

## **BERMUDA EDUCATORS COUNCIL ACT 2002**

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**BERMUDA  
2002 : 21**

### **BERMUDA EDUCATORS COUNCIL ACT 2002**

[Date of Assent: 13 August 2002]

[Operative Date: 31 December 2002]

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WHEREAS it is expedient to make provision for the establishment of a council to be responsible for the registration, certification and continuing education of educators in Bermuda; and for connected purposes:

Be it enacted by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Assembly of Bermuda, and by the authority of the same, as follows:—

### *PRELIMINARY*

#### **Short title and commencement**

1. This Act may be cited as the Bermuda Educators Council Act 2002 and shall come into operation on such day as the Minister may appoint by notice published in the Gazette; and the Minister may appoint different days for the commencement of different provisions.

#### **Interpretation**

2. In this Act—

"Council" means the Council referred to in section 3;

"educator" means a teacher, a principal of a school, a person who holds a teaching post or is engaged as a teacher, and a para-professional;

"employer" in relation to an educator includes a person who engages or makes arrangements for the engagement of that educator to provide his services as an educator otherwise than under a contract of employment, and "prospective employer", "employed" and "employment" shall be construed accordingly;

"Minister" means the Minister responsible for education;

"para-professional" means a person who possesses appropriate qualification and training to be a teacher's assistant;

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"register" means the register referred to in section 7 and "registered" is to be construed accordingly;

"registered educator" except as provided in Schedule 2, means an educator registered under this Act;

"school" has the same meaning as in the Education Act 1996;

"Secretary" means the Secretary to the Council appointed under paragraph 23(1) of Schedule 1.

### *BERMUDA EDUCATORS COUNCIL*

#### **The Council**

3. (1) There shall be a body corporate which shall be known as the Bermuda Educators Council ("the Council").

(2) The Council shall have such functions as are assigned to them by or under this Act.

(3) The principal aims of the Council in exercising their functions are—

(a) to improve standards of teaching so as to enhance the quality of learning; and

(b) to maintain and improve standards of professional conduct of educators;

in the public interest.

(4) Schedule 1 has effect in relation to the status, constitution and proceedings of the Council.

### *REGISTRATION OF EDUCATORS*

#### **Restriction on taking up employment at schools**

4. (1) Subject to section 5, a person shall not take up any employment as an educator at a school unless he is registered under this Act.

(2) A person who contravenes the provisions of subsection (1) is guilty of an offence and is liable on summary conviction to a fine of \$5,000.

#### **Exemption from restriction on employment**

5. (1) The Minister acting on the advice of the Exemption Committee, on being satisfied that there is a need in schools in Bermuda for persons who possess knowledge of, and skills in, particular subjects

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taught at schools, may by order exempt from the restriction imposed by section 4(1) —

- (a) a specified person; or
- (b) persons falling within specified classes;

who possess such knowledge and skills.

(2) An exemption order may provide for an exemption to have effect—

- (a) only in specified circumstances;
- (b) subject to conditions.

(3) "Specified" means specified by the order.

(4) An "Exemption Committee" means the committee established by section 6.

(5) An order made under this section is subject to negative resolution procedure.

### **Exemption Committee**

6. (1) There shall be an Exemption Committee appointed by the Minister in accordance with this section, which shall advise the Minister on proposals for exemption from the restriction imposed by section 4(1).

(2) The Committee shall comprise five members two of whom shall be registered educators nominated by the Council.

(3) The term of appointment of a member of the Exemption Committee is one year.

### **Register of educators**

7. (1) The Council shall establish and maintain a register of educators ("the register").

(2) Except as provided in section 9(1)(a), the register shall contain the name of every person who is eligible for registration and applies to be registered in the register.

(3) A person is eligible for registration if—

- (a) he qualifies for registration under subsection (4); or
- (b) he is a qualified educator pursuant to subsection (5) and he is otherwise a fit and proper person to be registered.

(4) A person qualifies for registration if—

- (a) he is employed as an educator at the date of commencement of this section;

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- (b) he has been employed as an educator for a period of not less than five years; and
  - (c) he applies to be registered within a period of six months from the date of commencement of this section.
- (5) A person is a qualified educator —
- (a) where such person is a teacher, or a principal of a school, if —
    - (i) he holds a university degree or equivalent qualification granted by an institution recognised by the Council; and
    - (ii) he has successfully completed a course of initial training for teachers in schools at an institution recognised by the Council;
  - (b) where such person is a para-professional, if —
    - (i) he holds an associate degree or equivalent qualification granted by an institution recognised by the Council; and
    - (ii) he has successfully completed a course of training appropriate for para-professionals at an institution recognised by the Council.

