

CHAPTER 107

THE NATIONAL EXAMINATIONS COUNCIL OF TANZANIA ACT

[PRINCIPAL LEGISLATION]

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SCHEDULE

CHAPTER 107

THE NATIONAL EXAMINATIONS COUNCIL OF TANZANIA ACT

An Act to make provision for the establishment, constitution, control and administration of the National Examinations Council of Tanzania and for related matters.

[1st December, 1973]

[GN. No. 973 of 1973]

Acts Nos.
21 of 1973
4 of 1987
5 of 1991
2 of 1998
12 of 2019

PART I

PRELIMINARY PROVISIONS

Short title

1. This Act may be cited as the National Examinations Council of Tanzania Act.

Interpretation
Acts Nos.
4 of 1987 Sch.
12 of 2019 s. 24

2. In this Act, unless the context requires otherwise-
“authorised officer” includes an examination supervisor, invigilator, and any other person entrusted with the duty to handle examination material;
“candidate” means a person registered to sit for an examination conducted by or on behalf of the Council;
“certificate” means a document issued by the Council and designated as such showing results obtained by a particular candidate in an examination;
“Chairman” means the Chairman of the Council;
“Committee” means a Committee established under and in accordance with the provisions of section 10 and includes the Executive Committee established under section 9;

“Council” means the National Examinations Council of Tanzania established under section 3;

“examination” means a formal test of a person’s knowledge or proficiency in a particular subject matter or skill conducted under this Act by or on behalf of the Council;

“examination material” whether in print or electronic form, means-

- (a) an examination paper, booklets, stencils, recorded tapes, chemicals and electronic devices;
- (b) notes for the preparation of an examination paper;
- (c) instructions for the setting up of equipment and the preparation of instruments for an examination;
- (d) security envelopes and storage bags used for safe custody of the examination papers; or
- (e) any other document or material which is intended to form part of an examination paper or to enable an examination paper to be prepared and conducted;

“examination paper” includes a question paper, examination instructions or the draft or copy of an examination paper or instructions in respect of an examination which has not been taken, and includes an electronic form thereof;

“Executive Secretary” means the officer appointed by the President to be the Executive Secretary of the Council;

“financial year” in relation to the Council includes the Council’s first accounting period, whether shorter or longer than a year, and if the Council changes its accounting period, the period, whether shorter or longer than a year, employed to give effect to the change;

“member” in relation to the Council, means a member of the Council and includes the Chairman, and in relation to a Committee means a member of the Committee and includes the Chairman of the Committee;

“Minister” means the Minister responsible for education.

PART II

ESTABLISHMENT, OBJECTIVES AND FUNCTIONS OF THE COUNCIL¹

Establishment of
Council

3.—(1) There is established an Examinations Council to be known as the National Examinations Council of Tanzania.

(2) The Council shall be a body corporate and shall-

- (a) have perpetual succession and a common seal;
- (b) in its corporate name, be capable of suing and being sued;
- (c) be capable of purchasing and otherwise acquiring or disposing of any movable or immovable property; and
- (d) subject to the provisions of this Act, have power to borrow money and to do or perform all acts and things which a body corporate may lawfully do.

(3) The provisions of the Schedule to this Act shall have effect as to the constitution and the tenure of office of the members of the Council, termination of their appointment, the proceedings of the Council and other matters in relation to the council and its members.

(4) The President may, by order published in the *Gazette*, vary, amend or replace all or any of the provisions of the Schedule to this Act.

Objects and
functions of
Council
Acts Nos.
2 of 1998 Sch.
12 of 2019 s. 26

4. The objects and functions of the Council shall be to-

- (a) formulate examination policy in accordance with the principles of education for self-reliance and the education and training policy;
- (b) assume responsibility for examinations within the United Republic and to make provision for places and centres of examinations;
- (c) receive from other persons or bodies of persons reports or other material affecting examinations policy and to consider and review examinations policy as circumstances may require;

¹ Amended by Act No. 12 of 2019 s. 25

- (d) co-operate with other persons or bodies of persons in the orderly development of an examinations system in the United Republic;
- (e) conduct examinations for, and to grant diplomas, certificates and other awards of the Council;
- (f) act as the body which shall facilitate, administer and supervise foreign examinations in Tanzania;
- (g) conduct research on issues related to examinations or assessment; and
- (h) organise training courses for or arrange for the training of setters, moderators, examiners, supervisors, invigilators and other persons connected with examinations.

