



Circular 0025/2013

**To: The Managerial Authorities of Recognised Primary, Secondary,
Community and Comprehensive Schools
and
The Chief Executive Officers of Vocational Education Committees**

REQUIREMENT FOR TEACHERS IN RECOGNISED SCHOOLS TO REGISTER WITH THE TEACHING COUNCIL

COMMENCEMENT OF SECTION 30 ON 1 NOVEMBER 2013

The Minister for Education and Skills recently announced that Section 30 of the Teaching Council Act 2001 will commence on **1 November 2013**.

The purpose of this Circular is to–

- Advise unregistered people who are employed in teaching posts in recognised schools and who have sufficient qualifications to be registered with the Teaching Council to **APPLY IMMEDIATELY** to the Council, as the registration process can take several months,
- Explain the employment consequences for qualified and unqualified people employed in teaching posts in recognised schools who are unregistered on or after 1 November 2013,
- Explain the approach to be taken to posts occupied by unregistered people who are not qualified, and
- Provide guidance to Boards of Management and Vocational Education Committees regarding appointments to Oireachtas funded teaching posts in recognised schools, having regard to the 1 November 2013 commencement date for Section 30.

The rules and procedures are to be implemented by each employer with immediate effect and all teachers 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/Vocational Education Committee. Employers are urged to bring the contents of this circular 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.

Dalton Tattan
Principal Officer
Teachers/SNA Terms and Conditions
15 May 2013

Padraig Maloney
Principal Officer
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15 May 2013

Definitions

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

Centre for education - means a place, other than a school or a place providing university or other third level education, where adult or continuing education or vocational education or training, is provided and which is designated for that purpose under section 10(4) of the Education Act 1998;

Department – means the Department of Education and Skills;

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

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; and

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

1. Section 30 of the Teaching Council Act 2001

- 1.1 The Teaching Council was established under the Teaching Council Act 2001 as the regulator of the teaching profession. The Council promotes professional standards in teaching. It acts in the interests of the public good by upholding and enhancing the reputation and status of the teaching profession through fair and transparent regulation.
- 1.2 Section 30 of the 2001 Act prohibits payment from public funds of people employed as teachers in recognised schools unless they are registered with the Teaching Council. It is designed to underpin the Government's policy of having a registered and fully qualified graduate teaching profession.
- 1.3 When Section 30 is commenced on 1 November 2013 the Department and VECs will be **prohibited by law** from paying any person who is employed in a teaching post in a recognised school unless he or she is registered with the Teaching Council.

2. People affected by the commencement of Section 30

- 2.1 Section 30 will apply to people employed as teachers in recognised schools.
- 2.2 It does not apply to a person who is employed–
 - (a) as a teacher in a centre for education or other education or training setting (eg Youthreach, certain VTOS provision),
 - (b) in a recognised school in a role other than that of teaching (see paragraph 5 below), or
 - (c) in accordance with the Ministerial regulations to be made under the Education Act 1998 (as amended) (see paragraph 7 below).
- 2.3 Although not a legal requirement, in order to be paid from public funds, any person employed as a teacher in a place other than a recognised school is advised to maintain his/her registration with the Teaching Council.

3. Immediate steps to be taken by unregistered people currently employed as teachers

- 3.1 Section 30 will become law on **1 November 2013**.
- 3.2 If you are employed as a teacher in a recognised school and believe that you have sufficient qualifications to be registered with the Teaching Council, you should **APPLY IMMEDIATELY** to the Council to be registered. Registration, which includes vetting by An Garda Síochána, can take several months and any delay in applying to the Council now may mean you are not registered in time for 1

November 2013. If, on or after that date, a person is unregistered for any reason, including delay, that person's pay will be stopped.

- 3.3 A person in this position should also inform his or her employer immediately of the position and the steps he/she is taking to resolve it.

4. Impact of Section 30 on an unregistered person currently employed as a teacher, including those on leave of absence, in a recognised school

- 4.1 A person employed as a teacher in a recognised school who is, on or after 1 November 2013, not registered with the Teaching Council, cannot be paid by the Department, employing VEC or by a recognised school using public funds from any source.

