

An Roinn Oideachais agus  
Eolaíochta  
Rannóg Múinteoirí  
Iarbhunoidreachais  
Cor na Madadh,  
Co. Na hIarmhí.



Department of Education  
And Science  
Post Primary Teacher Section  
Cornamaddy,  
Athlone,  
Co. Westmeath.

**Circular 0124/2006**

## **The Management Authorities of Secondary, Community and Comprehensive Schools, and the Chief Executive Officers of Vocational Education Committees**

### **Protection of Employees (Fixed-Term Work) Act 2003 Phase 2 Discussions**

#### **1. Introduction**

- 1.1 The purpose of this circular is to advise school authorities that, following discussions between the managerial authorities of schools, the teacher unions and the Departments of Education and Science and Finance, further agreement has been reached on a number of issues associated with the implementation of the Protection of Employees (Fixed Term Work) Act 2003.
- 1.2 Employers are again reminded of the requirements to issue written statements under Section 8 of the Act. These are set out in paragraphs 3.4, 3.5 and 3.6 below and should be adhered to in all instances where fixed term teachers (including part-time teachers) are employed. This is an *essential* requirement of the Protection of Employees (Fixed-Term) Work Act, 2003.

#### **2. Clarification of transitional arrangements**

##### **2.1 Continuation of transitional arrangements**

- 2.1.1 The transitional agreement, outlined in circular [PPT 14/05](#) dealt with qualified teachers with more than four years successive service as at 1<sup>st</sup> September 2005 employed in mainstream schools (including Post Leaving Courses) Senior Traveller Training Centres, VTOS Centres, the Prison Service and Youthreach. It also comprehended Youthreach Co-ordinators and Youthreach Resource Persons
- 2.1.2 That agreement is now being extended to include the same categories of staff (as listed in para 2.1.1) on fixed term contracts with four or more year's successive teaching service between the periods 1<sup>st</sup> September 2005 and 1<sup>st</sup> September 2006 inclusive. The employer shall issue a contract of indefinite duration to any such staff member who is not excluded by reason of one or more of the following which the employer can demonstrate:

- (i) s/he is not deemed to be qualified for the post; or

- (ii) the post will not be viable within a reasonable period and that such a ground was set out as an objective ground in writing in the previous contract; or
- (iii) the staff member is covering for a post holder on an approved scheme of leave of absence; or
- (iv) there are formal written disciplinary charges of a significant nature against an individual on grounds of misconduct or other serious disciplinary offences.

The exclusions at (ii) and (iii) above shall not apply where the staff member has not received a written contract setting out objective grounds since September 2002.

**2.1.3** The hours of the contract of indefinite duration will be the hours for which the staff member was engaged on a fixed term contract in the school/academic year prior to the issuing of the CID (other than those hours which are for the provision of temporary cover as set out in circular [PPT 14/05](#)).

## **2.2 Clarification in relation to qualifications issue –**

A fixed-term teacher who

- (i) has more than four years successive teaching service between the periods 1/9/05 and 1/9/06 inclusive, and
- (ii) has obtained the requisite qualifications at some period during the aforementioned four year timeframe and
- (iii) is otherwise eligible for a contract of indefinite duration under the terms of the transitional agreement,

shall be deemed to be qualified, if s/he is fully qualified under the criteria applicable to the post in the relevant sector and may be offered a contract of indefinite duration.

## **2.3 Adjudication system**

The Transitional Agreement established a system for adjudication of appeals from aggrieved individuals. Departmental [Circular 0050/2006](#) sets out the details of the adjudication system. This adjudication system is voluntary and intended to facilitate a quick, efficient resolution of disputes arising from the award or refusal to award a contract of indefinite duration. Use of this system does not restrict the freedom of any party to pursue statutory relief if so desired. Appeals against decisions made under the terms of this Circular Letter must be made within 4 working weeks of the date of notification of the decision by the Board of Management/VEC to refuse a CID or 6 working weeks after the date of issue of this circular whichever is the later.