Powers and duties
of Council
Acts Nos.
4 of 1987 Sch.
2 of 1998 Sch.
12 of 2019 s. 27

5.-(1) The Council shall have power to do things and to act in all ways necessary for, or incidental to the purposes for which it is established.

(2) In particular and without prejudice to the generality of subsection (1), but subject to the provisions of subsection (4), the Council shall have power to-

- (a) administer the properties of the Council both movable and immovable;
- (b) administer the funds and other assets of the Council;
- (c) signify the acts of the Council by use of the common seal;
- (d) appoint any officers of the Council whom it may deem necessary subject to the provisions of this Act;
- (e) review regulations relating to examinations;
- (f) consider and approve subjects suitable for examination;
- (g) appoint panels or boards of examiners;
- (h) enter into arrangements, whether reciprocal or otherwise with other persons or organisations, whether within or outside the United Republic, for the recognition of awards granted in respect of examinations falling within their respective responsibilities;

- (i) suspend or nullify examination or any part thereof, where the Council is satisfied that there have been irregularities in the course of such examination;
- (j) withhold or cancel the results or certificate of a candidate where the Council is satisfied that he has been involved in examination irregularities; and
- (k) do all other acts and things which may be provided for in this Act or which may be prescribed.

(3) The Council shall conduct within the United Republic either on its own or in participation with any other person or organisation any academic, technical and other examinations which the Council may consider necessary or desirable in the public interest.

(4) This Act shall not be construed as authorising the Council to do any act or thing in respect of-

- (a) examinations conducted by any University, tertiary or institution of higher learning established in the United Republic or the grant of degrees, diplomas, certificates and other awards of the University or such other institution;
- (b) examinations conducted by employers where the examinations are open only to their own employees or to candidates who wish to enter their employment.

Executive
Secretary of
Council

6.-(1) There shall be an Executive Secretary of the Council who shall be appointed by the President on the terms and conditions which the President may determine and who shall also act as Executive Secretary to the Executive Committee.

(2) Where the Executive Secretary is not a member of the Council, he shall have no power to vote at any meeting of the Council.

(3) Subject to the provisions of this section, the Executive Secretary shall have any functions which may be conferred upon him by the Council.

Staff of Council **7.** The Council may appoint on any terms and conditions which it may determine, any number of officers of the Council whom it may consider necessary for the performance of its functions.

Delegation of powers of appointment **8.** The Council may, subject to such conditions and restrictions as it may impose, delegate to any person or body of persons, the power of appointment to any office or offices on the staff of the Council.

Executive Committee of Council **9.**—(1) The Council shall appoint an Executive Committee comprising of-

Acts Nos. 2 of 1998 Sch. 12 of 2019 s. 28
(a) the Chairman, who shall be the Chairman of the Committee; and

(b) not more than four other members of the Council.

(2) The functions of the Executive Committee shall be to act as the executive authority of the Council in the management of its ordinary affairs and to consult and to report to the Council and for those purposes it may exercise all the executive powers and functions vested in the Council by this Act other than the power of approving estimates conferred by section 15 or any function or power delegated by the Council to a Committee established under section 10.

(3) The provisions of the Schedule to this Act shall apply, with any modifications which the circumstances may require, in relation to the tenure of office of the members of the Executive Committee, the right to terminate their appointment, appointment of a new member to fill any vacancy and also in relation to the quorum, proceedings and meetings of the Committee.

Examinations Committees and other committees **10.**—(1) The Council shall establish School Examinations Committee and Professional Examinations Committee.

Act No. 2 of 1998 Sch. (2) In addition, the Council may, establish any other committees which it considers necessary.

(3) The Council shall prescribe the composition, powers, duties and procedure of all Committees established by it under this section and the tenure of office of persons appointed to

the committees and subject to the provisions of this Act, may delegate to any Committee any of its powers or functions other than the power of approving estimates conferred by section 15.

(4) The Council may appoint on any committee established under this section any person notwithstanding that person is not a member of the Council:

Provided that, in no case shall the number of members of any of such committees who are not also members of the Council exceed two-thirds of the total number of the members of the committee.

(5) For purposes of this section the Executive Secretary shall be deemed to be a member of the Council.

