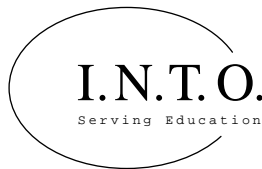


THE TEACHING COUNCIL ACT 2001

QUESTION AND ANSWER GUIDE



An INTO Publication

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This booklet does not purport to be a legal interpretation or an exhaustive analysis, but rather a ready reference designed to be of practical assistance to principals and teachers in developing an understanding of the key aspects of the Act.

FOREWORD

The role of the primary teacher has changed dramatically in recent years. New and ever more complex decision making is required of the teacher when mediating the curriculum to pupils, taking account of individual difference and individual needs. In primary schools all over the country on a daily basis teachers demonstrate their professional understanding and decision making. This has led to high levels of public trust and confidence in primary teachers. This must be built upon and enhanced and in this regard the Teaching Council holds out potential. For the first time professional issues relating to education are to be placed in the hands of professionals. Teachers are thus to be given a level of self-governance similar to doctors, lawyers and architects. This is essential in that it is no longer possible for teachers to rely on the State to uphold their professionalism.

Its establishment will give teachers a real say in professional matters that directly influence their role. It is long past time that matters relating to the teaching profession such as entry to the profession, teacher training, induction and probation and ongoing professional development become the responsibility of the professionals themselves. In recent years, in particular, teachers have made a huge contribution to professional knowledge and expertise, and with the formal structure of the Teaching Council now in place we can look forward to the future with renewed confidence.

The quality and morale of the teaching force are central to the implementation of change in education. Giving teachers a greater degree of professional control through the establishment of the Teaching Council and allowing them have a real say in how change is implemented and managed will ensure that the change agenda is in safe hands.

I am confident that over the coming years the Council will contribute to raising the status of the profession and, through the establishment of a formal registration practice, consign to history the concept that anyone is capable of teaching in our classrooms.

This is a landmark occasion in educational change and development in Ireland. I urge all members to take an active interest in the development of the Council, the establishment of which has been an INTO objective for decades. The INTO looks forward to engaging with the Council regarding implementation.



John Carr
General Secretary

May 2004

QUESTION AND ANSWER GUIDE TO THE TEACHING COUNCIL ACT

QUESTION 1:

What is the Teaching Council?

ANSWER:

The Teaching Council constitutes the first independent body to regulate key aspects of the teaching profession. These include such matters as the quality of teaching in the State, the professional conduct of teachers and the promotion of continuing professional development. The Council comprises a majority of practising teachers.

QUESTION 2:

How did the Teaching Council come about?

ANSWER:

For years the INTO has demanded the establishment of a Teaching Council in order to vest authority and responsibility for the significant issues affecting teachers in an independent body comprising a majority of teachers. This was in contrast to a situation where matters were entirely controlled by the State, generally the Department of Education and Science. In essence, therefore, the Teaching Council gives effect to the self-regulation of the teaching force. Such self-regulatory bodies are commonplace in other professions in the form of the Law Society, the Bar Council and the Irish Medical Council.

QUESTION 3:

Is the Teaching Council itself governed by law?

ANSWER:

Yes. The Teaching Council Act 2001 sets out the workings of the Teaching Council, including its membership and main functions. The Act is published in full on the INTO's website (www.into.ie). The Act itself states that the Minister shall, by order, appoint a day to be the establishment day for the purposes of the Act. The phrase 'the establishment day' appears throughout the Act, since the functions and duties of the Council will not commence until the Council is actually in place and has been formally declared to be established. This will take place after the nomination and election process to the Council has concluded.

QUESTION 4:

Will the Council be required to report on its activities during the year?

ANSWER:

Section 55 of the Act requires the Council to prepare and publish, in an appropriate form, an annual report of its activities and proceedings under the Act. The Council is obliged to provide the Minister with a copy of the report, and the Minister in turn shall cause the report to be laid before each house of the Oireachtas.

QUESTION 5:

What are the key features of the Teaching Council Act 2001?

ANSWER:

The Act sets out the objectives of the Council, its range of functions which are designed to achieve those objectives, the key committees of the Council, details of the process of registration with the Council, the procedures in relation to fitness to teach/practice and the duties of the Council in relation to education and training. The Act also includes a number of penalties for non-compliance with certain provisions of the Act.

For the purpose of this Question and Answer guide, the areas covered are categorised as follows:

- General Provisions Governing the Council, Questions 6-17;
- Registration, Questions 18-27;
- Education and Training, Questions 28-30;
- Fitness to Teach, Questions 31-42; and
- Offences and Related Matters, Questions 43-47.

GENERAL PROVISIONS GOVERNING THE TEACHING COUNCIL

QUESTION 6:

How is the Teaching Council comprised?

