



Circular 0052/2013

**To: The Managerial Authorities of Recognised Primary, Secondary,
Community and Comprehensive Schools
and
The Chief Executives of Education and Training Boards**

**PROCEDURES ON COMMENCEMENT OF SECTION 30
IN RECOGNISED SCHOOLS**

The Minister for Education and Skills has confirmed that the commencement order for Section 30 of the Teaching Council Act 2001 will be signed on **1st November 2013** and will take effect from **28 January 2014**.

The purpose of this circular is to –

- Explain the employment consequences for qualified and unqualified people employed in teaching posts in recognised schools who are unregistered on or after 28 January 2014.
- Provide guidance to employers regarding the –
 - appointment of people to teaching posts and
 - procedures to be followed in the case of people who are unregistered on or after 28 January 2014.

This circular should be read in conjunction with Department circular 0025/2013 *Requirement for Teachers in Recognised Schools to Register with the Teaching Council*.

The rules and procedures are to be implemented by each employer with immediate effect and all people employed in teaching posts must adhere to the terms of this circular.

Please ensure that copies of this circular are provided to all members of the Board of Management/Education and Training Board and its contents are brought to the attention of all people in teaching posts in their employment including those on any form of paid or unpaid leave of absence.

This Circular can be accessed on the Department's website under www.education.ie Home – Education Staff – Information – Employment Terms and Conditions – Registration with the Teaching Council - Section 30.

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25 October 2013

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25 October 2013

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Definitions

For the purposes of this circular the following terms shall have the meanings assigned to them here unless the context indicates otherwise:

Department – means the Department of Education and Skills;

Employer – means an Education and Training Board (ETB) for vocational schools/community colleges and a Board of Management/Manager in the case of primary, voluntary secondary, community and comprehensive schools. The Education and Training Board or Board of Management/Manager may delegate responsibility for matters set out in this circular to the Principal of the school;

Paymaster – means the person/organisation in charge of paying salaries. The Department of Education and Skills in the case of primary, voluntary secondary, community and comprehensive teachers and the Education and Training Boards in the case of vocational schools/community college teachers;

Recognised school – means a school which is recognised by the Minister for Education and Skills in accordance with Section 10 of the Education Act 1998;

Registered teacher – means a teacher whose name is entered on the Teaching Council's register;

Registration history – means the details of teacher registration provided by the Teaching Council and retained by the paymaster;

Teaching Council – means the Council established under Section 5 of the Teaching Council Act 2001.

1 General

- 1.1 From 28 January 2014 under section 30 of the Teaching Council Act 2001 the paymaster will be **prohibited by law** from paying any person who is employed as a teacher in a recognised school unless he/she is registered with the Teaching Council. Section 30 does not apply to a person who is employed as a teacher in a centre for education or other education or training setting.
- 1.2 It is therefore essential for anyone employed as a teacher in a recognised school including those on any form of paid leave of absence to be registered and maintain registration at all times.
- 1.3 Limited exceptions permitted under Ministerial regulations under Section 24(8) of the Education Act 1998 (as amended by the Education (Amendment) Act 2012) are attached at Appendix A of this circular. Service given under the limited exceptions does not reckon for incremental credit purposes.
- 1.4 In advance of 28 January 2014, people employed as teachers in recognised schools who are unregistered with the Teaching Council will be notified by their employing school or ETB that payment of salary will cease from that date due to non-registration.

2 Specialised Posts in the Education Sector

- 2.1 There are posts in certain subject areas in the education sector that are occupied by people who are not qualified teachers but whose posts have traditionally been classified as teaching posts. In some cases these posts are, and were always intended to be, teaching posts. In other cases, teaching qualifications are not required or appropriate. In addition, a primary degree or equivalent qualification recognised by the Teaching Council in the subject area in question may not be available, giving rise to concerns about the ongoing supply of qualified staff.
- 2.2 There are, therefore, posts that can be filled by people with appropriate qualifications or experience without an approved teaching qualification. It is in the educational interests of students that the people delivering the courses have appropriate qualifications or experience, and it is in the public interest that such courses and activities can continue.