Specific functions
of Examinations
Committees
Act No.
12 of 2019 s. 29

11.—(1) Without prejudice to the provisions of subsection (3) of section 10, every Examinations Committee established under that section shall be responsible to the Council for the control and regulation of the conduct of examinations in respect of subjects over which it has general responsibility.

(2) Each Examinations Committee shall, in addition to the general function in relation to examinations in respect of subjects over which it has general responsibility and to matters pertaining to it, have the following functions, to-

- (a) satisfy itself with regard to the curriculum and standard of the relevant courses of study or training offered by the appropriate institution in respect of any diploma, certificate or other award of the Council and to report its findings on it to the Council;
- (b) make rules with the consent of the Council with regard to the standards of proficiency to be attained in each examination for a relevant diploma, certificate or other award of the Council;
- (c) decide whether any candidate for the relevant diploma, certificate or other award, has attained the standard of proficiency prescribed in rules made under paragraph (b) and is otherwise fit for the grant of the diploma, certificate or other award;

- (d) make proposals to the Council on matters relating to examinations conducted by the Council; and
- (e) investigate all examination irregularities and malpractices and make recommendations to the Council.

Awards of diplomas, certificates, etc.

12. It shall be lawful for the Council to grant diplomas, certificates and any other awards which may be prescribed, to persons-

- (a) who satisfy the requirements in respect of examinations conducted or approved by the Council; or
- (b) who, in the opinion of the Council, are entitled to receive any diplomas, certificates or other awards.

PART III FINANCIAL PROVISIONS

Funds of Council Act No. 12 of 2019 s. 30

13.-(1) The funds and resources of the Council shall consist of-

- (a) any sums which may be provided for the purposes of the Council by Parliament, either by way of grant or loan;
- (b) any donations, grants, bequests and loans which the Council may receive from any person or organisation;
- (c) any fees or other charges paid to the Council by candidates for examinations or assessment;
- (d) any sums which may in any manner become payable to or vested in the Council either under the provisions of this Act or any other written law or incidental to the carrying out of its functions.

(2) The funds and resources of the Council shall be applied for the purposes for which the Council is established under this Act.

Power to invest

14. The Council shall have power to invest the funds of the Council in any investments which are authorised by and

Cap. 53 subject to any conditions which are prescribed by the Trustee Investments Act, in relation to investment of funds by a trustee.

Annual estimates **15.**-(1) The Council shall, in respect of every financial year, cause to be prepared estimates of the expenditure and revenue of the Council and the estimates shall be approved by the Council before the commencement of the relevant financial year.

(2) The annual estimates shall contain provision for all the estimated expenditure during the relevant year and in particular for the-

- (a) payment of salaries, allowances, passages and other charges in respect of the members of the staff of the Council;
- (b) payment of allowances, fees and expenses in respect of the members of the Council and of the committees;
- (c) payment of all pensions, gratuities and other charges in respect of retirement and terminal benefits which are payable out of the funds of the Council;
- (d) construction of the buildings for use by the Council and for the improvement, maintenance, replacement and rental of the buildings and other immovable properties owned or occupied by the Council;
- (e) proper maintenance and replacement of the furniture and equipment of the Council;
- (f) creation of any reserve funds to meet future contingent liabilities which the Council may think fit.

(3) Save with the prior written consent of the Minister, no expenditure shall be incurred for the purposes of the Council otherwise than in accordance with the provisions of the annual estimates or of supplementary estimates approved by the Council.

(4) Copies of every annual estimates and of every supplementary estimates prepared in accordance with this section shall be furnished to the Minister.

Financial
statements and
report
Act No.
12 of 2019 s. 31

16.—(1) The Council shall cause to be prepared in respect of every financial year-

- (a) a statement of financial performance during the financial year;
- (b) a statement of the assets and liabilities of the Council on the last day of that financial year; and
- (c) a report upon the progress and work of the Council during that financial year,

and shall cause such statements and report to be forwarded to the Minister.

(2) Within six months of the expiry of each financial year, the Council shall cause the statements referred to in paragraphs (a) and (b) of subsection (1) to be audited by the Controller and Auditor-General; and copies of the reports of the auditor shall be furnished to the Minister together with the statements to which the reports relate.