## **3. Mechanism for Future Recruitment of Fixed-Term Personnel**

- 3.1 An anticipated vacancy of more than 22 weeks duration should be advertised and filled through a formal recruitment process using the same procedures and criteria as are prescribed from time to time by the Minister for Education & Science for the filling of permanent vacancies.
- 3.2 Registerable teachers (in accordance with Circular Letters [101/2006](#), [102/2006](#) and [103/2006](#)), who are appropriately qualified for the advertised post, shall be recruited for all vacancies. In exceptional circumstances where the employer can demonstrate to the satisfaction of the Department of Education and Science that every reasonable effort has been made to recruit an appropriately qualified teacher, an unqualified

person may be recruited pending the recruitment of an appropriately qualified teacher and this provision must be inserted in the terms of contract issued to that applicant. **There is, however, an ongoing commitment on behalf of the employer to seek to recruit a fully qualified teacher for all vacancies.**

- 3.3 Where a teacher is engaged on successive fixed term contracts in the same or similar positions with the same employer, an interview process is required for the initial appointment only providing that the teacher is appropriately qualified for each contract offered.
- 3.4 Written contracts of employment shall be issued to all temporary (fixed-term) teachers as soon as practicable after their appointment. It is considered best practice to issue the terms of contract no later than the date of commencement of employment. This document shall be signed by the teacher and the employer. The teacher shall be given a copy of the document and the employer shall retain a copy on file.
- 3.5 Each statement of terms must contain the objective condition determining the contract whether it is;
- finishing on a certain date
  - completing a specific task, or
  - the occurrence of a specific event.
- 3.6 Where an employer proposes to renew a fixed-term contract, the fixed term teacher shall be informed, at the latest by the date of renewal, in writing by the employer of the objective grounds justifying
- (i) the renewal of the fixed-term contract **and**
  - (ii) the failure to offer a contract of indefinite duration.

#### **4. Access to Permanent Vacancies in the Existing Employment**

- 4.1 Fixed-term teachers must be notified of the existence of a permanent vacancy. School authorities should note the provisions of the Protection of Employees (Fixed-Term) Work Act, 2003 which at section 10.2 provides that the information regarding a vacancy *“may be provided by means of a general announcement at a suitable place or undertaking or establishment”*.
- 4.2 The method used to bring such vacancies to the attention of fixed-term teachers shall be included in the written statement of terms given to each fixed-term teacher. The methodology to be used is not prescriptive and may include, for example, any or all of the following:
- the use of the employer website,
  - notifications to individuals outside of term time,
  - the school notice board during term time.

The objective is to ensure that the fixed-term teacher is notified of the vacancy in a timely manner so as to provide a teacher with the opportunity to apply for the position should s/he wish to do so. Fixed term teachers on leave should be notified of such vacancies.

#### **5. Conditions of Employment for fixed-term teachers**

- 5.1 Conditions of employment of a fixed-term teacher during the period of his/her contract are subject to the principle of no less favourable treatment than is applicable to permanent teachers, unless objective grounds exist for doing so. In general it is agreed that the expiry of a contract and, as a consequence, the termination of the employment

relationship, marks the end of any obligation on the part of the employer in respect of conditions of employment. However it is recognised that renewable contracts and the continuation of the post for which the fixed term teacher was employed may result in an ongoing commitment to the fixed term employee in certain limited circumstances beyond the initial expiry date of the contract.

## 5.2 In-Service Training

A fixed-term teacher shall have equal access to in-service training as a comparable permanent teacher. Such access shall not be confined to the days on which the fixed-term (including part-time) teacher would ordinarily be employed.

## 5.3 Post Graduate training

A fixed-term teacher shall be eligible to apply for access to Post Graduate courses in accordance with the procedures and criteria prescribed from time to time by the Minister for Education & Science. Payment for attendance at such courses (where it applies) shall not exceed the duration of the contract of the fixed-term teacher.

## 5.4 Career-Breaks:

Fixed-term teachers shall have access to the career break scheme on the same basis as permanent teachers within their sector. Applications for career breaks shall not be rejected solely on the grounds of the status of the applicant as a fixed-term teacher. The reason for rejecting an application for a career break shall be given in writing by the Board of Management/VEC. Access to the career break scheme will cease in all instances on the expiry and non-renewal of the fixed-term contract.

## 5.5 Job Sharing:

A fixed-term teacher shall have access to job-sharing on the same basis as a comparable permanent teacher within the same sector. Applications for job-sharing shall not be rejected solely on the basis of the status of the applicant as a fixed-term teacher. Access to job-sharing will cease on the same basis as for permanent teachers and in all instances on the expiry and non-renewal of the contract for which they were engaged as a jobsharer.

## 5.6 Sick Leave during period of contract:

A fixed term teacher shall have, in the case of leave which is

- certified: the same entitlement as a comparable permanent teacher within the same sector.
- uncertified: the same entitlement as a comparable permanent teacher within the same sector.

