

GENERAL TEACHING COUNCIL BILL

EXPLANATORY AND FINANCIAL MEMORANDUM

INTRODUCTION

1. This Explanatory and Financial memorandum has been prepared by the Department of Education (DE) in order to assist the reader of the Bill and to help inform debate on it. It does not form part of the Bill and has not been endorsed by the Assembly.
2. The Memorandum needs to be read in conjunction with the Bill. It is not, and is not meant to be, a comprehensive description of the Bill. So, where a clause or part of a clause or schedule does not seem to require an explanation or comment, none is given.

BACKGROUND AND POLICY OBJECTIVES

3. The General Teaching Council for Northern Ireland (GTCNI) is established under Chapter 1 of Part 6 of The Education (Northern Ireland) Order 1998 (the 1998 Order). It is the professional body for teachers in Northern Ireland. Its core functions under the 1998 Order are the registration and regulation of teachers (Articles 35 and 36) and providing advice to DE and employing authorities on the standards of entry to the profession; the training, career development and performance management of teachers; and standards of teaching and teachers' conduct (Article 37).
4. GTCNI has for a number of years struggled to discharge its duties effectively. It had been operating in special measures for seven of the last nine years, up to December 2024, and an independent Board Effectiveness Review (the Review) undertaken in 2021 found that its leadership Council was dysfunctional, deeply flawed and irredeemably divided. The Review recommended that DE bring forward legislation to dissolve and replace GTCNI. The then Minister of Education, Michelle McIlveen MLA, made a statement to the Assembly on 13 December 2021, accepting these recommendations and announcing her decision, given the division and dysfunctionality identified, to stand down its Council with immediate effect.
5. The Review also recommended that the Board of any future replacement body should comprise 10-12 members (GTCNI's Council as defined in current legislation comprises 33 members) with all future Board members exclusively appointed through a skills and experience-based public appointments process. The Department considers this step to be critical in preventing any recurrence of the conflicts, governance and leadership failures which continually undermined the work of GTCNI up to December 2021. DE has previously highlighted its intention to use a public appointments process for any future Board as part of our 2024 engagement exercise with the teaching profession.

6. Since December 2021, GTCNI has continued to operate under DE oversight and under the leadership of an interim Chief Executive appointed by the Department. In this time GTCNI has operated very effectively, managing the registration of new teachers efficiently while systematically addressing the numerous operational and audit concerns which the former leadership Council had been unable to address.
7. Since 2021, the Department has undertaken several rounds of engagement with the profession. These confirmed that GTCNI's existing functions were all important, directly supporting the quality of our teaching workforce; and accordingly, all its existing functions should be retained. While these engagements attracted a comparatively limited response from teachers, the majority of those teachers who did reply considered it important to belong to an effective professional body and accepted the importance of maintaining high professional standards in teaching.
8. A business case analysing options for replacing GTCNI established that the retention of GTCNI delivered all desired functional objectives while protecting the continuity of GTCNI's existing functions with the lowest level of associated risks. This business case and the feedback from the engagements, along with the operational improvements delivered by GTCNI's staff team, led the Minister to determine that the most time and resource efficient way to achieve all of these desired outcomes was to retain and reform GTCNI rather than dissolving it, simply to create a functionally identical replacement.
9. The Bill will enable the Department to reform GTCNI, creating new 'fit-for-purpose' Board and Committee structures and correct identified flaws and gaps in GTCNI's current legislation which have, to date, prevented it from regulating the teaching profession in the manner originally intended.

CONSULTATION

10. A public consultation on the functions delivered by GTCNI ran from 13 June to 30 September 2022. It sought views on the statutory functions currently delivered by GTCNI and explored whether additional functions would benefit the teaching profession here. It also sought respondents' views on the recommendations made by the Review regarding proposed structural changes at GTCNI Board level. The consultation also covered options to strengthen teacher regulation with a range of sanctions, an area where the existing legislation is known to be flawed and sub-optimal.
11. There was a poor response rate which was not unexpected given the failure of the previous body to deliver substantively for the profession. However, the key points of consensus drawn from the limited responses showed that:
 - The majority of respondents believed that the functions of 'establishing and maintaining a register for teachers', 'approving qualifications for the purpose of registration' and 'regulating the teaching profession' are essential to both the teaching profession and the wider education system. The function of 'providing advice on developing and enhancing the teaching profession' was deemed essential and/or helpful but not regarded as significant as the other functions.