Lists of the subject areas in question in Special Schools are attached at Appendix B and in Post Leaving Certificate (PLC) colleges at Appendix C of this circular. In these areas, posts will be reclassified and, therefore, will not in future be regarded as teaching posts. All posts delivering the listed subject areas will in future be classified as tutor posts. The holders of these posts will not be subject to the requirements of Section 30. Departmental approval must be granted for the reclassification of the post(s). Appropriate qualifications requirements may be drawn up for tutor appointments in these areas from time to time taking account of industry requirements.

- 2.3 In the PLC area, teachers may deliver some modules in the areas listed in Appendix C where this forms a small proportion of their overall hours.

- 2.4 People currently employed in these posts will retain their current rate of pay and their current terms and conditions of employment. New appointees will be paid as tutors.
- 2.5 There will be other areas where it is necessary to employ an industry or sectoral expert to deliver programme content. An example of this would be content leading to industry-awarded qualifications such as Cisco networking or Microsoft Certified Engineer where the awarding body specifies the qualification to deliver the programme. There will also be other developing and specialist areas in the ICT area as well as areas such as highly specialised crafts, content leading to the awards of sports bodies and others. People in these areas will be employed as tutors or on a contract for service. All proposals to recruit for this purpose must be approved in advance by the Department.

3 The Teaching Council

- 3.1 Each year before his/her renewal date, the Council will send each teacher a reminder notice and renewal form at his/her last notified correspondence address. The Council also issues renewal reminders by email. A registered teacher should make note of his/her renewal date and should contact the Council if he/she does not receive a renewal notice when they would normally expect to receive such a notice.
- 3.2 In the event that registration is not renewed by the renewal date, the Teaching Council will send the teacher a notice stating that he/she will be removed from the register if registration is not renewed. The consequences of removal from the register for teachers in employment including cessation of salary will be specified in the notice.
- 3.3 The Teaching Council will provide the paymaster with registration details for all teachers on an ongoing basis.

4 Recruitment of Teachers

- 4.1 Employers must ensure that all persons proposed for employment (casual and non-casual) provide evidence of current registration prior to the commencement of his/her employment.
- 4.2 Employers may view a teacher's Teaching Council registration renewal receipt of payment or confirm the teacher's registration status online through the *Search the Register* function available on the Teaching Council website at www.teachingcouncil.ie.
- 4.3 Employers must ensure that the requirement to maintain registration with the Teaching Council is inserted as a condition within all contracts.
- 4.4 The limited exceptions permitted under Ministerial regulations made under Section 24(8) of the Education Act 1998 (as amended by the Education (Amendment) Act 2012) whereby unregistered people may be employed in place of registered teachers are attached at Appendix A of this circular. In particular, the regulations stipulate that an unregistered person may not be paid from public funds for a period of more than 5 consecutive school days.

5 The Paymaster

- 5.1 The Paymaster will check the registration history for each person due to receive salary prior to processing each payroll to confirm registration.
- 5.2 Salary will not be paid by the Paymaster to any teacher for any period of teaching service during which they are not registered with the Teaching Council. There will be no retrospective payment for a period during which a person is unregistered.
- 5.3 Any salary paid for a period when registration has lapsed will be recovered by the Paymaster.
- 5.4 The Paymaster will resume payment of salary from the date of his/her registration with the Teaching council and return to duties.

6 People employed as teachers in recognised schools who are eligible for registration but who are unregistered with the Teaching Council on or after 28 January 2014.

- 6.1 He/she cannot be paid from Oireachtas funds for the time during which he/she is unregistered.
- 6.2 He/she may be granted a period of unpaid leave referred to as Teaching Council Non Registration (TCNR) leave subject to a maximum duration of 6 months (see paragraph 8).
- 6.3 A person on TCNR leave must submit evidence to his/her employer that registration with the Teaching Council is being pursued in the case of a person eligible for registration **or** that the necessary qualifications to become registered with the Teaching Council are being pursued in the case of a person ineligible for registration. The employer must retain this evidence and confirm in writing to the Paymaster that a period of unpaid leave has been granted and will continue until further notice by the employer.

7 People employed as teachers in a permanent/CID capacity in recognised schools who are not eligible for registration and are unregistered with the Teaching Council on or after 28 January 2014.

