



Primary Circular 0104/2006

To: The Management Authorities of Primary Schools

Protection of Employees (Fixed-Term Work) Act 2003

Phase 2 Discussions

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.

2. Clarification of transitional arrangements

2.1 Continuation of transitional arrangements

2.1.1 The transitional agreement comprehended qualified teachers with more than four years successive service as at 1st 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 between the periods 1st September 2005 and 1st September 2006 inclusive.

2.1.2 Therefore those fixed term teachers with more than 4 years or more successive teaching service between the periods 1st September 2005 and 1st September 2006 inclusive 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 2002. Such persons (who are deemed to be qualified) shall automatically receive contracts of indefinite duration.

Employers are again reminded of the requirements to issue written statement 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 employees are employed. This is an essential requirement of the Protection of Employees (Fixed-Term) Work Act, 2003.

2.1.3 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/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 [primary circular 24/05](#)).

2.1.4 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 2.1.2 above.

2.2 Clarification in relation to qualifications issue

A fixed-term teacher who has more than four years successive teaching service between the periods 1/9/05 and 1/9/06 inclusive, shall be deemed to be qualified, if s/he is fully qualified under the criteria applicable to the post in the relevant sector. Where a person obtains the requisite qualifications at some period during the aforementioned four year timeframe and is otherwise eligible for a contract of indefinite duration under the terms of the transitional agreement, then s/he should be offered a contract of indefinite duration.

2.3 Treatment of certain unqualified Teachers

It has been agreed on an exceptional basis that the provisions of paragraph 2.1.2 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 between the periods 1/9/05 and 1/9/06 and are otherwise eligible for a contract of indefinite duration under the terms of the transitional agreement, 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 Adjudication system

Under the Transitional Agreement a system for adjudication of appeals from aggrieved individuals was established. 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.

3. Mechanism for Future Recruitment of Fixed-Term Personnel

3.1 In cases of anticipated vacancies of more than 22 weeks duration the positions should be advertised and filled through a formal recruitment process using the same procedures and criteria as for permanent vacancies.

3.2 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

3.3 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.

3.4 Written contracts of employment are to be issued to all temporary (fixed-term) appointees as soon as practicable after their appointment. Best practice would be to issue the terms and conditions of appointment no later than the date of commencement of employment. 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.

- 3.5 Each statement of terms must contain the objective conditions determining the context 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 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. Access to Permanent Vacancies in the Existing Employment

Temporary (fixed-term) teachers 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 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. Access to Training for Fixed-term employees

5.1 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.

5.2 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.

6. Conditions of Employment for fixed-term employees

- 6.1 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.

6.2 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.

6.3 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.

6.4 Sick Leave:

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

6.5 Compassionate Leave:

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

6.6 Parental Leave:

Fixed-term employees to have the same entitlement to parental leave as permanent teachers.

6.7 Paternity Leave:

Fixed-term employees to have the same entitlements as permanent employees.

6.8 Force Majeure Leave:

Fixed-term employees will have the same entitlement to force majeure leave as permanent employees during their contract.

6.9 Carers Leave:

Fixed-term employees to have the same entitlements as permanent employees.

6.10 Brief absences:

Fixed-term employees to have the same entitlements as permanent employees.

6.11 Maternity Leave:

Fixed-term employees 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 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.

7. Mechanism for the Alignment of Posts and available Personnel

7.1 The method for determining the allocations of posts to each school/sector will continue as heretofore.

7.2 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 CIDS have effectively the same tenure rights as a permanent teacher. The combination of permanent and CID 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.

7.3 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 the Transitional Agreement (outlined in primary circular 24/05). 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 advertised in the normal manner i.e. by utilisation of the panel arrangement as appropriate to the sector or advertisement.

- 7.4** 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.
- 7.5** 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:
- 7.6 Re-deployment (Panel Rights) – where these apply**
- 7.6.1** For the purpose of determining seniority – no distinction is to be drawn between permanent service and service while 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 vary 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.
- 7.6.2** Ordinarily fixed-term teachers do not have a right to re-deployment on the expiry of their contract – unless the post for which they are employed on a fixed-term basis continues on a fixed-term basis after the expiry of the contract. Such re-deployment shall be as a fixed-term teacher and no distinction should be drawn between part-time and full-time teachers in respect of the right to re-deployment.
- 7.6.3** 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. The practical arrangements will be the subject of further discussions between the parties.

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 under Education Personnel/Primary/Circulars and Information Booklets or e-mail query to: primary_payments@education.gov.ie

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