- The majority of respondents considered that it was important teachers were members of an effective professional body; however, when it came to whether teachers should pay a fee to be a member of an effective body, there was a clear split between teachers and non-teachers disagreeing and agreeing respectively.
 - There was a clear majority for two of the recommendations made in the Review Report which were:
 - ensuring that the membership of the Board of any new professional body should be based on individuals being able to demonstrate relevant experience, skills and competences, and
 - future appointments to the Board of a new professional body should follow the public appointments process.
 - The majority of all respondents believed that a new professional body, or other regulatory mechanism, should be able to apply a range of sanctions to a teacher found guilty of misconduct.
12. Due to the low number of responses, the Minister requested that a further survey be undertaken to identify any additional functions or services which teachers considered could enhance their personal effectiveness or strengthen the wider profession. This survey ran from 24 February to 28 April 2023 and, due to ongoing industrial action at that time, the survey was narrowly targeted, seeking views from teachers currently working within key education delivery partners.
13. The survey attracted a higher response rate than the public consultation and from the responses received, over two-thirds of respondents were in favour of establishing a new professional body and similar proportions felt that a body should:
- Offer greater flexibility in its registration requirements to accommodate those whose qualifications had only minor deficiencies when compared to Northern Ireland teaching standards.
 - Provide multiple channels to share and promote effective practice in teaching, including an annual conference.
 - Monitor and disseminate new academic research to members in areas such as workforce planning, pedagogy and classroom practice; and be able to commission research on topics of particular relevance to teaching in Northern Ireland.
 - Set professional standards for teaching in Northern Ireland.
 - Provide training and support to boards of governors and school leaders in understanding and upholding professional standards.
 - Have a broader range of options to address cases of teacher misconduct.
 - Validate initial teacher education programmes and qualifications for Northern Ireland.
14. Additional areas of work which a majority of respondents felt a new professional body should consider taking forward included:
- Introducing periodic reaccreditation requiring evidence of a teacher's ongoing participation in teacher professional learning (*already a requirement in Scotland*).
 - Extending the scope of the body to take in other education practitioners/professionals such as classroom assistants and FE lecturers.

15. Following analysis of these responses and subsequent engagement with all United Kingdom and Republic of Ireland teaching regulators, a series of proposals were brought to the Department's Top Management Group; it felt that a further engagement exercise to share these proposals with the entire teaching workforce would be beneficial prior to the Department beginning to draft a Bill.
16. This engagement exercise which ran from 5 February to 3 March 2024 attracted a significantly higher number of responses than either of the previous exercises. A majority of respondents (54%) were supportive of the Department's proposals. Of those who opposed the proposals, two main issues were raised - teacher control of leadership of the new body and a preference for elected teacher board members rather than public appointees.

OPTIONS CONSIDERED

17. Following the consultation and engagement exercises, the Minister requested an options paper and costed business case. A number of options were considered, including:
 - Retain GTCNI as it is and continue to operate with Department oversight;
 - Retain GTCNI with a reinstated Board restoring normal Non-departmental Public Body (NDPB) governance and accountability processes;
 - Retain and reform GTCNI, legislate to amend Board structure and enable its regulation function to be fully implemented;
 - Transfer all functions into the Department;
 - Establish a new NDPB as an Arms' Length Body of the Department; and
 - Establish an Agency as an Arms' Length Body of the Department.
18. Of these options, retaining and reforming GTCNI was the lowest cost option which delivered all of the desired functional outcomes. It was also the option with the lowest levels of associated risk and provided significant resource and timing advantages in the speed with which it could be implemented.