### **Applications for registration**

8. (1) An application for registration shall include —
- (a) the applicant's full name;
  - (b) the applicant's date of birth;
  - (c) the applicant's home address or other contact address; and
  - (d) the date on which the applicant qualified as a teacher or para-professional.
- (2) The Council may make further provision as to —
- (a) the form and manner in which applications for registration are to be made; and
  - (b) the documentary and other evidence which is to accompany applications for registration.

### **Registration of educators**

9. (1) The Council shall —

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- (a) on the establishment of the register, register members of the Council who have been appointed pursuant to paragraphs 4(2) and (3) of Schedule 1; and
- (b) on application made in accordance with section 8, register persons who they are satisfied are eligible for registration pursuant to sections 7 (3) (a) and (b).

(2) The Council shall issue to a person registered under subsection (1) a certificate of registration.

(3) A certificate of registration issued under subsection (2) shall be in such form as the Council may provide.

### **Content of register**

10. (1) There shall be recorded in the register against the names of those registered in it the following matters —

- (a) the full name of the educator;
- (b) whether the educator is male or female;
- (c) the educator's date of birth;
- (d) where applicable, any name by which the educator was formerly known;
- (e) the educator's home address or other contact address, and if known his telephone number, facsimile number and electronic mail address;
- (f) where the educator holds a degree or equivalent qualification —
  - (i) the date of its award;
  - (ii) its title;
  - (iii) the institution by which it was awarded;
  - (iv) the class of the degree or qualification; and
  - (v) its subject;
- (g) the date on which the educator qualified as a teacher or para-professional;
- (h) an indication that the educator has paid his current registration fee, and whether he is in arrears.

(2) The Council may make provision as to additional matters to be recorded in the register.

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### **Division of register into separate parts**

11. The Council may make provision as to the division of the register into separate parts.

### **Amending entries on the register**

12. (1) The Council may make provision as to the restoration and alteration of entries on the register, and the transfer of entries between different parts of the register.

(2) The Council may also make provision as to the removal of entries from the register where the persons concerned have ceased to be eligible for registration, have failed to pay a registration fee, or otherwise.

### **Charging of registration fees**

13. The Council may make provision —

- (a) to charge fees fixed by them in respect of —
  - (i) applications for registration or for the restoration of entries in the register; and
  - (ii) the retention of entries in the register;
- (b) for there to be exceptions where fees are not to be charged; and
- (c) for them to refuse an application for registration until the appropriate fee has been paid.

### **Access to the register**

14. (1) The Council shall on request inform a member of the public whether or not a person is a registered educator.

(2) The Council may make available for inspection the names of educators on the register in such a manner as the Council determine.

### **Supply of information to educators**

15. The Council shall supply a registered educator, at his request, with a copy of the information entered on the register against his name free of charge.

*ONGOING EDUCATION*

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### **Ongoing education of registered educators**

16. (1) The Council shall develop, establish and maintain qualifications for the continued registration of educators, and shall issue certificates of qualification therefor.

(2) In this regard the Council shall publish, in such manner as they see fit, a list of educational programmes which they recognise, being—

- (a) educational programmes for educators offered by post-secondary educational institutions and other bodies; and
- (b) professional teacher education programmes offered by post-secondary educational institutions.

### *CODE OF PRACTICE*

### **Issue and revision of Code of Practice**

17. The Council shall issue and from time to time revise a Code of Practice laying down standards of professional conduct and practice expected of registered educators.

### **Provision of copies of Code of Practice**

18. (1) The Council shall make copies of the Code of Practice available free of charge to all registered educators —

- (a) when the Code of Practice is first issued;
- (b) if the Council so determine, when the Code of Practice is revised; and
- (c) on an educator's first registration.

(2) The Council may make available a copy of the Code of Practice to a person—

- (a) who is the employer or prospective employer of an educator, or who is concerned with the employment of educators; or
- (b) who is engaged in or concerned with the training or professional development of educators;

at his request and on payment of such reasonable charge as they shall decide.



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### *DISCIPLINE*

#### **Disciplinary powers of Council in relation to registered educators**

19. Schedule 2 (which makes provision for certain disciplinary powers to be conferred on the Council in relation to registered educators) has effect.