4.2 People employed as teachers in recognised schools who are eligible for registration with the Teaching Council

In the case of any person employed as a teacher who has sufficient qualifications to be registered but who is unregistered with the Teaching Council on or after 1 November 2013, the following will apply:

- (a) He/she **cannot** be paid for the time during which he or she is unregistered.
- (b) His/her employer may place him/her on unpaid leave for a limited period of time pending his or her registration with the Teaching Council.
- (c) He/she will be paid from the date of his or her registration with the Teaching Council and return to duties. There will be no retrospective payment for the period during which he or she was unregistered.

4.3 People employed as teachers in recognised schools who **are not** eligible for registration with the Teaching Council

Other than the specified posts set out in paragraph 5 below, and the exceptions to be provided for by Ministerial regulation (see paragraph 7), a person employed as a teacher in a recognised school who does not have sufficient qualifications to be registered with the Teaching Council cannot continue to be paid from public funds on or after 1 November 2013.

A person in this situation will be offered a choice between–

- (a) an unpaid leave of absence for a period of not more than 6 years or the end of his/her contract of employment, whichever occurs first, in which to acquire the qualifications necessary to become registered with the Teaching Council, or

- (b) voluntary redundancy in accordance with the terms of the *Collective Agreement: Redundancy Payments to Public Servants* (June 2012) (see Appendix A)

The person will be required to inform his/her employer of his/her preferred option not later than **Friday, 6 September 2013**. In the event that he/she fails to do this, the employer may grant him/her a period of unpaid leave of absence in accordance with paragraph 4.3(a) above.

5. Classification of certain posts as non-teaching posts

5.1 There are certain specialised posts in the education sector which are occupied by people who are not qualified teachers but whose posts have traditionally been classified as teaching posts.

5.2 In some cases these posts are, and were always intended to be, teaching posts. In other cases, positions which were until now regarded as teaching ones are, in reality, instructional in nature where a teaching qualification is not essential. In the case of those instructional posts, the most appropriate person to be appointed is someone with specialist qualifications or experience regardless of whether or not he or she has a teaching qualification. It is in the educational interests of students that the people delivering the courses have those specialist qualifications or experience, and it is in the public interest that such courses and activities can continue.

5.3 PLCs: Post Leaving Certificate Courses

A number of courses delivered in PLCs are ones which are most appropriately delivered by people who are not teachers but have specialist qualifications or experience. The Department, in consultation with the management bodies, will identify these posts. Such posts will be reclassified and, therefore, will not in future be regarded as teaching posts. They will not be subject to the requirements of Section 30. A list of these posts will be made available as soon as possible.

5.4 Certain specialist roles in special schools

A small number of roles carried out in special schools have been identified as appropriate for delivery by people who are not teachers but have specialist qualifications or experience (eg swimming instructor, horticulturalist). Such posts will be reclassified and, therefore, will not in future be regarded as teaching posts. They will not be subject to the requirements of Section 30. A list of these posts will be made available as soon as possible.

5.5 School chaplains

In the case of school chaplains paid by the State, these posts are regarded as teaching posts and, therefore, those appointed to them should be registered teachers. However, it is also recognised that the most significant aspect to the role and time of a chaplain is not teaching but the provision of pastoral care in recognised schools. Having regard to that objective, any school chaplain currently in employment who cannot gain registration with the Teaching Council will be permitted to continue in his or her primary role in pastoral care but will be prohibited from teaching. New appointees to chaplain positions must be registered teachers.

5.6 EU commitments

Ireland is under obligations at European level to deliver language specialist (mother tongue) provision to children of certain EU institution officials. There is a continuing obligation on the State to deliver this provision. In order to meet this ongoing commitment, an exception will be provided for in the Ministerial regulations to permit the employment of an unregistered person who is a native speaker of the language to be delivered for a period of up to 1 school year.

6. **Recruitment of Teachers**

6.1 In recruiting people to teaching positions for the 2013/14 school year, employers must have regard to the 1 November 2013 start date for Section 30.

6.2 Outside the very limited, exceptional and short-term circumstances permitted under the Ministerial regulations (see paragraph 7 below), an unregistered person employed as a teacher in a recognised school cannot be paid from public monies on or after this date.