OVERVIEW

19. The Bill will enable DE to reform GTCNI, creating new 'fit-for-purpose' Board and Committee structures. It will correct identified flaws and gaps in GTCNI's current legislation which have, to date, prevented it from regulating the teaching profession in the manner originally intended.
20. Existing provisions covering its establishment from the 1998 Order will remain in place along with all of GTCNI's current statutory functions.
21. The Department has already committed that regulations and commencement orders for Clauses 7 and 8 will only be brought forward following appropriate consultation with the teaching profession and key stakeholders.

COMMENTARY ON CLAUSES

Clause 1 - Membership

Paragraph 1 of Schedule 1 to the Education (Northern Ireland) Order 1998 (“the 1998 Order”) provides for GTCNI to be constituted in accordance with regulations made by the Department of Education. This clause – in paragraph (a) – removes the requirement for those regulations to ensure that the membership of GTCNI includes persons representative of certain interests. Paragraph (b) of the clause removes references to the election of members to GTCNI.

Clause 2 - Rules relating to the Council’s constitution

This clause substitutes a new paragraph 1(3) for the paragraph in Schedule 1 to the 1998 Order. The replacement paragraph clarifies that the Department’s power to make regulations about the constitution of GTCNI under paragraph 1(1) of Schedule 1 includes power to require or authorise GTCNI to make provision by rules about matters relevant to its constitution; this would, for example, permit the Department to delegate to GTCNI responsibility for making provision about the tenure of office of its members and the establishment of committees and sub-committees.

Clause 3 - Sub-committees

This clause makes amendments to paragraph 1 of Schedule 1 to the 1998 Order to avoid doubt about whether the Department’s power in paragraph 1(1) to make regulations about the Council’s constitution includes power to authorise or require GTCNI to establish sub-committees, and to authorise or require committees of GTCNI to establish sub-committees. It also makes consequential amendments to other paragraphs of Schedule 1 to add references in those other paragraphs to sub-committees of the Council (which will include sub-committees established by committees). This will ensure that there is a legally robust basis for establishing both committees and sub-committees in furtherance of any of GTCNI’s assigned functions.

Clause 4 - Membership of committees and sub-committees

This clause adds two sub-paragraphs, (2A) and (2B), to paragraph 1 of Schedule 1 to the 1998 Order. Both sub-paragraphs affect how the Department’s power in paragraph 1 of Schedule 1 to make regulations about the constitution of committees and sub-committees of GTCNI may be exercised. Sub-paragraph (2A) permits regulations made under that paragraph to enable committees or sub-committees to include as members persons who are not members of GTCNI, or to be composed entirely of persons who are not members of GTCNI. This will allow GTCNI to draw on specialist expertise in the exercise of its functions. Sub-paragraph (2B) ensures that committees or sub-committees established to deal with matters relating to unacceptable professional conduct or serious professional incompetence are solely made up of persons who are not members of GTCNI. This requirement has been included to ensure that any decisions made about teachers’ fitness to practise are not in conflict with relevant case law about the involvement of members of regulatory bodies in decisions about professionals’ fitness to practise, i.e. the ILEX judgment (*R (Kaur) v Institute of Legal Executives Appeal Tribunal* and another [2011] EWCA Civ 1168).

Clause 5 - Delegation of functions

This clause substitutes a new paragraph 7 into Schedule 1 to the 1998 Order. It allows GTCNI to delegate its functions to a broader range of persons than is currently the case under the existing power of delegation in paragraph 7. In particular, it authorises delegation to any member of GTCNI, not just its chairman; any member of its staff, not just its chief executive (who is referred to in the 1998 Order as the “registrar”); and to any sub-committee of GTCNI (in addition to any committee). This will provide authority to those persons to whom a function is delegated, expediting decision making, without referral to the Board.