ANSWER:

The Council consists of 37 members elected or nominated as follows:

- 11 registered teachers employed in or qualified to teach in recognised primary schools, of whom nine shall be elected and two shall be nominated by recognised trade unions representing such teachers (i.e. INTO).
- 11 registered teachers employed in, or qualified to teach in, recognised post-primary schools, of whom seven shall be elected and four shall be nominated by recognised trade unions representing such teachers (i.e. ASTI and TUI).
- Two persons nominated from the Colleges of Education.
- Two persons nominated from other third level colleges ranging from NUI to the University of Limerick, St Angela's College of Education in Sligo and other bodies providing university or higher education.
- Four persons nominated by school management organisations, i.e. two from the primary sector and two from the post-primary sector.
- Two persons nominated by National Associations of Parents, one primary and one post-primary.
- Five persons appointed by the Minister, including persons with experience in business, industry or the professions. IBEC and ICTU are entitled to nominate one person each to the Minister.

QUESTION 7:

What are the objectives of the Teaching Council?

ANSWER:

Paragraph 6 of the legislation stipulates the following objects:

- to regulate the teaching profession and the professional conduct of teachers;
- to establish and promote the maintenance and improvement of standards of programmes of teacher education and training, teaching, knowledge, skill and competence of teachers in recognised primary and post-primary schools;
- to establish and promote the maintenance and improvement of standards of professional conduct of teachers; and
- to promote the continuing education, training and professional development of teachers.

QUESTION 8:

What are the functions of the Teaching Council?

ANSWER:

In order to achieve its objectives, the legislation lists a number of functions which the Council shall perform and, in addition, the legislation stipulates that the Council shall be entitled to do all things necessary or expedient to further its objects. The key functions of the Council shall include:

- to promote teaching as a profession;
- to establish, publish, review and maintain codes of professional conduct for teachers which shall include standards of teaching, knowledge, skill and competence;
- to establish and maintain a register of teachers;
- to determine, from time to time, the educational training and qualifications required for a person to be registered as a teacher;
- to establish criteria and procedures for registration, including matters related to the issue of certificates of registration and renewal of registration;
- to conduct or commission research on matters relevant to the objects of the Council and advise the Minister in relation to educational qualifications, teacher supply and any other matter relating to the functions of the Council;

- to represent the teaching profession on educational issues and establish procedures for the exchange of information with teachers, organisations involved in education and the public;
- to review and accredit programmes of teacher education and training for the purposes of registration;
- to act as the competent authority for the recognition of qualifications obtained in a State other than a member State of the European Communities by a person who has applied under the Act to be registered;
- to conduct inquiries into and, where appropriate, impose sanctions in relation to the fitness to teach of any registered teacher; and
- to establish procedures relating to a range of matters including induction and probation.

QUESTION 9:

Are the functions of the Teaching Council confined to those outlined in Question 8 above?

ANSWER:

No. Under Section 54 of the Act the Minister may from time to time, by regulation, assign additional functions to the Council following consultation with the Council and any other Minister of the Government as appropriate. The result is that the functions of the Council, in certain areas, may be modified. Examples of this include giving effect to any provision of the treaties governing the European Communities or any directive or regulation adopted by an institution of the European Communities, or a judgement of the European Court of Justice relating to teachers or the teaching profession.

QUESTION 10:

Will the Council have a Secretariat?

ANSWER:

The legislation makes provision for the appointment of employees of the Teaching Council, including a Director. The Council may delegate functions

relating to the appointment of employees to the Director. Employees are employed on such terms and conditions as the Director, with the consent of the Ministers for Education and Science and Finance, may from time to time determine, including matters related to remuneration, fees and allowances for expenses.

QUESTION 11:

Is there a difference in the provisions governing the appointment of a Director to the first Council and to subsequent Councils?

ANSWER:

Yes. In regard to the first Council, Paragraph 12 of the Act stipulates that the Minister may appoint a person to be the first Director. This person's term of office will not extend beyond two years after the establishment of the first Council. His/her terms and conditions of employment may be determined by the Minister for Education and Science with the consent of the Minister for Finance.

Thereafter, in accordance with Paragraph 11 of the Act, the Council will appoint a Chief Executive Officer in a whole time capacity – to be known as the 'Director'. The Director will manage and control the administration and business of the Council and perform other functions determined by the Council. The Director is at all times accountable to the Council. His/her functions are set out in Schedule 2 of the Act.

QUESTION 12:

How is the Council to be funded?

ANSWER:

The legislation states that all expenses incurred by the Council are to be defrayed by the Council out of funds at its disposal. Expenses incurred by the Minister, in the administration of the Act, may be paid out of monies provided by the Oireachtas.

