



Circular 0082/2007

## To: The Management Authorities of Primary Schools

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

### 1. Purpose of this Circular

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. The following are the terms of a consolidated circular. This circular supersedes all previous circulars. The terms of this circular will be open to review in light of experience and developments elsewhere.

### 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

The transitional agreement comprehended qualified teachers with more than four years successive service as at 1<sup>st</sup> September 2005 employed in primary schools. The transitional agreement is outlined in [primary circular 24/05](#). This circular now confirms that these arrangements should now comprehend qualified teachers with four years or more successive service as at 1<sup>st</sup> September 2006 or on any date thereafter (those employed for the first time after 14<sup>th</sup> July 2003 must have 2 or more successive contracts).

##### 2.2.1 Those fixed term teachers with 4 years or more successive teaching service on 1<sup>st</sup> September 2006 or on any date thereafter and who are deemed to be qualified shall receive contracts of indefinite duration unless the employer can demonstrate:

That a 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**

That the person is covering for a post holder on an approved scheme of leave of absence.

The foregoing exclusions shall not apply where the person has not received a written contract setting out objective grounds since September 2003. Such persons (who

are deemed to be qualified) shall automatically receive contracts of indefinite duration.

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 school year prior to the issuing of the CID (other than those hours which are for the provision of temporary cover).

2.2.3 Except where the employer can demonstrate that there are formal written disciplinary charges of a significant nature against an individual on grounds of misconduct or other serious disciplinary offences, the employer shall issue a contract of indefinite duration to any person who is not excluded by the terms of clause 2.2.1 above.

### 2.3 **Qualifications**

It has been agreed on an exceptional basis that the provisions of paragraph 2.2 above may be applied to those teachers, in the primary sector, who are post-primary qualified, as recognised by the Teaching Council, and receive incremental salary. Such teachers, who have four years successive service on 1/9/06 or on any date thereafter and are otherwise eligible for a contract of indefinite duration under the terms of clause 2.2 above, should receive such a contract.

It should be noted that such persons (unless they subsequently become fully qualified primary teachers) will not have access to the Redeployment scheme.

### 2.4 Teachers with Provisional Recognition

Heretofore such teachers were given a period of time to pass the Scrúdú le hadhaigh Cáilíocta sa Gaeilge (SCG) in order to achieve status as a fully qualified primary school teacher.

Since March, 2006 the Teaching Council has responsibility for the registration of all teachers including those referred to above and in such cases the Council issues conditional registration to teach in the Primary Sector (4-12 years) with an option for fulfilling the Irish Language requirement of Aptitude Test (SCG) or an Adaptation Period.

The following has been agreed on an exceptional basis in respect of those teachers opting for a) Adaptation Period & b) Aptitude Test.

- a) Teachers currently employed in the primary sector who have received conditional registration from the Teaching Council for the Primary Sector (4-12 years) (Irish Language Requirement – Adaptation Period) may continue to be employed in a fixed term capacity for the duration of the adaptation period, i.e., up to 3 years, provided the need for the post to which the teacher has been appointed continues to exist. Teachers with this conditional registration are also eligible for appointment in a fixed term capacity to a fixed term/permanent post at primary level. Eligibility for such appointments shall not extend beyond the period for which conditional registration has been granted. The teachers are eligible to be remunerated at the trained rate of pay for the duration of the adaptation period, i.e., up to 3 years.
- b) Teachers who have received conditional registration for the Primary Sector (4-12 years) (Irish Language Requirement – Aptitude Test) continue to be eligible for employment in a fixed term capacity in either fixed term or permanent posts in primary schools and to be remunerated at the trained rate of pay. Eligibility for such appointments shall not extend beyond the period for which conditional registration has been granted.

The terms outlined at a) & b) above shall be included as an objective condition for a fixed term contract and as an objective ground for not issuing a contract of indefinite duration.

In the event of achieving full qualifications as prescribed by the Teaching Council such teachers are eligible for consideration of a Contract of Indefinite Duration within the terms of 2.2 of this circular.

### **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 0047/2006](#) sets out the details of the adjudication system. In this regard Mr Peter Ward has agreed to act as Adjudicator.

### **4 Recruitment Procedures**

4.1 Those teachers 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. Please note that this amends [Primary Circular 0105/2006](#), Employment of Qualified Primary School Teachers, Para. 4, from anticipated vacancies of 24 weeks duration to 26 weeks.

4.5 Where a teacher is granted temporary leave i.e. career break, secondment, study leave etc., it shall be the responsibility of the employing authority to employ a 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 teachers as set out in this circular.

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 teacher, an unqualified person may be recruited pending the recruitment of a qualified teacher which provision must be inserted in the terms of appointment issued to the unqualified person.