- 7.1 He/she cannot be paid from Oireachtas funds for the time during which he/she is unregistered.
- 7.2 He/she will have the following options:
 - (a) Teaching Council Non Registration (TCNR) leave, subject to a maximum duration of 6 years (see paragraph 8), or

- (b) Voluntary redundancy in accordance with the terms of the Collective Agreement: Redundancy Payments to Public Servants (June 2012) (see Appendix D) or
- (c) Redeployment to non-teacher posts for such persons who are comprehended by the Haddington Road Agreement.

The person will be required to inform his/her employer of his/her preferred option not later than Thursday 28th November 2013. In the event that he/she fails to do this, the employer may grant him/her a period of TCNR leave from 28th January 2014 as at 6(a) above.

8 Teaching Council Non Registration (TCNR) Leave – Unpaid Leave of Absence

8.1 *Appointment of a Replacement Teacher*

- 8.1.1 Where a replacement teacher is to be employed he/she shall be offered a fixed term/specified purpose contract for the duration of the TCNR leave to be terminable on the return or resignation/retirement/end of contract of the person on leave.

8.2 *Posts of Responsibility*

- 8.2.1 Teaching Council registration is required for appointment as a teacher and similarly a person cannot be appointed to a post of responsibility unless they are registered.

8.3 *Resumption of Duty following TCNR Leave*

- 8.3.1 A person on TCNR leave must notify the employer immediately upon registration with the Teaching Council and a date must be arranged for the earliest possible return to duties.
- 8.3.2 It is the responsibility of the employer to inform the paymaster of the date of return of a teacher to duties following TCNR leave.
- 8.3.3 A person returning from TCNR leave in excess of two school years shall be screened by the Occupational Health Service (OHS). It is a pre-requisite for the restoration of salary that the person is deemed medically fit for duties by the OHS before he/she is permitted to resume his/her post.
- 8.3.4 The terms and conditions of teachers in general including the terms of any redeployment scheme existing at the time of return shall apply to the person resuming duty after TCNR leave.
- 8.3.5 A person returning from TCNR leave will be paid from the date of his/her registration with the Teaching Council and return to duties.

8.4 Other Leave of Absence

- 8.4.1 All teachers on any form of paid leave of absence must be registered with the Teaching Council and maintain that registration at all times. In the event that a person's registration lapses while on paid leave, salary will not be paid for the period he/she is unregistered and the person remains on the original leave type.

8.5 Social Welfare Entitlements

- 8.5.1 The person on a TCNR leave remains an employee of the employer for the duration of the absence and the absence does not constitute a break in service for PRSI Class purposes.
- 8.5.2 A person seeking to maintain his/her Social Welfare entitlements during a TCNR leave should contact the Department of Social Protection for advice.

8.6 Pensions

- 8.6.1 A period of TCNR leave of absence does not reckon for pension purposes. Subject to the provisions of the Purchase of Notional Service Scheme the period may be reckoned for pension purposes on payment of contributions at full actuarial cost following a return to service.
- 8.6.2 Further information on the purchase of notional service is available from the Department's website www.education.ie under Education Staff – Retirement/Pensions – Teaching Staff – Notional Service Scheme. Queries regarding notional service may be emailed to pensions@education.gov.ie or addressed to the Pension Unit of the Department. Teachers employed by Educational Training Board (ETB) should direct any queries to the relevant ETB.
- 8.6.3 The new Single Public Service Pension Scheme ("Single Scheme") commenced with effect from 1 January 2013. The Scheme applies to all pensionable first-time entrants to the Public Service on or after that date, as well as to former public servants returning to the public service after a break in pensionable service of more than 26 weeks. (A period of approved TCNR leave does not constitute a break in service for the purposes of the Single Scheme.) Further information on the Single Public Service Pension Scheme is available on the website of the Department of Public Expenditure and Reform at <http://per.gov.ie/wp-content/uploads/Single-Scheme-booklet-Final.pdf>

8.7 Incremental Credit

8.7.1 A period of TCNR leave of absence does not reckon for incremental credit purposes.

8.8 Voluntary Deductions at Source

8.8.1 Voluntary deductions from salary cease when a person goes on TCNR leave. It is the sole responsibility of a person on TCNR leave to ensure that medical insurance policies, income continuance insurance, union subscriptions, credit union and local property tax payments do not lapse. No liability rests with the Paymaster for policies of any nature which lapse. Further details in relation to voluntary deductions can be found on the Department's website www.education.ie under Education Staff – Information – Payroll & Financial - Voluntary Deductions.