Clause 6 - Remuneration and allowances

This clause replaces paragraph 8 of Schedule 1 to the 1998 Order with a new paragraph. This paragraph currently deals with allowances only. The replacement paragraph gives GTCNI the power to pay remuneration and allowances to its members. It will also allow for members of committees and sub-committees to be remunerated provided they are not already remunerated members of GTCNI or paid GTCNI staff. Allowances, such as mileage and subsistence costs, may also be paid to any member of any committee or sub-committee.

Clause 7 - Provisional registration

This clause amends Article 36 of the 1998 Order, an Article which gives the Department the power to make regulations relating to the registration of teachers. The changes being made avoids doubt about whether the Department is permitted, through the regulations, to authorise GTCNI to provisionally register persons whose qualifications have minor deficiencies against GTCNI’s qualification requirements. Allowing registration on a provisional basis will enable such individuals to work as teachers, for a stipulated period, during which time they must provide evidence that they have remedied the identified deficits and can receive full registration. This mechanism is already used by other teaching regulators in the United Kingdom and Republic of Ireland.

Clause 8 - Further training

This clause amends Article 36 of the 1998 Order to avoid doubt about whether the Department’s power to make regulations under Article 36 of the 1998 Order includes power to periodically require, or authorise GTCNI to periodically require, registered teachers to revalidate their professional standing by evidencing their continued participation in teacher professional learning (continuing professional development). As with Clause 7, this mechanism is already used by other teaching regulators in the United Kingdom and Republic of Ireland.

Clause 9 - Rules relating to registration

This clause substitutes a new paragraph (5) into Article 36 of the 1998 Order. It clarifies that the Department has the power to set out in regulations any matter relating to the registration of teachers that GTCNI will be required or authorised to include in its rules, e.g. a requirement for GTCNI to set qualification rules for entry to the register.

Clause 10 - Offences

Subsection (1) of this clause inserts a new Article 35A into the 1998 Order. This Article makes it an offence for a person who is not registered as a teacher in the register maintained by GTCNI under Article 35 to pretend, with intent to deceive another, to be a registered teacher. Subsection (2) of this clause makes amendments to Article 36 of the 1998 Order to allow the Department to create an offence and penalty by regulations. The amendments made by subsection (2) will, for example, allow regulations under Article 36 to make it an offence for a person to provide false or misleading information to GTCNI in seeking to secure registration. Both these offences will be triable summarily only and punishable by a fine not exceeding level 4 on the standard scale (£2,500, at the time of writing these notes). Regulations under Article 36 which contain provision for the offence can only be made if a draft of the regulations is laid before, and approved by a resolution of, the Assembly; and if combined with regulations under Chapter 1 of Part 6 of the 1998 Order on other matters subject only to negative resolution, then all can be taken forward in regulations which are subject to the draft affirmative procedure (see subsection (3)(c) of this clause, which allows any regulations under Chapter 1 of Part 6 of the 1998 Order to be subject to this procedure instead of being subject to negative resolution).

Clause 11 - Disciplinary powers

Subsections (1) and (2) of this clause introduce a new Schedule to the 1998 Order which clarifies the full range of disciplinary powers to be made available to GTCNI. With the introduction of Schedule 1A, GTCNI will acquire powers, through regulations made by the Department, to regulate the teaching profession and impose a range of sanctions. This allows for measured and proportionate action to be taken where an individual's behaviour falls below expected professional standards. GTCNI will be able to investigate allegations of unacceptable professional conduct or serious professional incompetence and to take action where those allegations are upheld. It will also be able to take action where a registered teacher has been convicted of a relevant offence (as defined by paragraph 9(1) of Schedule 1A).

“Registered teacher” for the purposes of Schedule 1A includes a person who was a registered teacher at the time of any alleged conduct or offence, and a person who has applied to be registered under Article 35 of the 1998 Order.