4.7 Where a fully qualified teacher 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**

#### **5.1 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.

**5.2 Notification of permanent vacancies to Fixed-Term teachers**

Fixed-term teachers must be notified of the existence of a 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 school 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 teacher. The objective is to ensure that the fixed-term teacher 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 teachers shall have equal access to in-service training as comparable permanent teachers. Such access shall not be confined to the days on which the fixed-term (including part-time) teacher would ordinarily be employed.

**5.3.2 Post Graduate training**

Fixed-term teachers 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 teacher and shall not exceed the duration of the contract of the fixed-term employee.

**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 employee. The reason for rejecting an application for a career break shall be given in writing by the Board of Management. 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 teachers shall have access to job-sharing on the same basis as permanent teachers 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:**

- **certified:** same entitlement as permanent teachers during contract
- **uncertified:** same entitlement as permanent teachers during contract

**5.7 Compassionate Leave:**

Fixed-term teachers shall have the same entitlement to compassionate leave as permanent teachers within their sector during contract.

**5.8 Parental Leave:**

Fixed-term teachers shall have the same entitlement to parental leave as permanent teachers during their contract.

- 5.9 **Paternity Leave:**  
Fixed-term teachers shall have the same entitlement to paternity leave as permanent teachers during their contract.
- 5.10 **Force Majeure Leave:**  
Fixed-term teachers shall have the same entitlement to force majeure leave as permanent teachers during their contract.
- 5.11 **Carers Leave:**  
Fixed-term teachers shall have the same entitlement to carers leave as permanent teachers during their contract.
- 5.12 **Brief absences:**  
Fixed-term teachers shall have the same entitlement to brief absences as permanent teachers during their contract.
- 5.13 **Maternity Leave:**  
Fixed-term teachers shall have the same entitlement to pay as permanent teachers while on maternity leave which occurs during the term of their contract. Where the contract for which they were 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. Where the contract for which the teacher was employed expires and is not renewed and the employment ceases, the entitlement to paid maternity leave also ceases.

**\*NOTE:** The foregoing conditions of employment also apply to unqualified persons. In the case of casual and substitute teachers and those employed for short periods the terms of the existing agreements will continue to apply.

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

- 6.1 The method for determining the allocations of posts to each school/sector will continue as heretofore.
- 6.2 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 contracts of indefinite duration have effectively the same tenure rights as a permanent teacher. The combination of permanent and contract of indefinite duration teachers, will in some instances, result in schools having a total number of teachers at or above the quota for the school based on the method used for calculating the allocation.
- 6.3 Where the total number of teachers in permanent/CID arrangements **is below** the number of approved permanent posts/hours based on the allocation the following options are to be applied sequentially by employers on the filling of such posts/hours
- (a) a fixed term teacher who qualifies for a contract of indefinite duration under paragraph 2 above is to receive the contract of indefinite duration and fills the post
  - (b) utilise the redeployment panel in accordance with any agreed arrangements

Following the completion of stages (a) and (b) above any remaining permanent post/hours shall be advertised as a vacancy

- 6.4 Where the total number of teachers in permanent/CID arrangements **equals** or exceeds the number of approved permanent posts based on the allocation, no further permanent post is to be advertised. Where a requirement for a post or a number of

hours is identified based on curriculum needs surplus to the allocation, special approval will be required from the Department of Education and Science for the filling of such posts/hours.

6.5 Where the total number of teachers in permanent/CID arrangements **exceeds** the number of approved permanent posts on the basis of the allocation in the school **and** suitable alternative employment is not available within the particular employment the following measures will be taken:

6.6 **Re-deployment (Panel Rights)**

6.6.1 **Seniority** - For the purpose of determining seniority no distinction is to be drawn between permanent service and service while on a CID. The date of operation of the CID is the date given by the employer or a third party whichever is the earlier. 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 vary with the agreement of the transferee.

6.6.2 The supplementary panel rights of fixed-term teachers (where they exist) will continue as heretofore. No distinction should be drawn between part-time and full-time teachers in terms of supplementary panel rights.

6.6.3 It is accepted in principle that fully qualified part time teachers employed on contracts of indefinite duration have a right to redeployment should the need arise. The operational arrangements necessary to provide for the redeployment of part time teachers will form part of the proposed general discussions under Towards 2016 on existing panel arrangements to be held no later than December, 2007, to incorporate this principle for the school year 2008/2009. Any issues of clarification related to the Fixed Term or Part Time Workers legislation will be referred to the Teachers Conciliation Council.

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) under Education Personnel/Primary/Circulars and Information Booklets or e-mail query to: [primary\\_payments@education.gov.ie](mailto:primary_payments@education.gov.ie)

Johnny Bracken  
Principal Officer

August, 2007