## 5.7 Compassionate Leave:

A fixed-term teacher shall have the same entitlement to compassionate leave as a comparable permanent teacher within the same sector.

## 5.8 Parental Leave:

A fixed-term teacher shall have the same entitlement to parental leave as a comparable permanent teacher within the same sector.

## 5.9 Paternity Leave:

A fixed-term teacher shall have the same entitlement to paternity leave as a comparable permanent teacher within the same sector.

5.10 Force Majeure Leave:

A fixed-term teacher shall have the same entitlement to force majeure leave as a comparable permanent teacher within the same sector.

5.11 Carers Leave:

A fixed-term teacher shall have the same entitlement to carers leave as a comparable permanent teacher within the same sector.

5.12 Brief Absences/Special Leave:

A fixed-term teacher shall have the same entitlement to brief absences/special leave as a comparable permanent teacher within the same sector.

5.13 Maternity Leave:

A fixed-term teacher shall have the same entitlement to maternity leave and, while on maternity leave which occurs during the term of their contract, shall have the same entitlement to pay as a comparable permanent teacher within the same sector.

Where the contract under which the teacher was employed expires and is not renewed and the employment ceases, the entitlement to paid maternity leave also ceases.

Where the contract under which the teacher was employed is renewed by a successive contract a dismissal shall not be effected and maternity pay shall continue to be paid until the cessation of maternity pay under the maternity leave scheme or the expiry of the successive contract, whichever is the sooner.

**6. Mechanism for the Alignment of Posts and available Personnel**

6.1 The method for determining the allocations of publicly funded posts (including curricular concessions) to each school/sector will continue to be in accordance with procedures published from time to time by the Minister for Education and Science.

6.2 **Any school authority which proposes to issue a contract of indefinite duration in excess of its approved allocation and to have the teacher's salary paid from public funds MUST seek the approval of Post Primary Teacher Allocations Section for an increased allocation.** This approval will be forthcoming where the terms of the Protection of Employees (Fixed Term Work) Act 2003 are fully complied with.

6.3 For the purposes of calculating the number of teachers in posts to whom there is an ongoing contractual commitment it will be necessary to combine the number of permanent teachers with the number on contracts of indefinite duration. Based on the agreed definition of an employee on a contract of indefinite duration those on CIDs have effectively the same tenure rights as a permanent teacher

6.4 Where a permanent vacancy occurs, the employer must assess whether an existing fixed-term teacher qualifies for a Contract of Indefinite Duration in accordance with the terms of existing agreements. If a permanent vacancy is identified and an existing fixed-term teacher does not qualify for a Contract of Indefinite Duration under the terms of Departmental Circulars, all such permanent vacancies must be filled in the approved manner.

6.5 Where the total number of teachers (expressed in whole-time teacher equivalents) in permanent/CID arrangements **equals or exceeds the number of approved permanent posts based on the allocation,** no further permanent post shall be filled.

- 6.6 Where the total number of teachers (expressed in whole-time teacher equivalents) in permanent and CID arrangements, combined, **exceeds** the number of approved permanent posts on the basis of the allocation in the VEC or school **and** suitable alternative employment is not available within the particular employment, the measures set out in section 7 will apply.

## **7 Re-deployment (Panel Rights) – where these apply**

- 7.1 For the purposes of seniority no distinction shall be drawn between permanent service and service on a CID. No distinction shall be drawn between part-time and full-time teachers employed on permanent or CID contracts for the purposes of re-deployment and both shall transfer on their contracted hours. The hours on transfer may be varied with the agreement of the transferee. The practical arrangements for the re-deployment of part-time teachers with contracts of indefinite duration will be the subject of further discussions between the parties.
- 7.2 Ordinarily fixed-term teachers do not have a right to re-deployment on the expiry of their contract. However, where the post for which a fixed term teacher is employed on a fixed-term basis continues on a fixed-term basis after the expiry of the contract – e.g. replacement for a career break – redeployment may be considered. Such re-deployment shall be as a fixed-term teacher.

You are requested to ensure that copies of this circular are provided to the appropriate representatives of parents and teachers for transmission to individual parents and teachers.

This circular can be accessed on the Department's website [www.education.ie](http://www.education.ie)

Queries concerning this circular letter should be emailed to: [allocations@education.gov.ie](mailto:allocations@education.gov.ie)

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7<sup>th</sup> September, 2006