Regulations about the investigation, hearing and determination of fitness to practise cases are likely to include provision about the matters listed in paragraph 1(2) of Schedule 1A. This paragraph provides examples of how the power in paragraph 1(1) may be exercised. It envisages regulations making provision about serving notices on a person who is subject to fitness to practise proceedings; allowing a person the opportunity of making oral representations in hearings; allowing the person to be represented by any other person at hearings (a barrister, for example); publishing statements where a case against a person is not proved; the production and admissibility of evidence; and administering oaths or affirmations. By virtue of paragraph 1(3) of Schedule 1A, no person will be required to give evidence or provide any document or other material evidence that could not be required in civil proceedings in any court in Northern Ireland.

Regulations under paragraph 1(1) of Schedule 1A may also make provision for functions conferred on the Council in relation to the investigation, hearing and determination of fitness to practise cases to be excluded or restricted (see paragraph 1(4) of Schedule 1A). For example, regulations could make provision preventing GTCNI from investigating a case referred to it while the matter is the subject of an ongoing employer's disciplinary process. Similarly, the regulations could make provision preventing GTCNI from investigating matters which have already been referred to the UK Disclosure and Barring Service (DBS).

Paragraph 2(1) of Schedule 1A provides the Department with the power to make provision by regulations authorising GTCNI to make certain disciplinary orders in respect of registered teachers who have been found guilty of unacceptable professional conduct or serious professional incompetence or found to have been convicted of a relevant offence. Paragraph 2(2) of Schedule 1A gives examples of how the power in paragraph 1(1) is likely to be exercised. The regulations may, for example, provide for GTCNI to serve notice on the teacher to whom the disciplinary order applies and to their employer; GTCNI to serve notice of their right of appeal; and the publishing of information relating to the case. The notice to the employer may require the employer to take certain steps in relation to the teacher which may include dismissal. The types of disciplinary order available to GTCNI will be a reprimand; a conditional registration order; a suspension order; or a prohibition order.

A conditional registration order imposed by GTCNI may specify steps that the teacher subject to it will need to take in order to, in the opinion of GTCNI, become a competent teacher. It will allow for any cost relating to a condition specified in the order to be borne by the teacher, e.g. cost of any remedial training course(s).

The teacher concerned may request that GTCNI review the order with a view to any condition specified in it being varied or revoked. GTCNI will also, however, be permitted to make a suspension order or a prohibition order where the teacher fails to comply with the conditional registration order, if regulations made by the Department authorise GTCNI to do so.

A suspension order will allow GTCNI to remove a teacher's entry from the register for a period of up to two years meaning that person would be unable to work as a teacher in a grant-aided school in Northern Ireland. The order may also specify conditions that the teacher must comply with, similar to those in a conditional registration order. The teacher must comply with those conditions to be eligible to be allowed back on to the register.

As with a conditional registration order, a suspension order will allow for any cost relating to a condition specified in the order to be borne by the teacher, e.g. cost of a training course(s). A teacher subject to a suspension order will also be able to request a review by GTCNI of any conditions specified in the order with a view to GTCNI varying or revoking those conditions.

A prohibition order will allow GTCNI to remove a teacher's entry from the register for a minimum period of two years meaning that person would be unable to work as a teacher in a grant-aided school in Northern Ireland. A teacher subject to such an order may only

apply to have their registration restored after a two year period or a longer time, if this is specified within the prohibition order.

GTCNI will be provided with the power, through regulations made by the Department, to make an interim suspension order in respect of a teacher who, on the face value of evidence presented to it, seems likely to be found guilty of unacceptable professional conduct or serious professional incompetence or likely to be found to have been convicted of a relevant offence. GTCNI may only make an interim suspension order if it is satisfied that it is necessary for the protection of children; is otherwise in the public interest; or is in the interests of the teacher themselves.

An interim suspension order will allow GTCNI to remove a teacher's entry from the register, meaning that person would be unable to work as a teacher in a grant-aided school in Northern Ireland. An interim suspension order cannot exceed a period of 18 months; however, regulations may provide for that period to be extended. GTCNI must review an interim order within six months of the order being made and within each subsequent six month period. If the order is varied by the High Court on an appeal against the order, then the date for a first review should be taken from the date of the High Court's decision.

