



**AN BILLE UM CHOMHAIRLE MHÚINTEOIREACHTA
(LEASÚ), 2015
TEACHING COUNCIL (AMENDMENT) BILL 2015**

EXPLANATORY MEMORANDUM

Purpose of the Bill

The purpose of the Bill is to provide a clear statutory basis for the role of the Teaching Council in the forthcoming statutory arrangements for the vetting of registered teachers in the context of it acting as a conduit for recognised schools and ETBs, to empower the Teaching Council to seek and obtain vetting disclosures in its own right as a registration body i.e. for initial registration, renewal of registration and where relevant in a Fitness to Teach inquiry and to clarify and strengthen the statutory provisions relating to the Teaching Council's fitness to teach function prior to the commencement of these provisions

Provisions of the Bill

Section 1 — Definition

Section 1 defines the “Principal Act” in this Bill as the Teaching Council Act 2001.

Section 2 — Amendment of section 2 of Principal Act

Section 2 amends section 2 of the Principal Act by defining certain terms used in the Bill and inserting them into section 2 of the Principal Act.

Section 3 — Amendment of section 7 of Principal Act

Section 3 amends section 7 (Functions of the Council) of the Principal Act. It provides that, in addition to the functions specified in the existing section 7, it will be a function of the Teaching Council to obtain or receive vetting disclosures for the purposes set out in this Bill, for the purpose of its role as a relevant organisation or for the purpose of its role as a relevant organisation representing another relevant organisation under the National Vetting Bureau (Children and Vulnerable Persons) Act 2012. The term “relevant organisation” has the same meaning as it has in the National Vetting Bureau (Children and Vulnerable Persons) Act 2012.

Section 3 also amends section 7 of the Principal Act to provide that the Council shall, in the performance of its functions under that Act, have regard to the need to protect children and vulnerable adults.

Section 4 — Amendment of section 8 of Principal Act

Section 4 amends section 8 (Membership of Council) of the Principal Act to update the bodies providing primary and post

primary initial teacher education which nominate persons to the Minister for appointment to the Council.

Section 5 — Amendment of section 29 of Principal Act

Section 5 amends section 29 (The Register) of the Principal Act to provide that the information to be entered in the register in respect of a registered teacher, as prescribed by the Council, shall, in addition to the information specified in the existing section 29, include:

- whether the registration is subject to any conditions applied under the amended section 31 of the Principal Act, the amended section 33 of the Principal Act or under the amended section 44 of the Principal Act and
- the information disclosed by the most recent vetting disclosure in the possession of the Council in respect of the person.

Section 5 also amends section 29 of the Principal Act to clarify that the existing provisions of that section which relate to publishing the register, making it available for inspection and providing for a copy of an entry or extract to be made available on request are subject to any enactment or rule of law which would prohibit the disclosure of such information.

Section 6 — Amendment of section 30 of Principal Act

Section 6 substitutes section 30 (Employment of a registered teacher) of the Principal Act. The existing section 30 provides that a person employed as a teacher in a recognised school shall not be remunerated out of moneys provided by the Oireachtas where the person is not a registered teacher or where the person is removed or suspended from the register. The substituted section 30 updates the existing wording of the section including to cross reference:

- an amendment which was made to the Education Act 1998 under the Education (Amendment) Act, 2012. The 2012 amendment makes provision for the employment, in certain exceptional and limited circumstances, of persons who are not registered teachers,
- amendments being made under this Bill to sections 44 and 47 of the Principal Act. These amendments are being made under sections 17(f) and 19 of the Bill and provide that where the High Court has decided to remove or suspend a registered teacher from the register or leave has been granted for an appeal to the Court of Appeal in accordance with those sections, the High Court (or the Court of Appeal as appropriate) is also required, where that teacher is employed as a teacher in a recognised school, to determine whether he or she may continue to be paid pursuant to his or her contract of employment out of moneys provided by the Oireachtas.

Section 7 — Amendment of section 31 of Principal Act

Section 7 amends section 31 (Registration) of the Principal Act to provide for the following:

- regulations for the purpose of registration under section 31 shall provide for the documentary and other evidence that the Council may seek for the purposes of determining an application for registration and for other evidence to enable the Council to satisfy itself that a person is a fit and proper person to be admitted to the register,