In regard to these matters, Paragraph 23 of the Act provides that the Council may charge, receive and recover "such fees as the Council may from time to time prescribe, subject to the consent of the Minister, in relation to the performance by the Council of its functions, the provision by it of

services... and the carrying on by it of activities". Paragraph 23 goes on to list a number of functions for which the Council may charge fees. These include the following:

- the registration of teachers and matters to do with registration including renewal of registration;
- the review and accreditation of programmes of teacher education and training; and
- any other service which the Council may, from time to time, provide.

At Annual Congress 2004, the General Secretary of the INTO, John Carr, called on the Minister for Education and Science to provide adequate funding to the Teaching Council in light of the range of activities which will now be performed by the Council which were previously the responsibility of the Department of Education and Science.

The Council is also obliged to keep proper accounts including records of monies received and expended, along with details of assets and liabilities.

QUESTION 13:

How will the Council work?

ANSWER:

The Council may meet on a number of occasions in order to progress its programme of work. Schedule 1 of the Act states that the Minister shall fix the date, time and place of the first meeting of the Council. Thereafter, the Act requires the Council to hold at least three meetings each year and such and so many other meetings as the Chairperson may determine.

The Council is obliged to establish the following committees under Section 24 of the Act:

- an Executive Committee;
- an Investigating Committee; and
- a Disciplinary Committee.

In addition, the Council may establish other committees consisting in whole or in part of persons who are members of the Council. The committees shall be responsible for assisting and advising the Council on matters related to any of its functions, and the Council may delegate functions to the committees from time to time.

Members of the Committees may be paid allowances by the Council for expenses incurred by them in the discharge of their functions. In

establishing committees, the Council is required to have regard to the desirability of an appropriate gender balance.

QUESTION 14:

What is the membership of the three compulsory committees mentioned in the answer to Question 13?

ANSWER:

The **Executive Committee** consists of 11 members, with not less than six and not more than seven being registered teachers either from the primary or post-primary sectors. Members are the Chairperson of the Council, the Deputy Chairperson, the Chairpersons of such other committees as the Council considers appropriate (other than the Investigating and Disciplinary Committees), two of the five members of the Council appointed by the Minister, and such other members as the Council considers appropriate. The Director of the Teaching Council acts as Secretary to the Executive Committee.

The main function of the Executive Committee is to facilitate and assist the Council in the performance of its functions, to co-ordinate the work of the Council and to act on behalf of the Council.

The **Investigating Committee** consists of 11 members also. The Committee comprises the Deputy Chairperson of the Council who is the Chairperson of the Investigating Committee, six members of the Council who are registered teachers employed in either primary or post-primary schools, three members of the Council representative of the nominees of the colleges of education, other higher education authorities, school management organisations and National Association of Parents, and one of the five nominees of the Minister. The Director of the Council shall act as Secretary to the Investigating Committee.

The **Disciplinary Committee** consists of 13 members. The Chairperson of the Council is the Chairperson of the Disciplinary Committee. It includes seven members of the Council who are registered teachers in either primary or post-primary schools, three members of the Council representative of the Colleges of Education, other higher education authorities, school management organisations and National Association of Parents, and two members of the Council from the group appointed by the Minister. The Director of the Council shall act as Secretary to the Disciplinary Committee.

The Investigating and Disciplinary Committees each have a specific remit to deal with matters relating to fitness to teach.

QUESTION 15:

What are the procedures for the establishment of the Teaching Council?

ANSWER:

The legislation distinguishes between the establishment of the first Teaching Council and subsequent Teaching Councils. In relation to the first Teaching Council, the Act provides that the Minister shall take all necessary steps to secure the appointment of its members. The INTO, together with the other teacher unions, met with the Department of Education and Science on a number of occasions in relation to the establishment of the first Council and the election of members.

The Minister has prescribed regulations for the election of members to the first Council. They provide for:

- compilation of a Provisional Electoral Roll based on the numbers of teachers in service on 1 April 2004;
- copies of the Electoral Roll, relevant to each school, to be sent to schools in order to give teachers an opportunity to correct or add to the roll;
- a nomination process for candidates seeking election to the Council – scheduled (at the time of printing) to take place in September 2004;
- issue of ballot papers, Poll and Declaration of Results scheduled to take place (at the time of printing) in October 2004.

The regulations prescribe that any eligible teacher, i.e. a teacher who is qualified and in service on 1 April 2004, may seek nomination to stand for election to the first Teaching Council. A candidate for election must be nominated in writing by means of a nomination paper signed by not less than 50 teachers whose names are on the Electoral Roll in the constituency for which the candidate is nominated.

Once the first Council is established, thereafter it is a matter for the Council itself to take all the necessary steps to secure the appointment of members to subsequent Councils.

QUESTION 16:

What is the term of office for members of the Teaching Council?

