.4, must then report to the Parliament on the instrument setting out its recommendations no later than 40 days after the instrument is laid.

Committee recommends approval of an instrument

4. Rule 10.6.5 provides that if the lead committee recommends approval of the instrument, the Parliamentary Bureau must lodge a motion to that effect and schedule time for consideration of the motion by the Parliament. Both the lodging and taking of the Bureau motion can be after the 40 day period has elapsed as the Standing Orders provide no time limit within which these steps must be taken.

Committee agrees not to recommend the approval of an instrument

5. Where the lead committee has considered a motion to recommend approval of the instrument and disagreed to it, then the committee should report to the Parliament indicating that it agrees not to recommend approval.

6. The Scottish Government would then have the option either to withdraw the instrument or to ask the Parliamentary Bureau to schedule time in the Chamber for a debate on it.

7. If the Bureau agreed, it would invite the Parliament, by way of a Business Motion, to decide whether to consider the instrument. If the Parliament agreed, the Bureau would schedule Parliamentary time for a debate. If, after debate, the Parliament did not agree to the motion before it, the instrument could not be approved and the Scottish Government would be required to consider whether to withdraw the instrument. Even if it did not formally withdraw, nothing further could be done with the instrument in the absence of parliamentary approval of the instrument.
EXTRACT FROM THE SUBORDINATE LEGISLATION COMMITTEE’S 41st REPORT 2009

The Teaching Council (Scotland) Act 1965 Modification Order 2009 (SSI 2009/draft) (Education, Lifelong Learning and Culture Committee)

1. The purpose of this instrument is to modify the Teaching Council (Scotland) Act 1965 and to repeal sections of that Act which confer powers on the Scottish Ministers to influence or to confer additional functions on the General Teaching Council for Scotland (“GTCS”).

2. Correspondence with the Scottish Government is reproduced at Appendix 1.

3. The Committee considers it good practice when making amendments to the statute book to “tidy up” the consequences of those changes. In this case certain sections of primary legislation are being repealed. Those sections being repealed were inserted into the 1965 Act by provisions in the Standards in Scotland’s Schools etc. Act 2000 which serve no other purpose. As they have no remaining purpose it is good drafting practice to repeal them. While this is not legally necessary, it is considered good practice as they leave behind a false trail which could be misleading.

4. The Government advised the Committee that it intends to undertake major statutory reform of the Council in the near future at which point these redundant sections could be repealed. It would have been preferable to have done this in this instrument given the minimal amount of time that it would have taken to identify the loose ends that required to be tidied up.

5. The Committee reports to the lead committee and to the Parliament that it considers it good practice for amendments to primary legislation to remove any resulting redundant provisions. The Committee therefore welcomes the Government’s commitment to do so in the context of the forthcoming changes to the status of the General Teaching Council.
APPENDIX 1

The Teaching Council (Scotland) Act 1965 Modification Order 2009 (SSI 2009/draft)

On 11th September 2009 the Scottish Government was asked:

*Given that with the repeal of sections 4A, 5(1)(b) and 6A of and paragraph 16A of Schedule 1 to the Teaching Council (Scotland) Act 1965 sections 45(3), 47(1) and 54 of and paragraph 1(2) of schedule 2 to the Standards in Scotland's Schools etc. Act 2000 are rendered redundant, why are those redundant provisions not themselves repealed by this Order?*

The Scottish Government responds as follows:

The Scottish Government agrees that sections 45(3), 47(1) and 54 of and paragraph 1(2) of schedule 2 to the Standards in Scotland's Schools etc. Act 2000 are rendered redundant by the repeal of sections 4A, 5(1)(b) and 6A of and paragraph 16A of Schedule 1 to the Teaching Council (Scotland) Act 1965 in the draft Order. That said, it is not considered that having those redundant provisions on the statute book has any detrimental legal effect on the draft Order.

As the General Teaching Council for Scotland is becoming an independent body, it is the intention to undertake a major reform of the Council in the near future which will include significantly amending the Teaching Council (Scotland) Act 1965. There may also be a need to amend the Standards in Scotland's Schools etc. Act 2000 as part of this exercise, including repeal of redundant sections. At that time any other redundant provisions, such as those in question will be picked up.