Annual
statements of
account and
reports to be laid
before National
Assembly

17. The Minister shall lay before the National Assembly, as soon as may be practicable, copies of the statements and report referred to in subsection (1) of section 16 together with copies of the reports of the auditor referred to in subsection (2) of that section.

PART IV OFFENCES AND PENALTIES

Leaking and
malicious
destruction of
examination
paper
Act No.
12 of 2019 s. 32

18.—(1) A person who, having access to examination materials, shall not intentionally reveal the contents thereof, whether orally, in writing or electronically to any unauthorised person.

(2) A person shall not disclose to any person any examination question or any information relating to the contents of any examination paper.

(3) A person shall not damage or destroy examination material.

(4) A person who, being an authorised officer, shall not negligently or carelessly discharge the functions set out under

this Act so as to occasion leakage or malicious destruction of examination paper.

[s. 17A]

Impersonation
Act No.
12 of 2019 s. 32

19. A person shall not-

- (a) whether as a registered candidate or otherwise, sit for a particular examination of the Council with intent to impersonate, offers or attempts to present himself to take the part of another registered candidate;
- (b) being a registered candidate for a particular Councils' examination, knowingly allows another person to sit for that examination on his or her behalf; or
- (c) falsely use a certificate, testimonial, signature, photograph or document of another person with intent to impersonate that other person.

[s. 17B]

Unlawful
handling of
booklets and
possession of
unauthorised
materials or
content
Act No.
12 of 2019 s. 32

20.-(1) A person shall not take out from an examination room, strong room, hall, office or any other identified or selected place, examination question paper, answer booklet or unauthorised examination material used or unused, in person or by the use of an agent.

(2) A person shall not possess a written, recording or any other form of communication condensed or summarised on any medium of communication device, including electronic communication device onto which information in regard to examinations in progress or to be conducted is written, recorded or communicated.

[s. 17C]

Prohibition of
publication or
disclosure of
information to
unauthorised
person
Act No.
12 of 2019 s. 32

21.-(1) A person shall not, without the consent in writing given by or on behalf of the Council, publish or disclose to any person, otherwise than in the course of his duties, the contents of any document, or information under this Act.

(2) A person shall not publish or communicate to any person information which to his knowledge has been published or disclosed in contravention of subsection (1).

[s. 17D]

Presentation of
forged certificate
or diploma
Act No.
12 of 2019 s. 32

22. A person shall not present a forged certificate or diploma to a prospective employer or to any learning institution with intent to gain employment or admission.

[s. 17E]

Aiding or
abetting
Act No.
12 of 2019 s. 32

23. A person who aids or abets commission of any offence under this Act commits an offence.

[s. 17F]

General penalty
Act No.
12 of 2019 s. 32

24.—(1) A person who contravenes or fails to comply with any provisions under this Part, commits an offence and on conviction shall be liable to a fine of not less than ten million shillings or to imprisonment for a term of not less than three years but not exceeding five years or to both.

(2) Where a person who commits an offence is a candidate, the Council may, in addition to the penalty under subsection (1), cancel the registration of such person as a candidate.

[s. 17G]

PART V MISCELLANEOUS PROVISIONS

Regulations

25.—(1) In the performance of its duties and exercise of its powers, the Council may, with the consent of the Minister, make regulations generally for the governance, control, administration and management of the Council and for conduct of its business and without prejudice to the generality of the foregoing, may make regulations prescribing-

- (a) the terms and conditions of service, pension and retirement benefits and the like, of staff other than temporary staff;
- (b) measures for the discipline of staff;

- (c) the financial procedures of the Council;
- (d) examination fees and other charges payable to the Council;
- (e) diplomas, certificates and other awards which may be conferred or granted by the Council;
- (f) the conditions which must be satisfied before the grant of any diploma, certificate or other award;
- (g) the manner in which diplomas, certificates or other awards may be granted;
- (h) the manner in which examinations may be conducted; and
- (i) anything which may be prescribed under this Act or any matter or thing which in the opinion of the Council, is necessary to prescribe for the furtherance of the functions and objects of the Council.

(2) The Council shall cause to be published in the *Gazette* any regulations made under this section.

[s. 18]

Fees and allowances

26. The Council may, with the approval of the Minister, make rules prescribing fees and allowances payable to members of the Council or a Committee.