ANSWER:

In the case of a member of the first Teaching Council, the term of office will not exceed three years. In the case of subsequent Councils, the term of office will not exceed four years unless a member dies, resigns or becomes disqualified in accordance with certain provisions under the Act. A member may not serve more than two consecutive terms of office on the Council. The term of office as a member of the first Council does not count as part of the two consecutive terms of office.

The Act prescribes procedures for filling casual vacancies and for electing the Chairperson and Deputy Chairperson of the Council. The Chairperson and Deputy Chairperson hold office for a term specified by the Council at the time of appointment unless s/he resigns or vacates office for some other reason.

QUESTION 17:

How does the election process work?

ANSWER:

In the election to the first Teaching Council, there are four categories of electors, i.e. eligible primary teachers, eligible post-primary teachers teaching in voluntary secondary schools, eligible post-primary teachers teaching in vocational education schools, and eligible post-primary teachers teaching in community and comprehensive schools. Each category of electors has a different entitlement in terms of the number of persons which it will elect to the Council.

In the case of primary teachers, nine persons will be elected. It is intended (at the time of printing) that the constituencies for the election are the constituencies applicable to European Parliament elections prior to 2004, i.e. Connaught/Ulster – 2 seats; Leinster – 2 seats; Munster – 2 seats; and Dublin – 3 seats.

The Central Executive Committee of the INTO has approved a strategy for providing INTO endorsement to candidates seeking nominations involving the candidates being selected by INTO conventions in each of the constituencies.

The Teaching Council Act 2001 provides that the Minister may regulate the election process for the purposes of ensuring a gender balance and the Minister has indicated that regulations are being prepared in this regard. Voting will be by proportional representation.

REGISTRATION

QUESTION 18:

What is registration about and what is its significance?

ANSWER:

The Teaching Council is obliged to establish a register of all qualified teachers which, in effect, will be the authoritative source of information regarding which persons are eligible to teach in primary and post-primary schools.

The significance of the register is that for the first time there will be such a definitive and transparent source of information.

The consequences of registration and, more particularly, non-registration, are also significant as set out at Section 30 of the Act. The section stipulates that a person employed as a teacher in a recognised school shall not be remunerated out of monies provided by the Oireachtas where that teacher is not registered or has been removed or suspended from the register in accordance with the provisions of the Act. Accordingly, the payment of qualified teachers is subject to registration.

QUESTION 19:

Is there something I should be doing right now in order to complete registration?

ANSWER:

No. Section 31 of the Act explicitly states that persons who are currently employed as teachers in schools and who are paid by the Department, or teachers who are not employed but would be eligible to be employed – are automatically deemed to be registered for a period of 12 months from the establishment day (c/f Q. 3). Such teachers shall be automatically registered on making application for registration within this 12 month period. However, if a person fails to apply within the 12 month period, then his/her registration will be deemed to have lapsed.

QUESTION 20:

How does registration work?

ANSWER:

As indicated above, after the Minister has declared the establishment day, the Council shall, as soon as practicable, establish and maintain a register which shall be known as the 'Register of Teachers'. The Teaching Council is entitled to prescribe the information to be entered in the register and the form and manner in which such information is entered and maintained. The information will include the following:

- details of the teacher – i.e. name, address for correspondence, date of birth, qualifications;
- name and address of employer, employment details including posts of responsibility held;
- whether the registration of the teacher is subject to any conditions;
- registration number and date of registration; and
- such other information as the Council, from time to time, considers appropriate.

QUESTION 21:

For how long is registration valid?

ANSWER:

It is valid for 12 months from the date of registration. Thereafter, a teacher may apply for renewal of his/her registration for further periods, each of which shall not exceed 12 months. On renewal, the Council may prescribe a renewal fee and the receipt issued by the Council in respect of same is sufficient evidence that the registration has been renewed.

QUESTION 22:

What happens if a teacher fails to apply for renewal of his/her registration?

ANSWER:

In these circumstances the Council, on the expiration of the 12 month registration period, will inform the teacher by notice in writing that s/he will be removed from the register within one month unless an application for renewal is made within that period together with any prescribed renewal fee.

If, notwithstanding such notification, the teacher fails to renew, the Council shall proceed to remove the teacher from the register. The teacher may challenge such decision by application to the High Court in accordance with Section 31 of the Act. The application must be made to the High Court within 21 days of the date of service of the notice of removal. The High Court may confirm the decision of the Council, annul or vary the decision, or give such other directions to the Council as the Court considers appropriate.

QUESTION 23:

Can the register be corrected?

ANSWER:

Yes. A registered teacher should inform the Council as soon as possible of any errors in the Register in relation to registration. In addition, the Council should be informed of any change in the information entered in the Register. The Council is obliged to correct errors in the Register.

