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4 September 2018

Circular 09/2018: Consolidation of arrangements for the offer of severance terms in the civil and public service

To: All Departments and Offices, and all public bodies coming under their aegis

I am directed by the Minister for Public Expenditure and Reform to say that it has been decided to clarify the set of procedures to apply to the offer of severance terms. This Circular consolidates the existing arrangements that currently operate in the civil and public service and, in addition, incorporates additional measures identified as necessary following consideration of the recommendations of the Comptroller and Auditor General Special Report No. 91, *Management of Severance Payments in Public Sector Bodies*.

Purpose: To implement a consistent set of arrangements, controls and procedures to be followed in cases in which the offer of severance terms is being considered, to ensure their correct application where severance terms are offered, and to ensure clarity of the responsibilities and roles of individual managers and as between public service bodies, Offices and Departments.

The offer of discretionary severance terms can arise in situations in which it is considered appropriate, as part of best human resource management practice, to provide for the ending of an existing employment contract where this is considered to be in the best interests of the organisation in question. Severance can also arise under statutory provisions, broad programmes of redundancy, voluntary early retirement schemes, etc. While this Circular covers the arrangements to apply to discretionary arrangements, the provisions set out hereunder in relation to the obtaining of prior approval, calculating the cost of severance terms, maintaining proper records, and complying with disclosure requirements will apply to all cases.

Relevant Legislation and Guidance:

- Superannuation and Pensions Act 1963
- Other legislation relevant to different public service pension schemes and severance arrangements
- Financial Emergency Measures in the Public Interest Act 2015
- DPER *Public Financial Procedures* and annual Circulars on preparation of the Appropriation Accounts
- DPER *Code of Practice for the Governance of State Bodies - Business and Financial Reporting Requirements; Remuneration and Superannuation Terms*

Application: Each Department and Office is required to give effect to this Circular and to bring it to the attention of all bodies and authorities operating under their aegis, and to ensure that appropriate steps are taken to implement it.

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Introduction

1. This Department considers it appropriate to preserve the capacity, as part of best human resource management practice, to make provision for the ending of an existing employment contract and the offering of severance terms where this is considered to be in the best interests of the organisation in question.

2. In some cases, the discretionary severance terms to be agreed might not be based on the terms of a contract or a prescribed scheme but following negotiations between employer and employee on a case-by-case basis.¹ The circumstances may be such that the employee's capacity to perform the role is perceived to be limited, or the employment relationship has broken down irreconcilably. While instances of this nature may be rare, it is nevertheless considered appropriate to provide guidance in respect of such cases.

3. This Circular is intended to set out in a single central source this Department's instructions to Departments, Offices and public service bodies on the management of severance arrangements, both in cases where provision for such terms exists in statute or schemes of employment and in cases where the offer of discretionary severance terms is being considered.

4. Except to the extent set out in paragraph 9, this Circular is not intended to apply to redundancy programmes, targeted voluntary early retirement schemes, voluntary redundancy schemes, etc., which are implemented on foot of Government decisions, collective agreements, or management decisions in situations of substantive organisational restructuring or to reduce staff numbers, which will normally be subject to separate discussion and agreement with this Department. For clarity of definition, 'severance terms' are taken to mean severance, termination or redundancy payments, as well as enhanced pension terms, such as added years of service or the early payment of pension without the application of actuarial reduction.

Provision for severance terms

5. In the civil service, statutory provision is made for severance arrangements under Section 6 of the Superannuation Act 1909 and Sections 6 and 7 of the Superannuation and Pensions Act 1963. These provide, *inter alia*, for the inclusion of notional added years of service in the calculation of pension benefits and the payment of special severance gratuities where an established civil servant retires or is removed from office:

- (a) in consequence of the abolition of his/her office, or
- (b) for the purpose of facilitating improvements in the organisation of the Department or Office to which he or she belongs by which greater efficiency or economy can be effected.

¹ Some schemes of employment include specific provision for severance payments and in those cases, the eligibility requirements and the amount of the payments are prescribed in the rules of the scheme.

6. Other public service pension schemes contain similar provision for the grant of severance terms in such situations.² In addition, as noted above, circumstances can arise where the offer of discretionary severance terms may need to be considered.