### *OTHER FUNCTIONS*

#### **Additional and ancillary functions of Council**

20. (1) The Minister may by order confer or impose on the Council such additional functions as he considers they may appropriately discharge in conjunction with any of their other functions under this Act.

(2) Before making an order under subsection (1), the Minister shall carry out such consultation as appears to him to be appropriate.

(3) The Council shall carry out such functions ancillary to their functions under this Act as the Minister may direct.

(4) An order made under this section is subject to negative resolution procedure.

## **SCHEDULE 1**

(section 3(4))

### **THE COUNCIL: ITS STATUS, CONSTITUTION AND PROCEEDINGS**

#### **Status of Council**

1. The Council shall not be regarded as the servant or agent of the Crown or as enjoying any status, immunity or privilege of the Crown; and the property of the Council shall not be regarded as property of, or property held on behalf of, the Crown.

#### **Powers of the Council**

2. The Council may do anything which is calculated to facilitate, or is incidental or conducive to, the carrying out of any of their functions.

#### **Constitution of the Council**

3. The Council shall comprise fifteen members and shall be constituted in accordance with the provisions of this Schedule.

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### **Appointment of first members of the Council**

4. (1) The first members of the Council shall be appointed by the Minister in accordance with this paragraph as soon as practicable after the commencement of this Schedule.

(2) Five members appointed as follows —

(a) three members from persons nominated by the Bermuda Union of Teachers;

(b) two members from persons nominated by the Association of School Principals.

(3) Five members appointed in accordance with subparagraph (5).

(4) Five members appointed in accordance with subparagraph (6).

(5) In making appointments under subparagraph (3) the Minister shall ensure that —

(a) two are teachers employed at a private school;

(b) two are teachers employed at a public school; and

(c) one is a teacher who has specialist qualification in relation to teaching persons with special educational needs.

(6) In making appointments under subparagraph (4) the Minister shall have regard to the desirability of the Council's membership reflecting the interests of—

(a) employers of educators;

(b) parents of pupils; and

(c) the general public.

### **Eligibility for appointment of first members of Council**

5. (1) A person is not eligible for appointment under paragraph 4 (2) unless he satisfies the conditions specified in subparagraphs (3)(a),(b) and (c).

(2) A person is not eligible for appointment under paragraph 4 (3) unless he satisfies the conditions specified in subparagraphs (3)(b) and (c).

(3) Those conditions are that —

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- (a) he is employed as an educator at the date of his appointment to the Council or he has been so employed within one year preceding that date;
- (b) he has been employed as an educator for not less than five years preceding his appointment to the Council;
- (c) he is not at any time subject to a disciplinary order under Schedule 2 by virtue of which he is not eligible for registration.

### **Term of office of first members of Council**

6. (1) The term of office of the first members of the Council is two years from the date of their appointment.

(2) Notwithstanding subparagraph (1), the first members of the Council shall continue to hold office until the new members of the Council have been elected or as the case may be, appointed, pursuant to paragraph 7.

(3) Paragraphs 13 (1), (2) and (3), paragraph 14(1)(b) and 14 (2) shall apply to members of the Council constituted under paragraph 4 as they apply to members of the Council constituted under paragraph 7.

### **Constitution of Council after expiry of term of office of first members**

7. (1) After the expiry of the term of office of the first members, the Council shall be constituted in accordance with the following provisions.

(2) The Council shall consist of eleven elected members elected in accordance with an electoral scheme made under paragraph 10, and four appointed members appointed by the Minister in accordance with paragraph 11.

### **Elected members**

8. The elected members shall comprise—

- (a) one principal of a private school;
- (b) one principal of a public school;
- (c) three teachers at a private schools;
- (d) four teachers at public school;
- (e) one para-professional; and
- (f) one teacher with specialist qualification in the teaching of persons with special educational needs.

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### **Eligibility for election and voting in an election**

9. (1) No person shall be eligible for election under paragraph 8 or to fill a vacancy under paragraph 14 among members elected under paragraph 8 unless —

- (a) he is employed as an educator at the date of his election to the Council or he has been so employed within one year preceding that date;
- (b) he has been employed as an educator for an aggregate period of five years or more in the eight years preceding his election to the Council; and
- (c) he is a registered educator who is not at any time subject to a disciplinary order under Schedule 2 by virtue of which he is not eligible for registration.