- changes to the wording in the Principal Act which differentiates between requirements that must be met in order to be registered (such as requirements in relation to qualifications, teaching experience and medical fitness) and conditions that may be attached to a person's registration, such as conditions relating to completion of a probationary period,
- that the Council shall not register a person who applies for registration unless it has sought and received a vetting disclosure in respect of the person and is satisfied that the person is a fit and proper person to be registered having considered that disclosure, any submissions made by the person in relation to the disclosure and any other documentary or other evidence submitted for that purpose by the person,
- that where a vetting disclosure received by the Council contains specified information (specified information has the same meaning as it has in the National Vetting Bureau (Children and Vulnerable Persons) Act 2012) and that specified information relates to conduct which occurred prior to the coming into operation of this section of the Bill, the Council may not consider that information (for the purposes of determining if a person is a fit and proper person to be admitted to the register) unless that conduct would have constituted a criminal offence at the time it occurred,
- that where a vetting disclosure received by the Council contains information that the Council considers of relevance to its consideration of whether the person is a fit and proper person to be registered, it shall invite submissions from the person in relation to that disclosure,
- that the Council may seek evidence from the applicant or any relevant person to verify any of the information submitted by the applicant for the purpose of registration in accordance with section 31,
- that the Council shall refuse to register a person if the person has failed to provide his or her consent to vetting or to provide any other information required by the Council to enable it to obtain a vetting disclosure in respect of the person,
- that the Council shall refuse to register a person where it is not satisfied that he or she is a fit and proper person to be admitted to the register,
- some technical amendments in the relevant subsections of section 31 that provide for the Council to refuse to register a person where the person stands removed or suspended from the register and for the Council to register a person with conditions.

Section 8 — Pending applications for registration under section 31 of Principal Act

Section 8 provides that where applications for initial registration have been made prior to the coming into operation of section 7 of this Bill and have not been decided upon when section 7 of this Bill becomes operational, such applications will continue under the amended section 31.

Section 9 — Information necessary to obtain vetting disclosures

Section 9 places a requirement on a person to provide his or her consent to a vetting application and to provide any other information

which is required by the Council to enable it to obtain a vetting disclosure in respect of the person where that person applies for registration under section 31 of the Principal Act or where he or she is requested by the Council to do so, for the purposes of renewal of his or her registration under section 33 of the Principal Act.

Section 10 — Amendment of section 32 of Principal Act

Section 10 amends section 32 (Registration subject to conditions) of the Principal Act to provide that where a teacher's initial registration is subject to conditions that have been applied by the High Court, the teacher shall be removed from the register where he or she fails to comply with any of those conditions.

Section 11 — Amendment of section 33 of Principal Act

Section 11 amends section 33 (Renewal of registration) of the Principal Act to provide for the following:

- revised text in relation to the powers of the Teaching Council to make regulations for the purposes of renewal of registration which shall provide for;
 - the form and manner of an application for renewal of registration,
 - the documentary and other evidence that the Council may request for the purpose of determining an application for renewal,
 - the documentary and other evidence that the Council may seek to enable it to satisfy itself that a person is a fit and proper person to have his or her registration renewed and
 - any other requirements to be met for renewal of registration which may include requirements relating to completion of programmes of continuing education and training, teaching experience or medical fitness.
- that an application for renewal, subject to any requirement in relation to vetting, and the payment of the renewal fee shall be submitted before the expiration of the person's period of registration.
- that the Council may seek a vetting disclosure in respect of a registered teacher applying for renewal of his or her registration.
- that where the Council intends to seek a vetting disclosure, it is required to notify the teacher concerned of that intention, such notice must issue not more than 10 months prior to his or her renewal date or within such lesser period that the Minister may direct, and the teacher is required to comply with the vetting requirement within the time period specified in that notice.
- that, in considering whether to seek a vetting disclosure in respect of a teacher, the Council must have regard to:
 - whether the Council has previously received a vetting disclosure for the teacher under the non-statutory garda vetting arrangements and, where it has, the time period since it was received,
 - whether the Council has previously received a vetting disclosure for the teacher under the statutory garda vetting arrangements of the National Vetting Bureau

(Children and Vulnerable Persons) Act 2012, and, where it has, the time period since it was received,

