

Ardoideachais – Beartas agus
Scileanna
An Roinn Oideachas agus
Eolaíochta,
Sraid Maoilbhríde,
Baile Átha Cliath 1.



Higher Education -Policy and Skills
Department of Education & Science,
Marlborough Street,
Dublin 1.

Circular 0093/2007

To: Director/President of each Institute of Technology,
President of Dublin Institute of Technology.

Protection of Employees (Fixed-Term Work) Act 2003 Revised Agreement

1. Purpose of this Circular

- 1.1 The purpose of this circular is to advise Institutes of Technology that following discussions between the managerial authorities of Institutes of Technology, the Teachers' Union of Ireland 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. The following are the terms of a consolidated circular. The provisions of this Circular are effective from the date of issue of this Circular. The terms of this circular will be open to review in light of experience and precedent developments elsewhere.
- 1.2 Employers are advised that cognisance should be taken of other relevant employment legislation in dealing with issues arising from this Circular Letter.

2. Contracts of indefinite duration

2.1 Definition of a contract of indefinite duration

A person who has an expectation that, subject to the normal date of retirement in the employment, she or he will be retained in the employment and will not be dismissed without there being any good reason such as misconduct or unfitness for their position, or other compelling or unavoidable circumstances. Any dismissal shall be achieved by the application of the agreed termination arrangement for the particular sector or the application of the relevant statute, as the case may be.

2.2 Assessing an entitlement to a contract of indefinite duration

- 2.1.1 The transitional agreement comprehended qualified lecturers* with more than four years successive service as at 1st September 2005 employed in Institutes of Technology to carry out the full range of duties. That agreement is now being extended to include qualified lecturers on fixed term contracts with four years or more successive service on 1st September 2006 or any date thereafter.

* Assistant Lecturer, College Teacher, Lecturer, Lecturer 1, Structured Lecturer, Senior Lecturer 1 (Teaching), Senior Lecturer 11 & Senior Lecturer 111

The transitional agreement is outlined in circular letter IT 15/05. This circular now confirms that these arrangements should now comprehend on an on-going basis qualified lecturers with four years or more successive service as at 1st September 2006 or on any date thereafter (those employed for the first time after 14th July 2003 must have 2 or more successive contracts).

- 2.2.1** The employer shall issue a contract of indefinite duration to any fixed term lecturer with 4 years or more successive lecturing service on the 1st September 2006 or any date thereafter (those employed for the first time after 14th July 2003 must have 2 or more successive contracts) who is deemed qualified and who is not excluded by reason of one or more of the following which the employer can demonstrate:
- (i) That the post will not be viable within a reasonable period and where such a ground was set out as an objective ground in writing in the previous contract; or
 - (ii) That the person is covering for a post holder on an approved scheme of leave of absence; or
 - (iii) 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 (i) and (ii) above shall not apply where the staff member has not received a written contract setting out objective grounds since September 2003. .

- 2.2.2** The hours of the contract of indefinite duration will be the hours for which the employee was engaged on a fixed term contract in the academic year prior to the issuing of the CID (other than those hours which are for the provision of temporary cover). This is subject to one exception as provided for in paragraph 7 below.

2.3 Qualifications

A fixed-term lecturer shall be deemed to be qualified, if he/she is fully qualified under the criteria applicable to the post in the Institute of Technology sector.

3 Adjudication system

There is an agreed system for considering the adjudication of appeals from aggrieved individuals. The 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. Any party is of course free to pursue statutory relief if so desired. [Departmental circular 0045/2006](#) sets out the details of the adjudication system. In this regard Mr Peter Ward has agreed to act as Adjudicator.

4. Recruitment Procedures

Those lecturers engaged for their first fixed-term contract should receive their written terms of employment within two months of the date of their appointment. The terms and conditions should be signed by the employee and the employer. The employee should receive a copy of the document and the employer is to retain a copy on file.