(2) No person shall be qualified to vote in an election of elected members unless such person is a registered educator who is not at any time subject to a disciplinary order by virtue of which he is not eligible for registration.

### **Scheme for election**

10. (1) The election of elected members shall be conducted in accordance with an electoral scheme set out in rules made by the Council.

(2) An electoral scheme may be amended or revoked by a subsequent scheme of the Council.

(3) An electoral scheme shall include provision for —

- (a) the appointment of a returning officer and other staff in connection with the holding of elections;
- (b) the making up of a roll of electors in Bermuda showing the proposed category of elected member for which each elector is entitled to vote;
- (c) the determination of the category of elected member for which each elector is entitled to vote;
- (d) the giving of notice of holding of the elections;
- (e) the nomination of candidates; and
- (f) any other matter related to the holding of the elections.

(4) Elections shall be held every four years.

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### **Appointed members**

11. In making appointments under paragraph 7(2), the Minister shall have regard to the desirability of the Council's membership reflecting the interests of—

- (a) employers of educators;
- (b) parents of pupils; and
- (c) the general public.

### **Term of office of members of Council**

12. (1) Subject to subparagraph (2), the term of office of a member of the Council constituted under paragraph 7 is four years.

(2) The term of office of a member appointed by the Minister under paragraph 7(2) shall be such period being not less than one year and not more than four years as specified by the Minister when making the appointment.

### **Resignation, removal and disqualification of members**

13. (1) A member may resign at any time by giving notice in writing addressed to the Secretary to the Council.

(2) A member may be removed from office by a majority vote of other members if without good cause he has been absent from three consecutive meetings of the Council.

(3) A member who is a registered educator shall cease to hold office if a disciplinary order is made in respect of him under Schedule 2 by virtue of which he is not eligible for registration.

(4) The Council may make rules prescribing further grounds on which a member may be removed from office and the procedure for removal, and rules made under this subparagraph may be amended or revoked by subsequent rules.

### **Casual vacancies among members**

14. (1) Where a vacancy occurs among members otherwise than by the expiry of a member's term of office—

- (a) if the vacancy is among elected members, the vacancy shall be filled by the person receiving the next highest number of votes in the election of the member who has vacated office, and if no such person is available the Council shall fill the vacancy by co-opting a person of like electoral qualifications as the member who has vacated office; and

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(b) if the vacancy is among appointed members, the Minister shall appoint another person to fill it but shall have regard to the matters set out in paragraph 11.

(2) A person appointed under subparagraph (1) to fill a vacancy holds office until the date on which the term of office of the member whose vacancy he fills would have expired.

### **Chairman of the Council**

15. (1) The members of the Council shall elect a Chairman from amongst their number.

(2) The Chairman may resign as Chairman by giving notice in writing addressed to the Secretary.

(3) The Council may make further rules with respect to the election of the Chairman, the period for which he holds office, and his removal as Chairman, and rules made under this paragraph may be amended or revoked by subsequent rules.

### **Meetings of the Council**

16. (1) The Council shall meet at least once every three months and as often as necessary or expedient for the due performance of their functions.

(2) The Chairman, or any three members may summon a meeting at any time by giving notice.

(3) At a meeting of the Council the quorum is seven members.

(4) The Chairman, or in his absence a person nominated by the members present at the meeting, shall chair meetings of the Council.

### **Committees of the Council**

17. (1) The Council may establish a committee for any purpose.

(2) Subject to subparagraph (3), the Council shall determine the number of members which a committee established under this paragraph are to have, and the terms on which they are to hold and vacate office.

(3) The Council may by rules make provision as to—

(a) the membership of a committee established under this paragraph;

(b) the terms on which such a committee's members are to hold and vacate office; and

(c) the procedure of any such committee.

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(4) Subject to such conditions as the Minister may impose, the Council may include on a committee persons who are not members of the Council.

### **Delegation of functions**

18. (1) The Council may authorise the Chairman, the Secretary or any committee established under paragraph 17 to exercise such of their functions as they may determine.

(2) Subparagraph (1) has effect without prejudice to any power to authorise an employee of the Council to carry out any of the Council's activities on behalf of the Council.

### **Application of seal and proof of instruments**

19. (1) The application of the seal of the Council shall be authenticated by the signature—

(a) of the Chairman or of some other person authorised either generally or specially by the Council to act for that purpose; and

(b) of one other member.