[s.19]

Minister may give directions
Act No.
12 of 2019 s. 33

27. The Minister may give the Council directions of a general or specific character and the Council shall, subject to the provisions of this Act, give effect to every direction.

[s. 20]

Proceedings of Council or Committee not to be invalid by reason of irregularity

28. An act or proceeding to the Council, the Executive Committee or an Examinations Committee shall not be invalid by reason only of the number of the members not being complete at the time of such act or proceeding or of any defect in the appointment of any member or of the fact that any member was at the time in question disqualified or disentitled to act as such.

[s. 21]

Protection of
members of
Council and
Committees
Cap. 16

29. Without prejudice to the provisions of section 284A of the Penal Code, a matter or thing done by any member or officer of the Council or a Committee shall not, if done in good faith in the execution or purported execution of the functions of the Council or Committee, render that member or officer personally liable for the matter or thing.

[s. 22]

Regional
Administrative
Secretary
and Principal
Secretary of
Zanzibar to be
representatives
Act No.
2 of 1998 Sch.

30. Each Regional Administrative Secretary and the Principal Secretary of the Ministry of Education Zanzibar shall be representatives of the Council in their respective areas of jurisdiction.

[s. 23]

Representatives
of Council
Act No.
4 of 1987 Sch.

31. Each Regional Education Officer in Tanzania and the Director for Secondary and Technical Education in the Revolutionary Government of Zanzibar shall be representatives of the Council.

[s. 24]

Regional
and Local
Government
Examinations
Committee
Act No.
12 of 2019 s. 34

32.—(1) There shall be established in respect of each regional and local government authority, the Examinations Committee.

(2) The Examinations Committee established under subsection (1) shall oversee the conduct of examinations at their respective Region or local government authority.

(3) The Regional Examinations Committee shall consist of-

- (a) Regional Administrative Secretary, who shall be the Chairman in each of his respective area of jurisdiction;
- (b) Regional Education Officer, who shall be the Secretary of the examination committee in his respective area of jurisdiction;
- (c) Regional State Attorney;
- (d) Regional Police Commander;
- (e) Regional Security Officer; and
- (f) Regional Academic Officer.

(4) The Local Government Examination Committee shall consist of-

- (a) the Executive Director of the local government authority, who shall be the Chairman;
- (b) Education Officer of the local government authority, who shall be the Secretary;
- (c) Officer Commanding District;
- (d) District Security Officer;
- (e) District Academic Officer; and
- (f) a State Attorney from the Office of the District Administrative Secretary.

[s. 25]

Oath of secrecy
Act No.
12 of 2019 s. 35

33.-(1) The Council may require any person-

- (a) dealing with moderation of examination items, printing of examination papers, supervision and invigilation of examinations, marking of candidate's scripts; or
- (b) officially assigned to assist in marking exercise, to take and subscribe to an oath of secrecy.

(2) A person who, having subscribed to the oath, publishes, discloses or communicates to any other person information that is privy of secrecy, commits an offence and on conviction, shall be liable to imprisonment for a term of not less than twenty years.

[s.26]

SCHEDULE

(Made under section 3(3))

COMPOSITION, TENURE AND PROCEEDING OF THE COUNCIL

Composition of
Council
Act No.
12 of 2019 s. 36

- 1.**—(1) The Council shall consist of-
- (a) a Chairman who shall be appointed by the President from amongst the Vice Chancellors of the accredited Public Universities established in the United Republic;
 - (b) one member appointed by the Minister responsible for education in consultation with the Minister responsible for local government from among head teachers of secondary schools;
 - (c) one member appointed by the Minister responsible for education in consultation with the Minister responsible for local government from among head teachers of primary schools;
 - (d) one member appointed by the Minister responsible for education representing private institutions, who has experience and qualifications in education matters;
 - (e) one member from the Ministry responsible for regional administration and local government who has experience and qualifications in education matters;
 - (f) three members from Tanzania Mainland appointed by the Minister responsible for education from amongst people who have experience in education assessment matters, finance, planning, community development, gender, children and social welfare; and
 - (g) three members from Tanzania Zanzibar appointed by the Minister responsible for education in consultation with the Minister responsible for education in the Revolutionary Government of Zanzibar, from among people vested with qualifications relevant for education and assessment.
- (2) In appointing members of the Council under subparagraph (1)(f) and (g), the Minister shall have due regard to representation of special groups.
- (3) The Council may co-opt not more than four persons to attend and provide expertise during the deliberation of the Council on such matters as the Council may determine but such persons shall not have the right to participate in the decision making of the Council.

