

Section 47 of The Teaching Council Acts, 2001 to 2015

Guidelines for the Teaching Council and The Teaching Council's Committees

1. This is a guidance document ("the Guidelines") to assist the Teaching Council ("the Council") and the Council's committees in relation to section 47 of the Teaching Council Acts, 2001 to 2015 ("the Act"). The Guidelines are not legally binding on the Council, its members, its committees or staff and may be amended from time to time.
2. Section 47 of the Act provides that the Council, if it is satisfied that it is in the public interest, may apply to the High Court for an order to suspend the registration of a registered teacher for a specified period. A copy of the text of section 47 is contained at Appendix 1 to these Guidelines.
3. A section 47 order will only be made by the High Court in exceptional circumstances where it is necessary to protect the public.

Referral to Executive Committee for consideration of Section 47 of the Act

4. The Council has delegated its power under section 47 of the Act to the Executive Committee, pursuant to section 26(i) of the Act. The Council has also determined that decisions of the Executive Committee do not require confirmation from the Council.
5. The Council under the Act has an obligation to protect the public. The Executive Committee should consider any matter where there is a risk to the protection of the public at the earliest opportunity.
6. Pursuant to section 47 of the Act, the Council's function which has been delegated to the Executive Committee is to decide whether to make an application to the High Court to suspend the registered teacher's registration where it considers that the suspension is in the public interest i.e. that it is necessary to protect the public. The Council may make such an application at any stage. The function of the High Court on receiving an application from the Council is to decide whether to make any interim or interlocutory order.
7. Where the Executive Committee is considering a matter that has been brought to its attention for it to decide whether to make a complaint to the Investigating Committee pursuant to section 42(1) of the Act, the Executive Committee may also consider section 47 of the Act and whether there is a necessity to protect the public.

8. In certain circumstances the Executive Committee will be provided with information, but not a complaint under Part 5 of the Act, and will be asked to consider whether to apply to the High Court to suspend the registration of a registered teacher. This could be, for example, where the Council receives a concerning vetting disclosure as part of a registered teacher's registration renewal process. It is not necessary for there to be a complaint against a registered teacher under Part 5 of the Act in order for the Executive Committee to consider whether to apply to the High Court.
9. The Executive Committee may at the same time as deciding whether to apply to the High Court pursuant to section 47, decide whether to make a complaint to the Investigating Committee pursuant to section 42(1) of the Act, except for where the Council receives a concerning vetting disclosure as part of a registered teacher's registration renewal process, which should be considered as part of that registration renewal process.
10. In exceptional circumstances, the Executive Committee will be required to consider whether there is an immediate necessity to protect the public by making a section 47 application to the High Court. The following are examples of concerns which could be considered by the Executive Committee in the context of section 47:
 - a. Allegations of violent or sexually abusive behaviour.
 - b. Allegations of inappropriate sexual advances being made towards a student, or where there is evidence to suggest a teacher has used his or her professional position to establish or pursue a sexual or improper relationship with a student.
 - c. Charges or convictions for serious criminal offences, including any charges or convictions for murder, attempted murder, manslaughter, assault or offences of a sexual nature to include rape, attempted rape, sexual assault or sexual abuse.
 - d. Where a registered teacher has breached conditions imposed on his or her registration or breaches undertakings given to the Council or the Executive Committee.
 - e. Where a registered teacher has serious health problems and is teaching while medically unfit to teach.
 - f. Where a registered teacher is seriously misusing alcohol or drugs, which impacts on his or her ability to teach.

This is not an exhaustive list and there may be matters which are not listed above that should be considered by the Executive Committee for the purpose of section 47 of the Act.

Committee Obligations

11. There is an on-going obligation on the Investigating Committee to consider section 47 of the Act. If the Investigating Committee, during the course of its investigation, discovers serious matters which raise concern about the protection of the public, the Investigating Committee should immediately refer the complaint to the Executive Committee for consideration under section 47.
12. If a complaint has been referred to the Disciplinary Committee for an inquiry, and the Disciplinary Committee and/or a panel of the Disciplinary Committee is concerned about the protection of the public, the Disciplinary Committee and/or panel should refer the matter to the Executive Committee for consideration pursuant to section 47. This includes after an inquiry has concluded and where the Disciplinary Committee and/or a panel considers that the registered teacher poses a risk to the public and should not be permitted to teach pending the confirmation by the Court of the panel's decision in relation to sanction, or the determination by the Court of an appeal or a judicial review.
13. All other committees including registration committees established by the Council pursuant to section 24 of the Act should be familiar with the Guidelines and should refer any matter to the Executive Committee for consideration pursuant to section 47 if they have concerns in relation to the protection of the public.