- any time periods for re-vetting of persons that have been prescribed under section 20 of the National Vetting Bureau (Children and Vulnerable Persons) Act 2012.
- that where the Council seeks a vetting disclosure in respect of a registered teacher and the disclosure contains specified information, it may not consider that specified information where the conduct concerned occurred before the commencement of section 11 of this Bill unless that conduct would have constituted a criminal offence at the time it occurred,
- that where the Council seeks a vetting disclosure, it shall, for the purposes of satisfying itself that the person is a fit and proper person to have his/her registration renewed, consider the information in that disclosure, any submissions in respect of that disclosure from the teacher concerned and any other documentary or other evidence submitted by the teacher in accordance with this section,
- that the Council must invite submissions from the teacher where the Council considers that information in a disclosure is of relevance to its consideration of whether the person is a fit and proper person to have his or her registration renewed.
- that the Council may seek evidence from the registered teacher or from any another relevant person to verify any of the information submitted by the teacher for the purposes of his or her renewal of registration,
- that the Council may refuse to renew a person's registration where he or she does not satisfy the requirements for renewal of registration as prescribed or where he or she stands removed or suspended from the register,
- that where the Council has sought a vetting disclosure in respect of a person, the Council shall refuse to renew that person's registration where:
 - he or she has failed to comply with the vetting request within the required timeframe and the Council has not been in a position to determine if he or she is a fit and proper person to be renewed or
 - where the Council is not satisfied that the person is a fit and proper person to be renewed
- that the Council may renew the person's registration subject to conditions, if any, that it considers appropriate,
- that a teacher may, within 21 days, apply to the High Court for an annulment of a decision by the Teaching Council to refuse to renew his or her registration or a decision to renew it subject to conditions.
- that the High Court may, on hearing an application from the teacher, confirm the decision of the Council, direct the Council to renew the registration (with or without conditions), annul the decision of the Council and direct the Council to make a further decision, vary the decision of the Council or give such any other directions to the Council as it considers appropriate and the High Court may make such order as to costs as it considers appropriate.

Section 12 — Conditions on registration applicable on renewal of registration

Section 12 provides that where, prior to section 11 of the Bill coming into operation, the period for compliance with a condition imposed at initial registration (under section 31 of the Principal Act) exceeded the period of that initial registration and that person's registration is subsequently renewed under the new renewal of registration provisions of this Bill (section 33 as amended by this Bill), that renewal will be subject to the (original) condition for any remaining outstanding period for compliance.

Section 13 — Amendment of section 34 of Principal Act

The existing provisions of section 34 (Removal from register for failure to apply for renewal of registration) allow for a notice period of one month following the expiry of a teacher's registration to be provided to a teacher who fails to apply for renewal and for that teacher to be removed from the register at the end of that month unless he or she has applied for renewal and paid the relevant renewal fee to the Council within that one month period.

This section amends section 34 to provide that in the case of a teacher who is required to comply with a vetting requirement under section 33, this notice period provision will apply only where he or she has complied with those vetting requirements.

The existing section 34 also requires that where an application has been made for inquiry under Part 5 (Fitness to Teach) of the Act and that person fails to apply for renewal of registration, the person shall not be removed from the register until such time as that inquiry is completed. This provision is being amended to reflect changes being made under this Bill to the wording of Part 5 (e.g. changing the wording from "application" to "complaint" and "applicant" to "complainant" etc.) and to make specific reference to the various provisions of Part 5 under which a Fitness to Teach process can reach conclusion.

Section 14 — Amendment of section 35 of Principal Act

Section 35 (Removal from register on application of registered teacher) currently provides that where an application has been made for inquiry under Part 5 (Fitness to Teach) of the Act, any application by the teacher concerned for removal from the register shall not be considered until the inquiry is completed. The wording of this provision is being amended to reflect changes being made under this Bill to the wording of Part 5 (e.g. changing the wording from "application" to "complaint" and "applicant" to "complainant" etc.) and to make specific reference to the various provisions of Part 5 under which a Fitness to Teach process can reach conclusion.

Section 15 — Amendment of section 42 of Principal Act

Section 15 amends section 42 (Inquiry by Investigating Committee) of the Principal Act to provide for the following:

- that a person, including the Council, may make a complaint to the Investigating Committee in relation to a registered teacher and the Committee may investigate that complaint where it concerns any of the following matters:
 - (a) that he or she has failed to comply with or has contravened any provision of the Teaching Council Act 2001, the Education Act, 1998, the Education for Persons with Special Educational Needs Act, 2004 or

the Education and Training Boards Act, 2013 or any regulations, rules or orders under those Acts,