7. In the case of State bodies, Departments and Offices are reminded of the existing requirement set out in Department of Finance letter to Personnel Officers dated 4 February 2010 that all proposals relating to the grant of severance terms to a CEO or equivalent are referred to this Department for consideration prior to any undertakings of this nature being agreed. For the avoidance of doubt, it is confirmed that the Department of Finance letter to Heads of Departments entitled 'Severance and Early Retirement for Chief Executives of State Sponsored Bodies' (dated 26 May 1998, ref: P18/126/98) is withdrawn.³

8. The instructions below take account of the Comptroller and Auditor General's recommendation in Special Report No. 91 of December 2015 (at paragraph 1.7) that 'appropriate risk management procedures for severance payments should ensure that:

- there is clear rationale for the payments
- available alternative options are considered
- legal costs are kept to the minimum level necessary to ensure legally sound agreements
- the amounts paid comply with the rules of the scheme (if applicable)
- payments are authorised at an appropriate level
- payments are appropriately disclosed in the employers' financial statements.'

9. In cases in which the severance terms are not discretionary, i.e. their provision exists in statute, by virtue of the specific scheme of employment in question, or in the range of cases set out in paragraph 4 above, the instructions as they relate to the obtaining of prior approval, the calculation of the value of the severance terms, the maintenance of proper records, and disclosure in the annual financial statements should, nonetheless, be applied in full.

² All new entrants to pensionable public service employment on or after 1 January 2013 are, in general, enrolled as members of the Single Public Service Pension Scheme. There is no provision under that scheme for the early payment of pension without actuarial reduction other than in cases of ill health early retirement, nor for the grant of notional added years of service.

³ This Circular covers the civil and public service. In the case of commercial State bodies, it should be noted that:

(i) under the *Code of Practice for the Governance of State Bodies – Remuneration and Superannuation Terms*, the terms and conditions of the CEOs of commercial State bodies, including severance terms should they arise, are subject to approval by the relevant Minister with the consent of the Minister for Public Expenditure and Reform;

(ii) under provisions introduced in June 2011, any prospective severance or redundancy proposals involving commercial State Bodies are subject to separate consultation with the parent Department and this Department.

Preparation of business case supporting decision to offer severance terms

10. A written business case must be prepared to support the decision to offer severance terms. This should include the following elements:

- (a) a chronological presentation of the key stages in the development of the particular issues that have given rise to the proposal to consider termination and the offer of severance terms, clearly detailing the actions taken by management at each stage and the rationale behind those actions;
- (b) confirmation that all appropriate internal HR policies, procedures, codes of conduct, etc. in the management of the issues in question have been correctly applied and have been subject to proper oversight having regard to the requirements of good governance;
- (c) the findings of the reports received on any investigations carried out on the issues in question;
- (d) the written advice obtained from expert advisors involved in the case, including legal advice;
- (e) the outcome of any third party mediation carried out (mediation is a process that may be followed to enable reasonable severance terms to be agreed, particularly where a dispute has arisen, or may potentially arise, between the two sides – see this Department’s Circular 17 of 2017 on mediation);
- (f) an outline of the risks involved in the various options now open to management, including quantification of both the costs and benefits of terminating the employment (see paragraph 14 below on the valuation of severance terms);
- (g) an outline of the economic justification for the severance terms being considered, detailing how the best interests of the organisation would be served in pursuing this option, including, where appropriate, a report on the savings or efficiencies that would be achieved through any subsequent organisational restructuring;
- (h) the rationale for the development of the terms now being proposed for a negotiated exit, and the basis for the specific severance terms proposed, which should include an assessment of the merits of the respective positions of the public service body and of the employee;
- (i) a statement of the measures taken to address any governance issues that have arisen in the context of the case; and
- (j) where, in a very exceptional case, it is decided that a confidentiality clause should be included in the proposed severance agreement, a summary of the precise factors underpinning that proposed course of action (see also paragraphs 21 – 23).

Obtaining authority to offer severance terms

11. The person negotiating and signing the severance agreement on behalf of the public service body must obtain formal authority to do so, and submit the written business case as the basis for such request. In the case of Departments/Offices, prior to the severance agreement being made, the severance terms must have the explicit sanction of this Department. State bodies are required to consult with their parent Departments/Offices before entering into any commitment on severance terms, and Departments/Offices must refer such requests to this Department for consideration and approval (see also paragraph

7). The same provisions for the obtaining of prior sanction will apply in situations where it is proposed to include a severance provision in a proposed contract of employment, before any commitments of this nature are entered into.