(2) Every document purporting to be an instrument made or issued by or on behalf of the Council and to be duly executed under the seal of the Council, or to be signed or executed by a person authorised by the Council to act in that behalf, shall be received in evidence and be treated, without further proof, as being so made or issued unless the contrary is shown.

### **Proceedings of Council not affected by vacancy among members**

20. The validity of the proceedings of the Council shall not be affected by a vacancy among the members or any defect in the appointment of a member.

### **Council to regulate their own procedure**

21. Subject to the preceding provisions of this Schedule, the Council may regulate their own procedure and that of any of their committees.

### **Salaries, allowances and other payments**

22. The Council shall pay to their members such fees, subsistence or other allowances, as the Council may determine.

### **Staff**

23. (1) The Council may appoint a Secretary and such other employees as they think fit.

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(2) The Council shall pay to their employees such remuneration and allowances as the Council may determine.

(3) The employees shall be appointed on such other terms and conditions as the Council may determine.

### **Finance**

24. The Minister may make grants to the Council of such amounts and subject to such terms and conditions as he may determine.

### **Accounts**

25. (1) It is the duty of the Council—

- (a) to keep proper accounts and proper records in relation to the accounts;
- (b) to prepare in respect of each financial year of the Council a statement of accounts; and
- (c) to send copies of the statement to the Minister and to the Auditor General before the end of the month of June next following the financial year to which the statement relates.

(2) The statement of accounts shall comply with any directions given by the Minister responsible for finance as to—

- (a) the information to be contained in it;
- (b) the manner in which the information contained in it is to be presented; or
- (c) the methods and principles according to which the statement is to be prepared;

and shall contain such additional information as the Minister responsible for finance may require to be provided.

(3) The Auditor General shall examine, certify and report on each statement received by him in pursuance of this paragraph.

(4) In this paragraph "financial year" means the period beginning with the date on which the Council is established and ending with the 31st March following that date, and each successive period of twelve months.

### **Annual reports**

26. The Council—

- (a) shall make an annual report to the Minister; and



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(b) may arrange for any such report to be published in such manner as the Council consider appropriate.

### **Council to provide Minister with copies of documents**

27. The Council shall provide the Minister with such copies of any documents distributed to members of the Council or of any such committee as he may require.

## **SCHEDULE 2**

(section 19)

### **DISCIPLINARY POWERS OF THE COUNCIL**

#### *INTRODUCTION*

#### **Interpretation**

1. In this Schedule unless the context otherwise provides —

"Code of Practice" means the Code of Practice authorised to be issued under section 17;

"conditional registration order" has the meaning given in paragraph 2;

"Committee"—

(a) in paragraphs 7 and 8 means an investigating Committee or a Professional Conduct Committee; and

(b) in paragraphs 11 to 16, 19 and 21 means a Professional Conduct Committee;

"disciplinary order" means—

(a) a reprimand;

(b) a conditional registration order;

(c) a suspension order; or

(d) a prohibition order;

"disciplinary proceedings" in relation to an educator means disciplinary proceedings under this Schedule;

"prohibition order" has the meaning given in paragraph 4;

"registered educator" except in paragraph 8, means—

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- (a) a person for the time being registered under this Act;
- (b) a person who was registered under this Act at the time of any alleged conduct or offence on his part; or
- (c) a person who has made an application to be registered under this Act;

"relevant offence" in relation to a registered educator, means a criminal offence other than one having no material relevance to his fitness to be a registered educator;

"suspension order" has the meaning given in paragraph 3;

"unacceptable professional conduct" means conduct which falls short of the standard expected of a registered educator.

### **Conditional registration orders**

2. (1) Where a conditional registration order is made in relation to a person, he shall continue to be eligible for registration under this Act, but he shall comply with such conditions relevant to his employment as an educator as may be specified in the order.

(2) Without prejudice to the generality of subparagraph (1), the conditions which may be specified in a conditional registration order include conditions requiring the person in question to take any specified steps that will, in the opinion of the Council, be conducive to his becoming a competent educator.

(3) Subject to subparagraph (4), any condition specified in a conditional registration order shall have effect either—

- (a) for such period as may be so specified; or
- (b) without limit of time.

(4) The Council may, if satisfied that such a person has failed to comply with any such condition, make a suspension or prohibition order in relation to him.