Executive Committee Meeting

14. It may be necessary to convene an Executive Committee meeting at short notice so that the Executive Committee can consider a matter in the context of section 47. The Executive Committee must ensure at its meeting that it has a quorum. The quorum for a meeting of the Executive Committee is 6.
15. Executive Committee members must ensure that no conflict of interest appears to arise in relation to the matter being considered. Possible reasons for an apparent conflict of interest include a relationship with any of the parties that may be involved such as a family relationship, colleague relationship, friendship, member of the school's board of management, staff colleague or any relationship or prior knowledge that could reasonably be deemed to create a perception of bias or appear prejudicial to the outcome.
16. The Executive Committee should, where possible, and depending on the circumstances of the matter, put the registered teacher on notice of the meeting to consider whether to make an application to the High Court. The registered teacher and/or his/her representatives should be invited to attend and provided with the opportunity to make oral submissions and/or to make written submissions to the Executive Committee. In addition, the registered teacher should be provided with a copy of the documentation to be considered by the Executive Committee at the meeting. However, there may be cases where the nature of the

complaint is so serious that it is necessary to seek the leave of the High Court to make the s47 application ex parte and without notice to the registered teacher concerned. The decision to make an application to seek the leave of the High Court should only be made in exceptional circumstances and having first obtained legal advice regarding the necessity to do so.

17. The first step for the Executive Committee to consider at its meeting is whether it is necessary to ask the High Court to suspend the registration of the registered teacher to protect the public. Whether an order pursuant to section 47 is necessary to protect the public is dependent on the facts of every case.
18. The Executive Committee when considering whether to apply to the High Court can consider a number of factors, including but not limited to the following:
 - a. The nature and seriousness of the allegations being made against the registered teacher.
 - b. The weight of the information, including any information about the likelihood of a further incident or incidents occurring.
 - c. Whether there are any charges or convictions of a criminal nature in being against the registered teacher and the nature and seriousness of any criminal charges or convictions.
 - d. The deficiencies in the registered teacher's teaching.
 - e. The immediate risk to the public and the necessity to protect the public.
 - f. The insight of the registered teacher. It may be that a teacher who is medically unfit may lack insight in relation to his/her ability to teach.
 - g. Whether public confidence in the profession is likely to be seriously damaged if the registered teacher continues to teach. For example, allegations that include inappropriate behaviour of a sexual nature could damage the public confidence in the profession if the registered teacher continues to teach.
 - h. The effect that a suspension order will have on the registered teacher.
 - i. Any submissions made by the registered teacher concerned or by his/her representatives.
19. The Executive Committee should move promptly when it has been put on notice of a registered teacher posing a potential risk to the public. If there has been a delay in bringing matters to the attention of the Executive Committee for the purpose of section 47, the delay does not mean that the Executive Committee should not consider the matter under section 47. Irrespective of any delay, the Executive Committee should still consider whether on the date of the Executive Committee meeting the registered teacher's suspension is necessary to protect the public. If the Executive Committee considers that the registered teacher's suspension is necessary, the Executive Committee should make an application to the High Court pursuant to section 47 of the Act.
20. If the Executive Committee decides to make an application to the High Court for an order to suspend the registered teacher's registration, the Executive Committee should give and record reasons for its decision.

Undertakings

21. In certain cases a registered teacher may attend before the Executive Committee and offer an undertaking not to teach or to teach in a restricted manner. The Executive Committee may accept an undertaking from a registered teacher if it believes that such an undertaking would be sufficient to protect the public interest.
22. However, if the Executive Committee believes that it is necessary to suspend a registered teacher's registration or to have certain conditions attached to a registered teacher's registration to protect the public, it is preferable that the Executive Committee apply to the High Court for an order. This is because it is the High Court that has been specifically assigned the function under the Act to decide whether to suspend the registration of a registered teacher. In addition, the High Court is required pursuant to section 47 of the Act, to include in any order a direction as to whether the registered teacher shall continue to be remunerated pursuant to his or her contract of employment out of moneys provided by the Oireachtas.
23. If the Executive Committee makes an application pursuant to section 47, the registered teacher can offer undertakings to the High Court who may or may not accept the undertakings.
24. Furthermore, if a registered teacher breaches an undertaking given to the Executive Committee, the Executive Committee cannot suspend the registered teacher. If on foot of a breach of an undertaking, the Executive Committee believes that the suspension of a registered teacher's registration is necessary to protect the public, the Executive Committee would have to convene a further meeting to decide whether to make an application to the High Court for an order pursuant to section 47.
25. On the other hand, if a registered teacher provides an undertaking to the Court and subsequently breaches that undertaking, the registered teacher could be held to be in contempt of court which is a very serious matter.
26. If an undertaking is provided to the Executive Committee, the Executive Committee ought to consider requesting permission from the registered teacher, as a condition of the undertaking being accepted, to notify the Minister, the teacher's employer and such other parties as the Executive Committee deems fit.
27. Similarly, if an undertaking is provided to the High Court, the Teaching Council's representatives should seek a direction from the High Court to notify the Minister, the teacher's employer and such other parties as the Teaching Council deems fit.