Paragraph 6(7) of Schedule 1A gives examples of the likely content of regulations covering interim suspension orders. For example, the regulations may impose requirements on the Council to serve notice on the teacher subject to the order; serve notice of the right of appeal under paragraph 7; publish information relating to the case; serve notices on the teacher's employer; and require the employer to take action in relation to the order.

The Department must, by virtue of paragraph 7 of Schedule 1A, make regulations to give a teacher the right to appeal to the High Court against an interim suspension order or a disciplinary order. The regulations must set out the period within which an appeal may be made. The decision of the High Court on an appeal is final and cannot be appealed.

Paragraph 8 of Schedule 1A affects the way in which powers in Schedule 1A to make regulations may be exercised. The paragraph allows, for example, those regulations to authorise the delegation of functions beyond the types of delegation permitted by paragraph 7 of Schedule 1 to the 1998 Order (as amended by clause 5 of the Bill). Paragraph 8 of Schedule 1A also ensures that powers to make regulations under Schedule 1A include power to require or authorise GTCNI to deal in its rules with any matter that the disciplinary regulations can provide for.

Clause 12 - Fees and charges to cover Council's expenditure

This clause inserts Article 39A into the 1998 Order. The Article authorises GTCNI to charge fees under Article 36, and to set charges under Schedule 1 for services, at levels which exceed the cost of providing those specific services or functions. This will ensure that fees can be set at levels which provide sufficient income to fund the totality of GTCNI's operations; while also protecting the long-term sustainability of the body. It also removes the Department's approval role in the setting of fees.

Clause 13 - Rules previously made by the Council

This clause sets out that the validity of any rules previously made by GTCNI is not affected by Clauses 2 and 9 and treats those rules as having been validly made under the 1998 Order for all purposes.

Clause 14 - The 1998 Order

This defines “the 1998 Order” for the purposes of the Bill as the Education (Northern Ireland) Order 1998.

Clause 15 - Commencement

This sets out that all clauses of the Bill will come into operation by Commencement Order, except Clauses 14, 15 and 16 which will come into effect the day after Royal Assent.

Clause 16 - Short title

Once this Bill comes into operation it will be referred to as the General Teaching Council Act (Northern Ireland) 2025.

FINANCIAL EFFECTS OF THE BILL

22. Implementation of the provisions in this Bill will incur no costs.

HUMAN RIGHTS ISSUES

23. The provisions of the Bill are compatible with the provisions of the European Convention on Human Rights.

EQUALITY IMPACT ASSESSMENT

24. Under the terms of section 75 of the Northern Ireland Act 1998, the Department carried out screening for equality impact and is satisfied that the provisions in the Bill will not lead to discriminatory or negative differential impact on any of the section 75 groups.

SUMMARY OF THE REGULATORY IMPACT ASSESSMENT

25. The effects of this Bill have been assessed and it is concluded that the provisions will not result in savings for, or costs to, businesses, charities, social economy exercises or voluntary bodies.

DATA PROTECTION IMPACT ASSESSMENT/DATA PROTECTION BY DESIGN

26. None required as the Bill does not require the Department to process personal information.

RURAL NEEDS IMPACT ASSESSMENT

27. None required as the Bill does not impact on the needs of people in rural areas.

LEGISLATIVE COMPETENCE

28. At Introduction the Minister for Education had made the following statement under section 9 of the Northern Ireland Act 1998:

“In my view the General Teaching Council Bill would be within the legislative competence of the Northern Ireland Assembly.”.



**Northern Ireland
Assembly**

Published by the Northern Ireland Assembly under the Open Northern
Ireland Assembly Licence (<http://data.niassembly.gov.uk/licence.aspx>)

The information contained in this document is available online
www.niassembly.gov.uk

For more information please contact:

Northern Ireland Assembly
Parliament Buildings
Ballymiscaw
Stormont
Belfast BT4 3XX

Telephone: 028 90 521137

Textphone: 028 90 521209

E-mail: info@niassembly.gov.uk