Further, the Council may, subject to the consent of the Minister, prescribe the information to be furnished by an employer to the Council in respect of a registered teacher who has been dismissed or resigns – in accordance with Section 37 of the Act.

QUESTION 24:

Is the register a public document?

ANSWER:

The legislation provides that the Council shall publish the Register in such form and manner as it considers appropriate. The discretion accorded to the Council in this regard clearly allows for aspects of the register to be published. Under Section 29 (6) of the Teaching Council Act 2001 the Council is required to keep the register at its office and, subject to the

payment of such fee as may be prescribed, the register shall be made available for inspection by any person, in whole or in part, at such times and in such manner as may be prescribed by the Council.

If a request is made by any person to the Director of the Teaching Council for a copy or extract from an entry in the register, the Director must provide a copy of the entry or extract to such person.

In addition, Paragraph 29(7) of the Act provides that the Teaching Council itself is deemed a public body for the purposes of the Freedom of Information Act 1997. Accordingly, the FOI Act will apply to the Teaching Council.

Notwithstanding the above, it is an offence for a member or employee of the Council or an advisor or consultant to the Council to disclose any confidential information obtained by him or her in that capacity. (c/f Q. 44)

QUESTION 25:

Are all of the details concerning registration set out in the Act?

ANSWER:

No. In addition to what is set out in the Act, the Council is also entitled to make regulations for the purposes of registration of persons who are not currently in service. Such regulations may outline:

- the form and manner of application for registration;
- the documentary/other evidence which should accompany an application for registration; and
- the conditions for admission to the Register, which may include qualifications, teaching experience, medical fitness or evidence of character.

QUESTION 26:

Can the Council refuse to register a teacher?

ANSWER:

Yes. Under section 31 (6) of the Act the Teaching Council may refuse to register a person in certain circumstances where, for example, s/he does not satisfy the requirements for registration, where before the establishment day

for the Council his/her recognition as a teacher has been withdrawn or where s/he has been removed from the register under the fitness to practice provisions.

Alternatively, the Council may register a person subject to certain conditions including probation. The Council may stipulate a period of time within which any conditions should be met.

QUESTION 27:

Can a teacher challenge a decision of the Council to refuse his/her registration or a decision requiring him/her to comply with conditions?

ANSWER:

Yes. There is a clear opportunity to challenge by way of application to the High Court. The details are set out in Section 31 (7) of the Act, which provides that the Council shall inform the person so affected by notice in writing within 21 days of its decision. The decision of the Council to refuse registration or impose conditions should also include the reasons for the decision and should advise the person that s/he may apply, within a further period of 21 days, to the High Court for annulment of the decision of the Council. The High Court, on hearing an application, may confirm the decision of the Council, annul the decision, and direct the Council to register the person with or without conditions as the case may be, or direct the Council to make a further decision. The High Court may vary the decision or give such other directions to the Council as the Court considers appropriate. The Court may also make such orders as to costs as it considers appropriate.

EDUCATION AND TRAINING

QUESTION 28:

What are the specific functions of the Council in relation to teacher education?

ANSWER:

Under Section 38 of the legislation the Council must, from time to time, review and accredit the programmes of teacher education and training provided by institutions of higher education and training in the State. It may review the standards of education appropriate to such teacher education programmes and review the standards of knowledge, skill and competence required for the practice of teaching. The Council will advise the Minister and, as it considers appropriate, the institutions concerned.

QUESTION 29:

Does the Council have a role in the professional development of teachers?

ANSWER:

Yes. Under Section 39 of the Act the Council shall promote the continuing education and training and professional development of teachers. This may involve the conduct of research, the publishing of findings arising out of such research, the promotion of awareness among the teaching profession and the public of the benefits of continuing education, reviewing and accrediting programmes relating to continuing education and other functions as necessary relating to the professional development of teachers as may be assigned to the Council by the Minister.

QUESTION 30:

In terms of its remit in education, training and fitness to teach, how will the Teaching Council impact on the functions of the Minister and the Inspectorate as set out in the Education Act 1998?

ANSWER:

The Teaching Council Act 2001 and the Education Act 1998 give clear statutory functions to the Council, the Department of Education and Science, the Inspectorate and the Minister respectively. The functions of the Teaching Council in many areas will impact on existing provisions, for example, the Council has been given responsibilities for induction and probation and has a clear role in teacher education, fitness to teach and professional development. At the same time, pursuant to the Education Act 1998, the Inspectorate has statutory functions in relation to advising and supporting schools and evaluating education standards in such schools. The Minister also has statutory functions in relation, for example, to such matters as the curriculum. How the statutory obligations of the Council, the Inspectorate, the Department of Education and Science and the Minister will eventually come to be applied in practice, will be a matter for the various parties to consider.