(5) A person in relation to whom a conditional registration order has been made may, in accordance with paragraph 18, apply to the Council for them to vary or revoke any condition specified in the order.

### **Suspension orders**

3. Where a suspension order is made in relation to a person who is a registered educator at the time when the order is made, he shall cease to be eligible for registration under this Act and his name shall be removed from the register accordingly but he shall become so eligible again at the

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end of such period not exceeding two years as may be specified in the order.

### **Prohibition orders**

4. (1) Where a prohibition order is made in relation to a person who is a registered educator he shall cease to be eligible for registration under this Act and his name shall be removed from the register accordingly; and he shall not become so eligible again unless the Council, on an application made by him in accordance with paragraph 20, so direct.

(2) No such application may be made before the end of the period of two years beginning with the date when the prohibition order takes effect or such longer period as may be specified in the order.

### *DISCIPLINARY FUNCTIONS OF THE COUNCIL*

#### **Establishment of Investigating Committees**

5. (1) The Council shall establish one or more committees of the Council to be known as Investigating Committees for the purposes of carrying out the functions referred to in subparagraph (2).

(2) The functions of an Investigating Committee are—

(a) to carry out such investigations as they see fit in cases where—

- (i) it is alleged that a registered educator is guilty of unacceptable professional conduct or has been convicted (at any time) of a relevant offence; or
- (ii) it appears to them that a registered educator may be so guilty or have been so convicted; and

(b) to decide in the light of their investigations whether—

- (i) a registered educator has a case to answer in relation to unacceptable professional conduct or conviction of a relevant offence, and the case should be referred for determination by a Professional Conduct Committee;
- (iii) a registered educator has no case to answer and the case against him should be discontinued; or
- (iv) the case against a registered educator should be discontinued on other grounds.

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### **Establishment of Professional Conduct Committees**

6. (1) The Council shall establish one or more committees of the Council to be known as Professional Conduct Committees for the purposes of carrying out the functions referred to in subparagraph (2).

(2) The functions of a Professional Conduct Committee are—

(a) to determine cases referred to them by an Investigating Committee where it appeared to the Investigating Committee that a registered educator has a case to answer in relation to—

- (i) unacceptable professional conduct; or
- (ii) conviction of a relevant offence;

(b) where a Professional Conduct Committee find an educator —

- (i) guilty of unacceptable professional conduct; or
- (ii) to have been convicted of a relevant offence;

to consider whether to make a disciplinary order in relation to him and, if they consider that such an order should be made, to make a disciplinary order; and

(c) to determine applications under paragraph 18 or 20 or matters arising in relation to disciplinary orders under paragraph 19 or 21.

### **Use of the Code of Practice in disciplinary matters**

7. A Committee shall take into account any failure by a registered educator to comply with the Code of Practice in any disciplinary proceedings against him.

### **Membership and procedure of Committee**

8. (1) A committee shall comprise the following members—

- (a) one lay member; and
- (b) two registered educator members.

(2) A person who is a member of the Investigating Committee investigating a case shall not be appointed as a member of the Professional Conduct Committee which determine that case.

(3) Subject to subparagraphs (1) and (2) the Council may make such provision as they see fit as to—

- (a) the membership of a Committee;

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(b) the terms on which a Committee's members are to hold and vacate office; and

(c) the procedure of a Committee.

(4) In this paragraph —

"lay member" means a member of the Committee who is an appointed member of the Council;

"registered educator member" means a member of the Committee who is—

(a) a registered educator; and

(b) employed as an educator on the date of his appointment to the Committee;

and a registered educator member who ceases to be a registered educator or who ceases to be employed as an educator shall cease to be regarded as a registered educator member.

### **Proceedings of Investigating Committees**

9. (1) Where an Investigating Committee decide to carry out an investigation in relation to a registered educator, they shall—

(a) inform the educator of the nature of the allegation or case against him; and

(b) at such stage in the investigation as they consider appropriate —

(i) afford him an opportunity to submit evidence and make representations in writing; and

(ii) consider such evidence and representations and any other evidence and material available to them.

(2) An Investigating Committee may decide to discontinue an investigation at any time before a case is referred for determination by a Professional Conduct Committee.

(3) When their investigation is complete the Investigating Committee shall take one of the following steps—

(a) refer the case for determination by a Professional Conduct Committee; or

(b) discontinue the case.