- (b) that his or her behaviour constitutes professional misconduct,
 - (c) poor professional performance,
 - (d) that he or she has engaged in conduct contrary to the Code of Professional Conduct established by the Teaching Council under the Principal Act,
 - (e) that his or her registration is erroneous due to a false or fraudulent declaration or misrepresentation,
 - (f) that he or she is medically unfit to teach,
 - (g) that he or she has been convicted in the State of an offence triable on indictment or convicted outside the State of an offence which would constitute an offence triable on indictment if it occurred in the State,
- that a person making a complaint must specify the conduct giving rise to the complaint.
 - that a complaint in relation to professional misconduct may be considered by the Investigating Committee notwithstanding that the conduct concerned occurred prior to the coming into operation of this Part of the Act where that conduct would have constituted a criminal offence at the time it occurred and where it is of such nature as to reasonably give rise to a bona fide concern that the teacher may harm or attempt to harm any child or vulnerable person, cause any child or vulnerable person to be harmed, put any child or vulnerable person at risk of harm or incite another person to harm any child or vulnerable person.
 - that a complaint in relation to (a), (e) or (g) above may be considered notwithstanding that the conduct concerned occurred prior to the coming into operation of this Part of the Act.
 - that the Council may make a complaint in relation to a registered teacher on the ground that the information disclosed in a vetting disclosure which it has received on behalf of another relevant organisation (i.e. received by the Council in its conduit role for schools and ETBs) is of such a nature as to reasonably give rise to a bona fide concern that the teacher may harm or attempt to harm any child or vulnerable person, cause any child or vulnerable person to be harmed, put any child or vulnerable person at risk of harm or incite another person to harm any child or vulnerable person.
 - that where a vetting disclosure which the Council has received on behalf of another relevant organisation contains specified information in relation to conduct that occurred prior to the coming into operation of this Part of the Act, the Council may not consider that information for the purposes of making a complaint unless the conduct concerned would have constituted a criminal offence at the time it occurred.
 - that where the Investigating Committee considers:
 - that the information in any complaint gives rise to a bona fide concern that the teacher complained of may harm or attempt to harm any child or vulnerable person, cause any child or vulnerable person to be harmed, put

any child or vulnerable person at risk of harm or incite another person to harm any child or vulnerable person and;

— the teacher concerned is employed in a recognised school or ETB, engaged in the delivery of home tuition (under the Department's Home Tuition Scheme) or employed in teaching children or vulnerable persons and;

— the employer is known to the Council,

the Director shall inform the employer of the complaint and the nature of the concern,

• that where—

— a complaint has been made by the Council on the ground that the information in a vetting disclosure gives rise to a bona fide concern that the teacher complained of may harm or attempt to harm any child or vulnerable person, cause any child or vulnerable person to be harmed, put any child or vulnerable person at risk of harm or incite another person to harm any child or vulnerable person and;

— the teacher is employed in a recognised school or ETB, engaged in the delivery of home tuition (under the Department's Home Tuition Scheme) or employed in teaching children or vulnerable persons and;

— the employer is known to the Council,

the Director shall inform the employer of the complaint and the nature of the concern,

• that where the Investigating Committee decides to hold an inquiry in respect of a registered teacher and considers that the complaint gives rise to a bona fide concern that the teacher complained of may harm or attempt to harm any child or vulnerable person, cause any child or vulnerable person to be harmed, put any child or vulnerable person at risk of harm or incite another person to harm any child or vulnerable person—

— the Investigating Committee may request the Council to seek a vetting disclosure in respect of the teacher,

— a copy of the disclosure received shall be provided to the teacher concerned and the teacher shall be invited to make submissions in writing in relation to it within a specified time period,

— the Investigating Committee may for the purposes of its inquiry consider the information contained in that vetting disclosure only in so far as it relates to the conduct in the complaint,

— where the vetting disclosure received contains specified information and the specified information relates to conduct which occurred prior to the coming into operation of this section, the Council may not consider that information for the purposes of its inquiry unless that conduct would have constituted a criminal offence at the time it occurred.

- that the Investigating Committee may—
 - by notice in writing require the complainant to verify, including by affidavit, the information contained in the complaint or supply such additional information or documents as it may reasonably require and may require that the information be supplied by means of a statutory declaration and
 - refuse to consider or further consider a complaint where the complainant does not comply with such a request
- that the Investigating Committee may, by notice in writing, for the purpose of considering the complaint, require the teacher concerned to supply information or documents relating to the complaint and that teacher is required to comply with such a request
- that the Investigating Committee may for the purpose of considering the complaint require any school where the teacher is or was employed as a teacher or any other person that the committee has reason to believe holds information material to the complaint to supply such information and documents to it that may reasonably be required by it and may obtain such expert advice or assistance as it considers appropriate.
- that a school or other person is required to comply with any request from the Investigating Committee to supply information or documents to it under this section.
- that the Investigating Committee may, by notice in writing, invite any school where the teacher is or was employed to make submissions to it within 21 days of a notice issued under this section.
- that, following its inquiry, the Investigating Committee shall, where it is of the opinion that there is a prima facie case to warrant further action, refer the complaint, in whole or in part, to the Disciplinary Committee or where it is of the opinion that there is no prima facie case to warrant further action shall refuse the complaint and give that decision and the reasons for it in writing to the Director.
- clarification that “document” in this section includes a book, record or other printed material, a photograph, any information stored, maintained or preserved by means of any mechanical or electronic device, whether or not stored, maintained or preserved in legible form, and any audio or video recording.
- a number of amendments to replace references to application and applicant with complaint and complainant respectively, as appropriate.