Tenure of office
Act No.
12 of 2019 s. 36

- 2.** The Chairman and members of the Council shall, unless the appointment is terminated by the Minister, or ceases in any other way to be a member, hold office for a period of four years and shall be eligible for reappointment for one further term.

Cessation of membership
Act No.
12 of 2019 s. 36

3.-(1) A member appointed by virtue of his office shall cease to be a member upon ceasing to hold the post that entitled his appointment to the Council.

(2) A member of the Council shall cease to be a member upon advice by the Council to the Minister of the fact, and the appointing authority may terminate the appointment of the member and appoint another member in his place if he-

- (a) has been absent for three consecutive meetings of the Council without reasonable cause;
- (b) is convicted of a criminal offence and sentenced to imprisonment for a term exceeding six months or to a fine exceeding five hundred thousand shillings;
- (c) is convicted of an offence involving dishonesty or fraud;
- (d) is adjudged bankrupt or enters into a composition scheme or arrangement with his creditors;
- (e) is incapacitated by physical or mental illness or is deemed otherwise unfit to discharge his duties as a member of the Council; or
- (f) fails to comply with the provisions of this Act relating to disclosure.

Appointment of temporary member

4. Where a member is by reason of illness, infirmity or absence from the United Republic, unable to attend any meeting of the Council, the appointing authority may appoint a temporary member in his place and the temporary member shall cease to hold office on the resumption of office of the substantive member.

Vice-Chairman

5. The Council shall elect one of its members to be the Vice-Chairman and a member elected as Vice-Chairman shall, subject to his continuing to be a member, hold office of Vice-Chairman for a term of one year from the date of his election and shall be eligible for re-election.

Power of Chairman and Vice-Chairman

6.-(1) The Chairman shall preside at all meetings of the Council.

(2) Where at any meeting of the Council the Chairman is absent, the Vice-Chairman shall preside.

(3) In the absence of both the Chairman and the Vice-Chairman at any meeting of the Council, the members present may, from amongst their number elect a temporary Chairman who shall preside at that meeting.

(4) The Chairman, Vice-Chairman or a temporary Chairman presiding at any meeting of the Council, shall have a vote and in the event of an equality of votes, shall have a casting vote in addition to his deliberative vote.

Meetings and procedure of Council
Act No.
12 of 2019 s. 36

7.-(1) The Council shall ordinarily meet at least once in every three months every year and at any additional times which may be fixed by the Chairman or, if he is absent from the United Republic or unable for any reason to act, the Vice-Chairman.

(2) The Chairman or, in his absence from the United Republic, the Vice-Chairman, may, and upon application in writing by at least five members, convene a special meeting of the Council at any time.

(3) The Executive Secretary of the Council shall give to each member adequate notice of the time and place of each meeting.

Quorum	8. At any meeting of the Council not less than one half of the members in office for the time being shall constitute a quorum.
Decisions of Council	9. Subject to the provisions relating to a casting vote, all questions at a meeting of the Council shall be determined by a majority of the votes of the members present and if any member refuses or fails to vote on any question he shall be deemed to have cast a negative vote.
Seal of Council	10. —(1) The seal of the Council shall be of the shape, size and form as the Council may determine. (2) The seal shall not be used except in pursuance of a resolution of the Council and shall be authenticated by the signature of the Chairman, or the Executive Secretary or any member of the Council authorised to act in that behalf by the Council. (3) All documents, other than those required by law to be under seal, made by, and all decisions of the Council may be signified under the hand of the Chairman or the Executive Secretary or any member in office of the Council authorised in that behalf by the Council.
Record of proceedings of Council	11. —(1) The Council shall cause minutes of all proceedings of meetings of the Council to be entered in a book kept for that purpose. (2) Any minutes if purporting to be approved by, and signed by the Chairman of, the next succeeding meeting of the Council shall be evidence of the proceedings and, until the contrary is proved, the meeting to which the minutes relate shall be deemed to have been duly convened and all proceedings at that meeting to have been duly transacted.
Council may regulate its proceedings	12. Subject to the provisions of this Schedule the Council may regulate its own proceedings.