12. In deciding on a case submitted to it for sanction, this Department's concern shall, for the most part, be related to ensuring that the severance terms being considered come within the parameters of existing policies. This Department shall not be responsible for making the business case justifying the decision to offer the severance terms in the first place, as detailed in paragraph 10, or for all the other aspects dealt with in this Circular, which shall be the responsibility of the Department/Office or, where appropriate, the public body concerned.

13. Public bodies are reminded that under Section 12 of the Financial Emergency Measures in the Public Interest Act 2015 any terms and conditions that are agreed for a public servant that are in excess of those approved by the Minister for Public Expenditure and Reform will, under the terms of that Section, be rendered void.

Severance value

14. The value of the severance agreement should be reasonable in the circumstances and justified as a proper use of public money. All aspects of the severance terms must be considered, not just the severance/termination/redundancy payments made. Thus, any enhancement of pension terms (e.g. notional added years, or the early payment of pension without actuarial reduction) should be taken into account in the decision-making process.

15. Discretionary severance payments should be calculated in accordance with the terms set out in the *Collective Agreement on Redundancy Payments to Public Servants* reached between this Department and the Public Service Committee of the ICTU and attached to this Department's letter to Personnel Officers dated 28 June 2012 (Ref No: E150/07/12). In particular, any *ex gratia* payment to a public servant employed for a period not less than 2 years, shall amount to no more than 3 weeks' pay per year of service, subject to the total statutory redundancy and *ex gratia* payment not exceeding either 2 years' pay or one half of the salary payable to preserved pension age, whichever is less.

16. In all other cases, the severance terms offered should be in accordance with the applicable statutory provisions, approved redundancy programme, voluntary early retirement scheme, etc. Enhanced terms must not, in any circumstances, be offered without the prior written approval of this Department.

Severance agreement

17. The terms of the agreement should be clearly spelled out, and the obligations of both parties carefully defined. The nature of each type of payment or severance term applied should be specified, and the basis for the payment or severance term should be explained. The severance agreement should be signed by both parties.

Disclosure in Appropriation Account or annual financial statements/treatment of confidentiality agreements

18. Departments, Offices and other Vote holders are required to make appropriate disclosure of material severance payments in the relevant Appropriation Account (see this Department's *Public Financial Procedures* and the annual Circulars on the preparation of the Appropriation Accounts). In addition to any severance payments made, the disclosure should include details, if any, of early payment of pension, the addition of added years of notional service, or any other enhancement to the accrued pension terms that has been granted.

19. In accordance with the *Code of Practice for the Governance of State Bodies - Business and Financial Reporting Requirements*, State Bodies should disclose in their annual report and/or financial statements details of payments and agreements (with a value in excess of €10,000) made in the reporting period. These would include severance/termination payments, granting of added years for pension purposes, or early retirement without normal actuarial reductions.

20. For bodies that issue financial statements in accordance with generally accepted accounting principles, it will be necessary to include in the disclosure note the full actuarial cost of granting added years or of early retirement without actuarial reduction. For the purposes of preparing the calculation, individual cases should be referred to the Public Service Pay and Pensions Division of this Department. The need for guidance to be provided by the Department in this area will be kept under review.

21. Given the policy underlying the Freedom of Information Acts, in concluding settlements, a public service body should not enter into confidentiality agreements which preclude it from disclosing details of the settlement reached in the financial statements, save in exceptional circumstances and on foot of legal advice that they are necessary in the circumstances of the case.

22. When, in those circumstances, confidentiality agreements are entered into, parties to agreements should be given prior notice that they may be subject to disclosure in any case where an overriding public interest is identified or when required by law.

23. On the basis of experience in the implementation of this Circular, and an evaluation of the particular arguments that Departments and State bodies provide to support the use of confidentiality clauses in specific individual cases (see paragraph 10(j) above), this Department will determine, at an appropriate future date, whether any further modifications to the severance disclosure requirements should be made in order to address any perceived deficiencies regarding the disclosure of severance terms in the financial statements of State bodies.

Maintenance of proper records

24. Public service bodies must keep proper records in cases in which severance terms have been granted, including, where relevant, the written business case for the offer of severance terms (paragraph 10), the authorisation to grant severance terms (paragraph 11), and the signed severance agreement (paragraph 17).

Further information

25. Any queries by Departments/Offices should be directed to this Department's Public Service Pensions Policy Unit, Public Service Pay and Pensions Division (pensions@per.gov.ie). Other public bodies should consult in the first instance with their parent Department/Office.