6.3 Where an employer, in compliance with existing arrangements under Department Circular 0031/2011, finds that it must appoint an unregistered person it should inform that person that payment to him/her on or after 1 November 2013 will not be permitted if he/she remains unregistered on that date. This is a change from the existing provision in paragraph 3.3 of Department Circular 0031/2011 which allows employers to appoint a person whose registration is pending with the Teaching Council for up to one year. From 1 November 2013, that person will be considered an unregistered person and will not be paid from public funds outside the exceptions set down in paragraph 7 below.

6.4 In particular, employers should ensure that registration with the Teaching Council is included as a requirement when advertising vacant teaching posts. Evidence of current registration should also be sought prior to that position being offered; e.g. by the employer viewing the teacher's Teaching Council registration renewal receipt of payment or confirming the teacher's registration status online through the *Search the Register* function available on the Teaching Council website at www.teachingcouncil.ie.

7. **Exceptions from the requirement to employ a registered teacher**

7.1 Following the commencement of Section 30, it will still be possible to employ unregistered people in place of registered teachers in exceptional circumstances only and for very limited periods. This will be permitted under regulations to be made by the Minister under Section 24(8) of the Education Act 1998 (as amended by the Education (Amendment) Act 2012).

7.2 These regulations cannot permit the payment from public funds of a registered teacher who is suspended from, or has been removed from, the register under Part 5 of the Teaching Council Act 2001.

7.3 Those regulations will be issued in due course. In addition to the provision for EU commitments (see paragraph 5.6 above), it is intended that they will provide as follows:

- (a) An unregistered person may be appointed where an employer has made all reasonable efforts to appoint a registered teacher in accordance with the normal appointment procedures and no registered teacher is available to take up the position in question.
- (b) An unregistered person will be subject to vetting by An Garda Síochána.
- (c) An unregistered person is competent and capable of acting in place of a registered teacher in the school.
- (d) An unregistered person must hold at least a level 7 qualification on the National Framework of Qualifications (within the meaning of the Qualifications and Quality Assurance (Education and Training) Act 2012).
- (e) An unregistered person will be paid a single rate of pay for unregistered persons who are engaged under these regulations and that rate of pay will be lower than that payable to registered teachers.
- (f) An unregistered person may not be paid from public funds for a continuous period of more than 5 school days.
- (g) Where an unregistered person is employed, the employer will remain under an obligation to source a registered teacher. It will be a term and condition of the unregistered person's contract of employment that it will terminate immediately if the employer can replace him or her with a registered teacher or at the expiry of the continuous 5 day period, whichever happens first.
- (h) The employer must retain and furnish to the Minister evidence that it has been unable to employ a registered teacher in the place of a registered teacher in a recognised school.

The employer must record in the minutes of the next Management meeting that the appointment is in accordance with the regulations as outlined above.

7.4 The Department and VECs will be bound by these regulations and will be prohibited by law from making exceptions in individual cases. There will be no discretion to depart from the regulations.

8. Publicity

- 8.1 The Department, VECs and the Teaching Council have already engaged in extensive communications on the issue of Section 30 and continue to do so. These have included advertisements in union magazines, inserts in teachers' payslips, and the provision of information notes and posters for recognised schools. Individual letters have also been issued to people employed in teaching positions who are not registered informing them of the requirement to register.

9. Correspondence address

- 9.1 The employer will address all necessary correspondence to the teacher at the address last notified by the teacher and no fault shall lie with the employer in the event that the teacher does not receive such correspondence.

10. Compliance

- 10.1 All teachers/employers must adhere to the regulations and procedures set out in this circular. Failure to abide with the regulations and procedures will lead to the cessation of salary. 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 A circular providing detailed guidance on the procedures to be followed by recognised schools where a person is, or becomes, unregistered on or after 1 November 2013 will be issued at the beginning of the next school year.
- 11.2 All queries in relation to registration should be directed to the Teaching Council – www.teachingcouncil.ie and Section30@teachingcouncil.ie.
- 11.3 Queries in relation to this circular may be sent to the Department at the following email address: section30_queries@education.gov.ie.

Appendix A

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.

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

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