FITNESS TO TEACH

QUESTION 31:

How do the new provisions relating to fitness to teach change existing procedures?

ANSWER:

The concept of 'fitness to teach' may be compared to fitness to practice – a term used by other professions. Essentially, employment and remuneration as a qualified teacher is dependent on a person being deemed fit to teach. Teachers in service prior to the establishment of the Council are presumed/deemed fit to teach – a fact confirmed by virtue of their entitlement to automatic registration. In the event that an issue or complaint arises with regard to the fitness or otherwise of a person to teach, the issue must be addressed and determined in accordance with provisions set out in Part 5 of the Teaching Council Act 2001.

While the concept of 'fitness to teach' has not been utilised up to now there has always been provision under Rule 108 of the *Rules for National Schools* for the Minister to withdraw recognition as a teacher. The Rule specifically states that this may arise where a teacher has conducted him/herself improperly, has failed or refused to comply with the *Rules for National Schools* or has falsified school records. However, notwithstanding the potential severity of the penalty applicable under Rule 108, i.e. the withdrawal of recognition, the Rule does not provide for any formal inquiry type of investigation as is now set out in Part 5 of the Teaching Council Act 2001, nor does the Rule provide for any lesser sanctions such as the imposition of conditions, as is also provided for in the Act (c/f Q. 37)

QUESTION 32:

How does the Teaching Council determine whether a teacher is 'fit to teach'?

ANSWER:

The Investigating and Disciplinary Committees of the Council (c/f Q. 14) are central to the consideration of whether a teacher is 'fit to teach'. Section 42

of the Act sets out how an investigation may be initiated. The section states that the Council or any person may apply to the Investigating Committee for an inquiry into the fitness to teach of a registered teacher on all or any of the following grounds:

- that the teacher has allegedly failed to comply with or has allegedly contravened any provision of the Teaching Council Act 2001, the Education Act 1998, the Education (Welfare) Act 2000, the Vocational Education Acts 1930 – 1999, or any regulations, rules or orders made under those Acts;
- that his/her behaviour constitutes professional misconduct;
- that his/her registration is erroneous due to a false or fraudulent declaration or misrepresentation; or
- that s/he is medically unfit to teach.

For the purposes of the Act, professional misconduct shall arise where a teacher engages in any improper conduct in his/her professional capacity as a teacher or engages in conduct which is contrary to a code of professional conduct to be established by the Council. The Act itself does not contain any detail as to what may be included in any such code save to say that it shall relate to professional conduct including standards of teaching, knowledge, skill and competence. This will inevitably be the subject of deliberations by the Council.

An application by the Council or any person to initiate an investigation into the fitness to practice of a teacher must be in writing, must be signed by the applicant and must be accompanied by such documents and information as may be relevant to the application.

QUESTION 33:

If an application is made by the Council or by any person to enquire into whether a teacher is 'fit to teach', what happens then?

ANSWER:

- In the first place, the application is considered by the Director of the Teaching Council. The Director of the Council acts as Secretary to the Investigating Committee and s/he shall refer the matter to the Investigating Committee unless the application is not in writing, is not signed, is not accompanied by the appropriate documentation, or unless the Director considers that the application is frivolous,

- vexatious, made in bad faith or is an abuse of process.
- Where an application is referred to the Investigating Committee, the Committee considers whether the application relates to the fitness to teach of a registered teacher, whether existing procedures (such as will be prescribed under Section 28 of the Education Act 1998) have been exhausted or if there is sufficient evidence to warrant an investigation.
 - Where the Investigating Committee decides to proceed, the registered teacher is entitled to be provided with a copy of the application and any supporting documents or information.
 - The Investigating Committee invites the registered teacher to make submissions in writing to the Committee within 21 days.
 - The Investigating Committee considers the submissions made and may request such other information from the applicant, the registered teacher, the school concerned, or may obtain such expert advice or assistance as it considers appropriate for the purposes of considering the application.
 - In the case of alleged medical unfitness, the Council may make regulations to provide for the submission of medical evidence, including attendance for medical examination.
 - Following its inquiry, the Investigating Committee will make a decision to either refer the application in whole or in part to the Disciplinary Committee or refuse the application.
 - There is no explicit provision in the legislation for an oral inquiry to be held as part of the investigation conducted by the Investigating Committee – rather it appears that the Committee considers the submissions and makes a decision either to refer on to the Disciplinary Committee or refuse the application. The Investigating Committee cannot determine whether a teacher is fit or unfit to teach.
 - Within 21 days the Director of the Council/Secretary to the Investigating Committee will provide a copy of the decision and the reasons therefore to the applicant, the registered teacher and, where the registered teacher is employed as a teacher, his/her employer.
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QUESTION 34:

What happens where an application is referred by the Investigating Committee to the Disciplinary Committee?