9 Correspondence Address

9.1 All correspondence will be addressed to the person employed in a teaching post at the address last notified by him/her and no fault shall lie with the employer in the event that correspondence is not received.

10 Compliance

10.1 All people employed in a teaching post and employers must adhere to the regulations and procedures set out in this circular. It is open to employers to avail of disciplinary procedures where employees fail to abide by the regulations and procedures. Substitute cover for schools will only be provided in accordance with the terms of this circular.

10.2 All relevant documentation relating to registration must be retained by the employer with the relevant personnel records. These records may be selected for inspection by nominated Department officials.

11 Further Information

11.1 All queries in relation to registration should be directed to the Teaching Council – www.teachingcouncil.ie and Section30@teachingcouncil.ie.

11.2 Queries in relation to this circular may be sent to the Department at the following email address: section30_queries@education.gov.ie.

Appendix A – Ministerial Regulations (Proposed for Signature)

1. These Regulations may be cited as the Education Act 1998 (Unregistered Persons) Regulations 2013.

2. These Regulations come into operation on _____

3. (1) In these Regulations -

“**Act of 1998**” - means the Education Act 1998 (No. 51 of 1998);

“**Act of 2001**” - means the Teaching Council Act 2001 (No. 8 of 2001);

“**relevant employer**” in relation to a recognised school means - the board of management of that school **or**, in the case of a recognised school maintained by an education and training board, that board;

“**school for children of EU staff**” means - a recognised school, or a section of a recognised school

(a) established for the purpose of discharging, or

(b) operating in practice by arrangement to discharge,

an obligation to staff of EU institutions;

4. A person who is not a registered teacher for a reason other than that he or she is suspended or removed from the register under Part 5 of the Act of 2001, may be employed in the place of a registered teacher in a recognised school and be remunerated, in respect of such employment, out of monies provided by the Oireachtas, where –

- (a) the relevant employer has made all reasonable efforts to appoint a registered teacher in accordance with the procedures determined by the Minister pursuant to section 24(11) of the Act of 1998, and
- (b) a registered teacher is not available to take up the position in question.

5. The employer shall be satisfied that a person employed in accordance with Regulation 4 is competent and capable of acting in place of a registered teacher in the school. In the case of a position in a school for children of EU staff, the person shall also be a native speaker of the language in which he or she is employed to teach.

6. A person employed in accordance with Regulation 4 shall be paid at the unqualified rate of pay determined from time to time by the Minister with the consent of the Minister for Public Expenditure and Reform.

7. A person who is employed in the place of a registered teacher (which employment is, in this Regulation, referred to as “substitute employment”) may be remunerated out of monies provided by the Oireachtas –

- (a) in the case of a position in a school for children of EU staff, for a period of no more than one school year at a time, and
- (b) in any other case, for non- consecutive periods of no more than 5 consecutive school days (within the meaning of section 25 of the Act of 1998).

8. Where a person is employed in accordance with Regulation 4 the relevant employer shall continue to make all reasonable efforts to employ a registered teacher.
9. It shall be a term and condition of a contract of employment of a person employed in accordance with Regulation 4 that the contract shall terminate –
 - (a) immediately if the relevant employer can employ a registered teacher in the position in which the person is being employed, or
 - (b) at the expiry of the relevant time period under Regulation 7, whichever happens first.
10. (1) Where a person is employed in a recognised school in accordance with Regulation 4, the Principal of the recognised school shall record in writing that –
 - (a) following the taking of all reasonable efforts by the relevant employer to appoint a registered teacher in accordance with the procedures determined by the Minister pursuant to section 24(11) of the Act of 1998, a registered teacher is not available to be employed by the recognised school concerned and the reasons for this, and
 - (b) the person employed in accordance with Regulation 4 is competent and capable of acting in place of a registered teacher in the said school.
- (2) The Principal of each recognised school shall provide information to the board of management, and, in the case of a recognised school maintained by an education and training board, that board, as to the circumstances in which a person has been employed in accordance with Regulation 4.