- 4.2 Each statement of terms must contain the objective conditions determining the context whether it is:
- Arriving at a specific date
Completing a specific task, or
The occurrence of a specific event
- 4.3 Where an employer proposes to renew a fixed-term contract, the fixed term employee shall be informed in writing by the employer of the objective grounds justifying the renewal of the fixed-term contract **and** the failure to offer a contract of indefinite duration at the latest by the date of renewal.
- 4.4 In cases of anticipated vacancies of more than 26 weeks duration the positions should be advertised and filled through a formal recruitment process using the same procedures and criteria as for permanent vacancies.
- 4.5 Where a lecturer is granted temporary leave i.e. career break or secondment it shall be the responsibility of the employing authority to employ an appropriate temporary replacement for the period of the temporary absence. Any replacement shall be employed on the agreed terms and conditions of employment for fixed term lecturers as set out in the relevant circulars.
- 4.6 There is a requirement to recruit suitably qualified persons for all vacancies regardless of duration. In exceptional circumstances where the employer can demonstrate that every reasonable effort has been made to recruit a qualified lecturer, an unqualified person may be recruited pending the recruitment of a qualified lecturer which provision must be inserted in the terms of appointment issued to the unqualified person.
- 4.7 Where a fully qualified lecturer is engaged on successive contracts in the same or similar positions with the same employer, an interview process is required for the initial appointment only.

5. Terms of employment for Fixed-term teachers

General

The principle to be applied to conditions of employment in respect of fixed-term employees is the principle of no less favourable treatment during the period of contract 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. Pro-rata lecturers are entitled to the same conditions of service on a pro-rata basis as a comparable permanent full-time lecturer.

Notification of permanent vacancies to Fixed-Term teachers

Fixed-term lecturers must be notified of the existence of the permanent vacancy. It is not possible to be prescriptive in respect of the methodology to be used in respect of each sector. Methods may include: the use of the employer website/notifications to individuals outside of term time/the relevant Institute notice board during term time. The method which will be used for the advertising of permanent vacancies is to be included in the written statement of terms given to each fixed-term lecturer. The objective is to ensure that the fixed-term lecturer is notified of the vacancy in a timely manner so as to allow that teacher the opportunity to apply for the position should s/he wish to do so. All employers 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 *“maybe provided by means of a general announcement at a suitable place or undertaking or establishment”*.

5.3 Access to Training for Fixed-term employees

5.3.1 In-Service Training

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

5.3.1 Post Graduate training

Fixed-term employees shall be eligible to apply for access to Post Graduate courses on the same basis as their comparable permanent employee. Payment for attendance at such courses (where it applies) shall be on the same basis as the comparable permanent employee and shall not exceed the duration of the contract of the fixed-term employee.

5.4 Career-Breaks:

Fixed-term lecturers shall have access to the career break scheme on the same basis as permanent lecturers 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 employee. The reason for rejecting an application for a career break shall be given in writing by the Institute. 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:

Fixed-term lecturers shall have access to job-sharing on the same basis as permanent lecturers 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 lecturer. Access to job-sharing will cease on the same basis as for permanent lecturers 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 the period of contract:

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

- **certified:** the same entitlement as a comparable permanent lecturer
- **uncertified:** same entitlement as a comparable permanent lecturer

5.7 Compassionate Leave:

A fixed term lecturer shall have the same entitlement to compassionate leave as a comparable permanent lecturer.

5.8 Parental Leave:

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

5.9 Paternity Leave:

A fixed term lecturer shall have the same entitlement to paternity leave as a comparable permanent lecturer.

5.10 Force Majeure Leave:

A fixed term lecturer shall have the same entitlement to force majeure leave as a comparable permanent lecturer.

5.11 Carers Leave:

A fixed term lecturer shall have the same entitlement to carer's leave as a comparable permanent lecturer.

5.12 Brief absences:

A fixed term lecturer shall have the same entitlement to brief absences as a comparable permanent lecturer.

5.13 Maternity Leave:

A fixed term lecturer 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 lecturer.

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

Where the contract for which the lecturer 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. Progression of CID Holders (Part-Time) from Assistant Lecturer to Lecturer – adjustment of hours

- 6.1** Where an Assistant Lecturer is employed on a CID on a part time basis, progression to the Lecturer's scale will be on a proportionate number of hours related to the adjustment for a full time post holder moving from 18 hours to 16 hours i.e. 90%. As this will result in a fraction of hours in many cases, the contract hours are to be rounded up and the contract and salary adjusted accordingly.