ANSWER:

The Disciplinary Committee (c/f Q. 14) holds an inquiry in respect of an application referred to it by the Investigating Committee. For the purposes of this inquiry, the Director of the Council appoints a panel from the Disciplinary Committee consisting of not less than three and not more than five persons, of whom a majority shall be registered teachers. The Disciplinary Panel will hear the case and make recommendations.

QUESTION 35:

Will the Disciplinary Panel hold an oral inquiry?

ANSWER:

Yes, it is empowered to do so. The legislation provides that the procedures of the Disciplinary Panel be laid down, from time to time, in rules made by the Council, with the consent of the Minister. Subject to these rules a Panel may, at the request or with the consent of the registered teacher concerned, hold an inquiry simply by an examination of the relevant documents and written submissions received from the applicant and the teacher, in place of an oral hearing.

However, other than in the aforementioned circumstances, the Disciplinary Panel proceeds to hold an oral hearing.

QUESTION 36:

Will such oral hearing be a formal type of inquiry?

ANSWER:

Where the Disciplinary Panel proceeds to hold an oral hearing, it has the powers, rights and privileges vested in the High Court or a High Court judge in respect of procedures necessary for the conduct of hearings. Such powers include enforcing the attendance of witnesses, their examination on oath or

otherwise, and the compelling of the production of documents. Accordingly, summonses can be issued to compel attendance before the Disciplinary Panel or require the production of documents.

QUESTION 37:

What may be the outcome of an inquiry held by a Disciplinary Panel?

ANSWER:

Following its inquiry, the Disciplinary Panel reports its findings to the full Disciplinary Committee. The report of the Disciplinary Panel is required to specify the nature of the application, details of the evidence considered by the Disciplinary Panel and all other matters which it considers appropriate, including its opinion as to the alleged fitness or unfitness to teach of the teacher. Alternatively, the report of the Disciplinary Panel may dismiss the application.

Where the Panel dismisses an application, the applicant and the registered teacher is notified in writing. In such a situation, it is open to the registered teacher to request the Council to publish a notice in such form and manner as may be determined by the Council, to the effect that the application has been dismissed.

Where the report of the Disciplinary Panel includes a finding of unfitness to teach, the Disciplinary Committee, following consideration of the report, may make a decision that;

- the registered teacher be removed from the register and that s/he not be eligible to apply to be restored to the register before a specified date;
- the registered teacher shall be suspended from the register for a specified period not exceeding two years; or
- the registered teacher be retained on the register subject to conditions which may include an obligation on the teacher to seek assistance relating to his/her health and welfare, an obligation to attend a specified professional development course, or such other conditions as the Disciplinary Committee thinks fit.

Within 21 days the Director shall supply a copy of the decision of the Disciplinary Committee to the parties, i.e. the applicant, the registered teacher, his/her employer if s/he is employed in a school and the Minister.

If the decision of the Disciplinary Committee is to suspend a teacher from the register, s/he shall be restored to the register on the expiry of the period, subject to the payment of such fee as may be prescribed.

QUESTION 38:

Can a teacher challenge a decision of the Disciplinary Committee?

ANSWER:

Yes, the teacher, within 21 days of receipt of the notice of the decision of the Disciplinary Committee, may apply to the High Court for an annulment of the decision. The High Court, having heard the application, may annul the decision of the Disciplinary Committee or may confirm the decision and as the Court considers appropriate, direct the Council to remove the teacher from the register, or direct that registration be suspended, or direct the Council to retain the registration of the teacher subject to conditions. In addition, the Court may vary the decision of the Disciplinary Committee or give such other directions to the Council as the Court considers appropriate.

QUESTION 39:

Is the decision of the Disciplinary Committee final?

ANSWER:

As explained in the previous question, it is open to the teacher to challenge the decision of the Disciplinary Committee through application to the High Court. However, where a teacher does not apply to the High Court for annulment of the decision there is, under Section 44 (5) of the legislation, an obligation on the Council itself to apply to the High Court on an ex-parte basis (i.e. without notification to the other side) for confirmation of the decision. The Court, on hearing such application, shall, unless it sees good reason to the contrary, confirm the decision or give such other directions to the Council as it considers appropriate. The Court may also make such orders as to costs as it considers appropriate.

The decision of the High Court on an application is final, except where a question of law arises which may be referred to the Supreme Court. Following the decision of the High Court (or the Supreme Court, as the case may be), the Council notifies the parties, i.e. the applicant, the teacher, the employer if the teacher is so employed and the Minister of the decision.

QUESTION 40:

Will the INTO represent members before the Council if a person/Council institutes an investigation against a teacher or if a teacher is summoned to attend before a Disciplinary Committee?