(3) The board of management of a recognised school shall, in accordance with -

(a) section 20, and

(b) the procedures it has established pursuant to section 21,

of the Act of 1998, inform the parents of students in the said school of the persons employed by the said board under Regulation 4.

(4) All records to which this regulation refers shall be retained by the Principal of the recognised school for not less than 2 years from the end of the school year in which the employment concerned occurred and shall, on request, be provided to –

(a) a member of the board of management of the said school, or

(b) the Minister, or a person appointed by him or her for the purpose of this Regulation.

Appendix B - Specialised Posts in Special Education

List of Special Education courses/modules re-designated to be delivered by a tutor.

Irish Sign Language

Swimming Instructor

Horticulture/ Gardening

Play and Interactive Support

IT Computer Studies

Music Therapy

Craftwork

This list may be amended from time to time.

Appendix C - Specialised Posts in Post Leaving Certificate

List of PLC courses/modules re-designated to be delivered by a tutor.

Beauty Therapy

Hairdressing

Security Studies

Animal Care/Grooming

First Aid

The qualifications requirements for Beauty Therapy and Hairdressing will be those set out previously in Circular 47/2000.

This list may be amended from time to time.

Appendix D – Collective Agreement: Redundancy Payments to Public Servants

Under the Public Service Agreement 2010 – 2014 the parties have agreed that Public Service numbers will be reduced in accordance with Government policy on public service numbers, as implemented through Employment Control Frameworks. To that end, the Agreement states (paragraph 1.5) that, where the circumstances require it, the Government may offer voluntary mechanisms to exit the public service, whether generally or in specific sectors, bodies, locations or services.

The Agreement includes a commitment (paragraph 1.6) by public service management that compulsory redundancy will not apply within the Public Service; however this is subject to some key qualifications, namely that it is subject to compliance with the terms of the Agreement, in particular on flexibility on redeployment. There is a saver for circumstances “where existing exit mechanisms apply”. There are established practices for making public servants redundant in appropriate circumstances, on the expiry of employment contracts or where redundancy terms have been agreed or generally applied¹.

It has been agreed on behalf of the Department of Public Expenditure and Reform and the Public Services Committee of ICTU that the following will apply, with effect from 1 June 2012, on the redundancy of a public servant as defined under the Financial Emergency Measures in the Public Interest Act 2009 - 2011² or group or class of public servants³:

- Any *ex gratia* payment will amount to no more than 3 weeks pay per year of service, subject to the total statutory redundancy and *ex gratia* payment not exceeding either 2 years’ pay or one half of the salary payable to preserved pension age, whichever is less;
- In accordance with the provisions in the Redundancy Payments Acts 1967 – 2007, public servants in employment for less than 2 years [104 weeks] are not eligible for a severance payment (statutory or *ex gratia*);
- Public servants will be advised in writing prior to acceptance of the *ex gratia* payment that s/he will not be eligible for re-employment in the public service by any public service body (as defined by the Financial Emergency Measures in the Public Interest Acts 2009 -2011) for a period of two years from termination of the employment. Thereafter the consent of the Minister for Public Expenditure and Reform will be required prior to re-employment. This declaration will also include an authorisation that their information (PPS number and details) can be used by their employer or any other public service body for the purposes of monitoring compliance with this provision.

This collective agreement will be reviewed from time to time in light of the prevailing economic and fiscal conditions.

¹ The Implementation Body established under the Agreement has noted [17 February 2012] that it was not intended that these practices would be superseded by the Agreement.

² Including public servants employed for a fixed term, meeting the criteria for redundancy under the Redundancy Payments Acts 1967 to 2007 and to whom a redundancy payment is required to be paid in accordance with the Protection of Employees (Fixed Term Work) Act 2003.

³ A public service employer may seek the sanction of its parent Department and the Department of Public Expenditure and Reform to make a collective agreement with a body representing relevant employees that varies some or all of the terms of this agreement. The redundancy arrangements specified under DES Circular 0058/2006 are unaffected by this collective agreement