TABLE

<i>Existing Hours</i>	<i>Revised Hours</i>
1	1
2	2
3	3
4	4
5	5
6	6
7	7
8	8
9	8
10	9
11	10
12	11
13	12
14	13
15	14
16	15
17	16
18	16

7. Weighting for Night Time Hours

- 7.1 A Contract of Indefinite Duration (CID) is to be based on the contracted lecturing hours in the previous academic year (see Section 4 of the agreed terms of the Transitional Agreement and paragraph 2.2.2. above). Where the final fixed term contract includes a proportion of night hours and the related weighting that contracted arrangement is to be carried forward into the CID. Where at the time of the conversion to CID it is proposed to reduce the proportion of night work, the treatment of the CID holder must be no less favourable than that accorded to a permanent employee. That is to say, while a mix of hours in the contract is altered, the total rate of pay must remain that based on the final fixed term contract. This may actually result in an increase in the contracted number of daytime hours in the CID. It is a matter for management to ensure that the lecturer is fulfilling the contracted hours in the contract. Thereafter the mixture of hours as between day and night work may be varied in accordance with the agreed arrangements in respect of permanent lecturers.

8. Mechanism for the Alignment of Posts and available Personnel

- 8.1 The method for determining the allocations of posts to each school/sector will continue as heretofore.
- 8.2 For the purposes of calculating the number of lecturers in posts to whom there is an ongoing contractual commitment, it will be necessary to combine the number of permanent lecturers with the number on contracts of indefinite duration. Based on the agreed definition of an employee on a contract of indefinite duration, those on contracts of indefinite duration have effectively the same tenure rights as a permanent lecturer.
- 8.3 Where a permanent vacancy occurs the following options are to be applied sequentially by employers on the filling of such posts/hours
- (a) a fixed term lecturer who qualifies for a contract of indefinite duration under paragraph 2 above is to receive the contract of indefinite duration
 - (b) If an existing fixed term lecturer does not qualify for a contract of indefinite duration the vacancy must be advertised in the normal manner i.e. by advertisement.
- 8.4 There is no re-deployment arrangement between the IOTs due, in the main, to geographical considerations. The specialist nature of the posts provides some opportunity to provide alternative employment within the same Institute and every reasonable opportunity for such redeployment should be explored and additional training support should also be provided to support the opportunities for re-deployment which do exist.

- 8.5 In implementing this section the attention of employers is drawn to the terms of The Unfair Dismissals Acts at Section 6 Sub Section 3 which states:

Without prejudice to the generality of sub-section (1) of this section, if an employee was dismissed due to redundancy but the circumstances constituting the redundancy applied equally to one or more other employees in similar employment with the same employer who have not been dismissed, and either

(b) he was selected for dismissal in contravention of a procedure (being a procedure that has been agreed upon by or on behalf of the employer and by the employee or a trade union, or an excepted body under the Trade Union Acts 1941 and 1971 (as amended by the Industrial Relations Act, 1990, representing him or has been established by the custom and practice of the employment concerned) relating to redundancy and there was no special reason justifying a departure from that procedure,

then the dismissal shall be deemed for the purposes of this Act, to be an unfair dismissal.

- 8.6 In order to comply with the terms of the Act it is proposed to put in place a procedure in the IOT sector where the employer identifies a situation where there are teaching staff surplus to requirements. The following options are to be applied sequentially:

- (a) Re-deployment within the Institute to suitable alternative posts for which the surplus staff are qualified.
- (b) Re-training to provide the additional qualifications required to be re-deployed to an identifiable vacancy
- (c) Reduction of hours (and pay) involving one or more staff – on a voluntary basis.
- (d) Termination of the employment of fixed-term employees whose contract has expired (with payment of redundancy pay). This option would be severely limited in cases where the fixed-term employee would otherwise be due to receive a contract of indefinite duration. It may also be necessary to insert the terms of the collective agreement into future fixed-term contracts.
- (e) Agreement to the filling of a vacant permanent post on a fixed-term basis for up to two years where it is agreed that the post is unlikely to be viable beyond that period.
- (f) Voluntary severance arrangements to be agreed at the Institutes of Technology Industrial Relations Forum.
- (g) These terms to be reviewed at the request of either party no earlier than February 2008 unless agreed by both parties.

This circular can be accessed on the Department's website www.education.ie

Queries concerning this circular letter should be emailed to Breda Quirke at the following address:

mailto:breda_quirke@education.gov.ie

Gerry Murray
Principal Officer

20th September 2007