ANSWER:

Yes – as is the case currently, members will continue to be fully entitled to the benefit of representation and advice and/or as appropriate legal assistance in accordance with the Organization's *Rules and Constitution*.

QUESTION 41:

Can a person who has been removed from the register apply after a period to be re-admitted to the register?

ANSWER:

Yes, and the normal provisions for considering applications will apply.

QUESTION 42:

Are there any circumstances where the Council itself may apply to have a teacher suspended from the register other than as part of the outcome of an inquiry by the Disciplinary Committee?

ANSWER:

Section 47 of the legislation outlines a circumstance where such may happen if it is deemed necessary in the public interest. Section 47 of the Act states that the Council may apply to the High Court for an order that a teacher's registration be suspended, if it is satisfied that such is in the public interest. Following a decision by a High Court under this section, the Council shall notify the teacher, the Minister and the employer of the teacher of the decision.

OFFENCES AND RELATED MATTERS

QUESTION 43:

If a person doesn't comply with the Teaching Council Act 2001 can s/he be penalised?

ANSWER:

Non-compliance with some of the key provisions of the Act can lead to consequences for a teacher which may have significant impact on his/her career – for example, failure to register will directly impact upon a person's ability to be paid as a qualified teacher. In addition, failure to comply with, or contravention of, any provision of the Teaching Council Act, can of itself constitute grounds for initiating an inquiry into the fitness to teach of any registered teacher (c/f Q. 32).

QUESTION 44:

Are there any other penalties specified in the Act?

ANSWER:

Yes, there are also three specific criminal offences specified in the Act and these arise in the following circumstances:

- Where a person falsely represents that s/he is a registered teacher or fraudulently makes use of a certificate of registration issued under the Act, or makes or causes to be made any false declaration or representation for the purposes of obtaining registration under the Act, or aids or abets any other person in the making of any such false declaration, such person may be liable on summary conviction to a fine not exceeding £1,500 (approx. €1,905) or to imprisonment for a term not exceeding 12 months, or both, at the discretion of the Court.
- There is an obligation on a Council member not to disclose confidential information obtained by him or her while carrying out Council business, whether as a member of the Council, an employee, or a member of any Committee. A person who contravenes the requirement not to disclose confidential

information shall be guilty of an offence and may be liable on summary conviction to a fine not exceeding £1,500 (approx. €1,905). 'Confidential information' includes information that is expressed by the Council or a committee as the case may be, to be confidential, either as regards particular information or as regards information of a particular class or description.

- Under Schedule 3 of the Act, a person shall be liable on summary conviction to a fine not exceeding £1,500 (approx. €1,905), where s/he fails to attend a Disciplinary Panel on being summoned, refuses to take an oath, refuses to produce any document in his/her power or control, refuses to answer any question to which a Disciplinary Panel may lawfully require an answer, or does anything which would be construed as contempt of court.

Proceedings in relation to an offence under the Act may be brought and prosecuted by the Council. Summary proceedings for an offence under the Act may be instituted within 12 months from the date of the offence.

QUESTION 45:

If I was summoned to be a witness before a Disciplinary Panel, could I be sued by any of the parties for any statement I may make as a witness?

ANSWER:

Schedule 3 of the Act confirms that witnesses are fully protected in that any witness before a Disciplinary Panel, shall be entitled to the same immunities and privileges as if s/he were a witness before the High Court. Accordingly, s/he is immune from suit in respect of any utterances made in that capacity.

QUESTION 46:

Can a member of the Council be sued for any statements s/he may make or any documents or records s/he may prepare as part of his/her work on the Council?

ANSWER:

Similar to the previous answer, Section 59 of the Act explicitly provides that any utterances made by a member of the Council, an employee, a member

of a committee or an advisor or consultant to the Council, including any documents or records prepared by such person, for the performance of the functions of the Council or its committees, shall be absolutely privileged wherever and however published. 'Absolute privilege' in this regard means that a person is immune from suit on foot thereof.

QUESTION 47:

If a teacher makes a statement or an admission to an Investigating Committee or Disciplinary Panel, or to any member of the Council or one of its committees, could any such statement or admission be used against the teacher in any subsequent criminal or civil proceedings?

ANSWER:

No. Section 60 of the Act provides for the non-admissibility of evidence submitted by a teacher under the fitness to teach provisions, before other Courts or Tribunals. The section states that a statement or admission made by a person before an inquiry under the fitness to teach provisions of the Act, including any written statement or document, shall not be admissible as evidence against the person (or against persons who may be liable for the acts/omissions of the person) in any criminal proceedings or in any civil proceedings in a Court or other tribunal (unless it constitutes contempt as outlined in the answer to Q. 44).