(4) Where an Investigating Committee decide to discontinue an investigation or a case they shall inform the registered educator

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concerned, and when they do so they shall at the same time inform him if they decided that he had no case to answer.

(5) Where an Investigating Committee decide that a registered educator has no case to answer, they shall at his request publish a statement to that effect.

(6) The Council may make such other provision as to the procedure to be followed by an Investigating Committee in connection with their investigations and other proceedings as they see fit, and may from time to time revise any rules of procedure made under this paragraph.

### **Proceedings of Professional Conduct Committees**

10. (1) A Professional Conduct Committee shall determine cases against registered educators referred to them by an Investigating Committee in accordance with subparagraphs (2) to (6), paragraphs 11 to 14 and rules made by the Council under paragraph 15.

(2) Except as provided in subparagraph (3), a Committee shall determine all cases, applications under paragraph 18 or 20 or matters arising in relation to disciplinary orders under paragraph 19 following a hearing.

(3) A Committee may determine a case, application under paragraph 18 or 20 or matter arising in relation to a disciplinary order under paragraph 19 without a hearing at the written request of the registered educator against whom disciplinary proceedings are being taken or against whom the disciplinary order was made, unless it appears to them necessary in the interests of justice or the public interest to hold a public hearing.

(4) A Committee may decide at any time after a case is referred to them by an Investigating Committee to discontinue that case, and if they decide to discontinue a case they shall inform the educator concerned and when they do so they shall at the same time inform him if they decided that the case against him was not proved.

(5) Where they do not find the case against a registered educator proved, a Committee shall at his request publish a statement to that effect.

(6) Where they find a registered educator —

(a) to have been guilty of unacceptable professional conduct; or

(b) to have been convicted (at any time) of a relevant offence;

a Committee may make a disciplinary order in relation to him in accordance with paragraph 16.

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### **Entitlement to appear and be represented at hearings**

11. A registered educator is entitled to appear and make oral representations, and to be represented by any person whom he desires to represent him, at any hearing of a Committee at which his case is considered.

### **Attendance of witnesses**

12. (1) A Committee may require any person to attend and give evidence or to produce documents or other material evidence at any hearing.

(2) Section 9 of the Magistrates Act 1948 (power to compel attendance of witnesses) applies to the attendance of witnesses before a Committee as it applies to the attendance of witnesses before a court of summary jurisdiction.

### **Requirement for hearings to be held in public**

13. (1) A Committee shall announce their determination of the outcome of all hearings in public and subject to subparagraphs (2) and (3) all hearings of a Committee shall take place in public.

(2) A Committee may deliberate in private at any time and for any purpose during or after a hearing.

(3) A Committee may exclude the public from a hearing or any part of a hearing—

- (a) where it appears to them necessary in the interests of justice to exclude the public;
- (b) where the registered educator against whom disciplinary proceedings are being taken makes a written request that the hearing should be in private, and the Committee do not consider it to be contrary to the public interest to hold the hearing in private; or
- (c) where it is necessary to protect the interests of children.

### **Administration of oaths and affirmations**

14. A Committee may require any witness at a hearing to give evidence on oath or affirmation and for that purpose the chairman may administer an oath or affirmation in due form.

### **Other provisions about Professional Conduct Committees' procedure**

15. The Council may make such other provision as to the procedure to be followed by a Committee in connection with their determinations and other proceedings as they see fit, and may from time to time revise any rules of procedure made under this paragraph.

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### **Disciplinary orders**

16. (1) A disciplinary order shall record the decision of the Committee, the date on which the order is made, and the date on which the order takes effect.

(2) A conditional registration order shall in addition to the items referred to in subparagraph (1) specify all the conditions relevant to his employment as an educator with which the registered educator is required to comply, and in relation to each such condition, either the period for which it has effect, or that it has effect without limit of time (as the case may be).

(3) A suspension order shall in addition to the items referred to in subparagraph (1) specify the period (not exceeding two years) at the end of which the registered educator again becomes eligible for registration.

(4) A prohibition order shall in addition to the items referred to in subparagraph (1) specify the period (which shall not be less than two years beginning with the date on which the order takes effect) before the end of which no application may be made for a determination that the registered educator is eligible for registration.

(5) Except where a Committee otherwise decide, a disciplinary order shall take effect on the date on which notice of it is served on the person in relation to whom it is made.