Section 16 — Amendment of section 43 of Principal Act

Section 16 amends section 43 (Inquiry by Disciplinary Committee) of the Principal Act to provide for the following:

- that following an inquiry by a disciplinary panel:
 - the panel shall dismiss the complaint where it makes no finding against the teacher,
 - where the panel makes a finding or findings against the registered teacher, the panel shall provide a report to the Disciplinary Committee which shall specify the

nature of the complaint, the evidence laid before the panel, the panel's finding(s) and any other matter the panel considers appropriate.

— where the inquiry was conducted in relation to a complaint made under (1D) of section 42 and where the panel, having regard to the protection of children and vulnerable persons, is satisfied that there is a risk that the person may harm or attempt to harm any child or vulnerable person, cause any child or vulnerable person to be harmed, put any child or vulnerable person at risk of harm or incite another person to harm any child or vulnerable person, the panel shall provide the Disciplinary committee with a report specifying the nature of the information disclosed in the vetting disclosure, the evidence laid before the panel and its assessment of and conclusion in respect of the risk concerned or where the panel is not satisfied that there is such a risk, it shall dismiss the complaint.

- references to “application” and “applicant” in section 43 to be replaced with “complaint” and “complainant” respectively.

Section 17 — Amendment of section 44 of Principal Act

Section 17 amends section 44 (Removal or suspension from register or retention subject to conditions) of the Principal Act to provide for the following:

- that following its consideration of the report of the inquiry made by a panel under section 43 of the Principal Act, that the Disciplinary Committee has available to it, in addition to the sanctions already provided for in section 44 (i.e. removal from the register, suspension from the register for a specified period, retention on the register subject to conditions), a new sanction to advise, admonish, or censure the registered teacher in writing,
- that an adverse decision of the Disciplinary Committee, other than a decision to advise, admonish, or censure in writing, may be appealed to the High Court,
- for references to the Supreme Court to be replaced with references to the Court of Appeal,
- that, where following an appeal to the High Court a teacher is suspended or removed from the register, and leave is granted to appeal to the Court of Appeal, the High Court or the Court of Appeal, as appropriate, shall, where the teacher is employed as a teacher in a recognised school, make a direction as to whether the teacher shall continue to be paid (subject to such terms and duration as it considers appropriate) pursuant to his/her contract of employment out of moneys provided by the Oireachtas,
- for references to “applicant” in section 44 to be replaced with “complainant”.

Section 18 — Amendment of section 45 of Principal Act

Section 18 amends section 45 (Compliance with conditions of retention on register) of the Principal Act to provide that where a registered teacher fails to comply with a condition imposed by the High Court under section 44, he or she shall be removed from the register.

Section 19 — Amendment of section 47 of Principal Act

Section 19 amends section 47 (Application by Council to High Court for order suspending registration) of the Principal Act to provide that where the High Court has ordered that a teacher's registration be suspended under that section, the High Court shall also, where the teacher is employed in a recognised school, make a direction on whether the teacher shall continue to be paid (subject to such terms and duration as it considers appropriate) pursuant to his/her contract of employment, out of moneys provided by the Oireachtas.

Section 20 — Amendment to schedule 3 of the Principal Act

Schedule 3 (Appointment of panel under section 43) of the Principal Act is amended to ensure consistency with the wording of section 42, i.e. "an application for an inquiry" is replaced with "a complaint in respect of" and "applicant" is replaced with "complainant".

This amendment also clarifies that a document as referred to in Schedule 3 of the Principal Act includes a book, record or other printed material, a photograph, any information stored, maintained or preserved by means of any mechanical or electronic device, whether or not stored, maintained or preserved in legible form, and any audio or video recording.

Section 21 — Amendment of section 24 of Education Act 1998

Section 21 provides for section 24(7)(b) of Education Act 1998 (as amended by section 6 of the Education (Amendment) Act 2012) to be amended to clarify the type of information relating to the registration status of teachers that the Teaching Council is required, under section 24 of the 1998 Act, to provide to the Minister or an Education and Training Board.

Section 22 — Repeals

Section 22 provides for the repeal of section 41 of the Teaching Council Act 2001.

Section 23 — Short title, collective citation and commencement

Section 23 provides for the short title of the Act, for the collective citation of the Teaching Council Acts and the Education Acts and for standard provisions relating to commencement of this Act.

*An Roinn Oideachais agus Scileanna,
Eanáir, 2015.*