Application to the High Court pursuant to section 47

28. If the Executive Committee decides to apply to the High Court for an order pursuant to section 47, it will be necessary to ground the application to the High Court by swearing an affidavit. The affidavit should be sworn by a registered teacher who is a member of the Executive Committee and the Council. This person should have been present at the Executive Committee meeting when the Executive Committee decided to make an application to the High Court. The affidavit should provide the High Court with information in relation to the nature of the complaint(s), the seriousness of the complaints and the potential risk to the public.
29. The Council, when it has obtained a date for the application, should put the registered teacher on notice of the date of the application. As set out in paragraph 16 above, there may be cases where, the nature of the complaint might be such that it may be appropriate to apply to seek the leave of the High Court to make the s47 application ex parte and without notice to the registered teacher concerned. The decision to make such an application should only be made in exceptional circumstances and having first obtained legal advice regarding the necessity to do so.
30. Ultimately, the decision of whether to suspend a registered teacher's registration is a decision for the High Court. The role of the High Court has been set out in case law. The role of the High Court is to weigh up the constitutional rights of the registered teacher against the protection of the public interest.
31. Section 30 of the Act provides that a registered teacher employed as a teacher in a State funded school will not be paid out of moneys provided by the Oireachtas when suspended from the register. Section 47(3A) of the Act provides that where the High Court makes an order suspending the teacher from teaching, and where the teacher is paid out of public monies, the High Court shall include in the order a direction as to whether the teacher should continue to be paid while suspended from the register. Section 47(3B) provides that a direction of the High Court that the teacher shall continue to be paid shall be subject to such terms and be for such period as the High Court considers appropriate. To assist the High Court in deciding whether to direct that a teacher should continue to be paid, the Council may be requested, in so far as is possible, to inform the High Court of matters including:
- a) Whether the teacher is employed as a teacher;
 - b) If the registered teacher is employed as a teacher, where he or she is currently employed;
 - c) If the registered teacher is employed as a teacher, whether he or she has been placed on administrative leave, whether he or she is being paid while on administrative leave, and the likely duration of the administrative leave period.

The Council will assist the High Court in so far as is possible. If the High Court seeks the view of the Council as to whether the teacher should continue to be paid, the Council may express a view that the teacher should continue to be paid, having considered the details of the case.

32. The High Court can also give the Council any direction that the Court considers appropriate. If the High Court decides to suspend the registration of a registered teacher the Council shall, as soon as is practicable, by notice in writing inform the registered teacher, the Minister and, where the teacher is employed as a teacher, his or her employer, of the decision. It is important that the Council seeks a direction from the High Court in relation to any other bodies or authorities it wishes to notify of the making of the order.
33. If an order is made pursuant to section 47 of the Act in relation to a registered teacher, the Investigating Committee, the Disciplinary Committee and/or the panel of the Disciplinary Committee holding the inquiry must act expeditiously in dealing with the complaint(s) made against a registered teacher in accordance with their respective functions under Part 5 of the Act. Similarly, if the section 47 order was made as a result of a concerning vetting disclosure which came to light in the registration renewal process, the renewal process should be progressed expeditiously so as to minimise the impact of any restrictions imposed by the High Court.

Departure from the Guidelines

34. Any departure from these Guidelines shall not render any proceedings or steps void unless the Council or Executive Committee so directs. Such proceedings or steps may be set aside either wholly or in part as irregular, or amended or otherwise dealt with in such manner or upon such terms as the Council or the Executive Committee shall think fit.

21 January 2019

Appendix 1

Application by Council to High Court for order suspending registration.

47.—(1) Where the Council is satisfied that it is in the public interest, the Council may, in relation to a registered teacher, apply to the High Court for an order that during the period specified in the order his or her registration shall be suspended.

- (2) An application under this section may be made in a summary manner and shall be heard otherwise than in public.
- (3) The High Court may, on an application being made to it under this section, make such interim or interlocutory order (if any) as it considers appropriate.

(3A) Where—

- (a) the High Court makes an interim or interlocutory order under subsection (3) that the registration of a teacher be suspended,
- (b) at the date of making the order the teacher is employed as a teacher in a recognised school, and
- (c) that teacher is remunerated in respect of his or her employment out of moneys provided by the Oireachtas,

the High Court shall include in the order a direction as to whether that teacher shall continue to be remunerated pursuant to his or her contract of employment out of moneys provided by the Oireachtas.

- (3B) A direction of the High Court under subsection (3A) that a teacher continue to be remunerated shall be subject to such terms and be for such period (not exceeding the period specified in the order for which registration is suspended) as the High Court considers appropriate.⁴⁷
- (4) Following a decision under this section by the High Court, the Council shall, as soon as practicable, by notice in writing, inform the teacher, the Minister and, where the teacher is employed as a teacher, his or her employer, of the decision.

⁴⁷ Inserted by Teaching Council (Amendment) Act 2015 section 20