(6) A Committee shall—

- (a) serve a notice of the disciplinary order on the person in relation to whom it is made containing the following information —
  - (i) the text of the order;
  - (ii) a description of the effect of the order;
  - (iii) the Committee's reasons for making the order;
  - (iv) notification of his right to appeal to the Supreme Court against the order and the time period for making such an appeal;
  - (v) where the order is a conditional registration order, an explanation of the steps a Committee are empowered to take should he fail to comply with a condition specified in it, and an explanation of his right to apply to vary or revoke a condition specified in the order and the method for making such an application; and



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(vi) where the order is a prohibition order, an explanation of his right to apply for a determination that he is eligible for registration and the method for making such an application;

(b) serve notice of the order on his present or last employer.

(7) Where following the determination of a case by a Committee they decide not to make a disciplinary order in relation to a registered educator, the Committee shall notify him of their decision.

(8) Where they do not find the case against a registered educator proved, a Committee shall at his request publish a statement to that effect.

### **Publication of disciplinary orders**

17. (1) The Council may publish the information set out in subparagraph (2) in relation to a disciplinary order in such manner as they see fit.

(2) The information to be published is—

(a) the name of the person in relation to whom the order is made and the name of the institution at which he was last employed as an educator.

(b) the type of disciplinary order;

(c) the dates on which the disciplinary order was made and takes effect;

(d) whether the person was found to have been guilty of unacceptable professional conduct or to have been convicted of a relevant offence;

(e) where the person was found to have been guilty of unacceptable professional conduct an indication of the nature of the conduct which led to the making of the order; and

(f) where the person was found to have been convicted of a relevant offence, the nature and date of the conviction in question.

### **Application to vary or set aside a condition in a conditional registration order**

18. (1) A registered educator in relation to whom a conditional registration order has been made may apply to the Council for variation or revocation of any condition specified in the order.

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(2) An application under subparagraph (1) shall be made in writing and shall specify the grounds on which the registered educator seeks to have any condition specified in the order varied or revoked, and it shall be accompanied by every document he relies upon in support of his application.

### **Consequences of failure to comply with a conditional registration order**

19. Where a Committee are satisfied that a registered educator against whom a conditional registration order has been made has failed to comply with any condition of it, they may make a suspension or prohibition order in relation to him.

### **Application for registration following making of prohibition order**

20. (1) A person in relation to whom a prohibition order has been made may apply to the Council for a determination that he is eligible for registration.

(2) An application under subparagraph (1) shall be made in writing and shall specify the grounds on which the person seeks the determination, and it shall be accompanied with every document he relies upon in support of his application.

### **Review of disciplinary orders**

21. A Committee may of their own motion at any time revoke a disciplinary order made by them where—

- (a) the only or main reason for making the order was that the person in relation to whom the order was made had been convicted of a relevant offence, and after the date the order was made the conviction in question was quashed; or
- (b) after the order was made the Committee obtained evidence not considered by them before they made the order, and they are satisfied that had they been aware of that evidence before they made the order they would not have made it.

### **Appeals to Supreme Court**

22. Any person aggrieved by a disciplinary order made in relation to him shall have the right to appeal against the order to the Supreme Court within 28 days from the date on which notice of the order is served on him.

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### **Service of notices and orders**

23. (1) Anything required to be served on a person for the purposes of disciplinary proceedings may be—

- (a) delivered to him personally; or
- (b) sent to him at his address recorded on the register by registered post; or
- (c) where he requests in writing that documents be served on him by such method, sent to him by facsimile or electronic mail or similar means which are capable of producing a document containing the text of the communication, in which case the document shall be regarded as served when it is received by him in a legible form.

(2) For the purposes of paragraph 16(5) notice of a disciplinary order shall be taken to have been served on the person in relation to whom it was made —

- (a) where it was delivered to him personally, on the day of delivery;
- (b) where it was sent to him by post at his address recorded on the register, on the day on which it was received by him; or
- (c) where he requests in writing that documents be served on him by such method, where it was sent to him by facsimile or electronic mail or similar means which are capable of producing a document containing the text of the communication, on the second day after the day on which it was transmitted.

### **Publication and provision of copies of documents**

24. (1) The Council shall publish in such other manner as they see fit any provision made under paragraph 8(3) and any rules of procedure made under paragraph 9(6) or 15, and shall at the request of any registered educator provide him with a copy of such provision or rules free of charge.

(2) The Council shall publish any statement they are required to publish under paragraph 9(5), 10(5) or 16(8) in such manner as they see fit.