



Primary Circular 24/05

Protection of Employees (Fixed-Term Work) Act 2003

Transitional Agreement 2005

Enquiries to Department of Education and Science, External Staff Relations Section at (01) 889-2196/2143/2409/6564

To the managerial authorities of primary schools.

1. The Minister for Education and Science wishes to advise you that following discussions between the managerial authorities of schools, the teacher unions and the Departments of Education and Science and Finance a transitional agreement has been agreed in relation to the implementation of the Protection of Employees (Fixed Term Work) Act 2003. The agreement comprehends qualified teachers with more than four years successive service as at 1st September 2005 employed in mainstream primary schools.
2. The transitional agreement provides for further discussions between the parties in November 2005 on a range of outstanding issues and for a review of the agreement in February 2006.
3. Discussions on the application of the agreement to programmes and grades other than those referred to above are continuing and the outcome of those discussions will be notified in due course.
4. School management authorities are requested to identify relevant personnel comprehended by the provisions of the agreement and to implement the terms of the agreement in respect of those personnel with immediate effect.
5. If you have any queries in relation to any aspects of the agreement you should contact the Department of Education and Science, External Staff Relations Section at (01)8892196/2143/2409/6564.

Management authorities are requested to bring the contents of this Circular to the attention of the teaching staff. They are also requested to give a copy of the Circular to the members of the Board of Management.

This circular may be accessed on the Department of Education & Science website at www.education.ie under Education Personnel/ Primary/ Circulars and Information Booklets.

Michael Keogh
Principal Officer

13 October 2005

Implementation of Fixed Term Work Act, 2003

Education Sector

Transitional Agreement – September 2005

The following terms are proposed to the parties as terms for the first phase of an overall comprehensive agreement for the implementation of the Protection of Employees, Fixed Term Work Act, 2003 in the Education Sector. Also set out are the proposed phasing of negotiations and the elements for negotiation for the completion of a comprehensive agreement. While it remains the objective of the parties to conclude a comprehensive agreement it is accepted that the objective cannot be achieved without further detailed exploration of key issues, particularly in light of pending decisions from the Labour Court, and perhaps other judicial processes.

Equally, with the commencement of the 2005-2006 school/academic year, it is accepted that agreement should be reached on certain principles which would then be applied for that school year thus providing clarity for employers and fixed-term workers comprehended by those principles.

All elements of the transitional agreement would be open to review in light of experience and precedent developments elsewhere. Aggrieved individuals would have access to a voluntary appeals mechanism, without prejudice to the statutory rights of either side.

A schedule for the stages of further discussion, agreement and review is set out.

Stage I – September 2005

- Definition of Contract of Indefinite Duration (CID).
- Treatment of those with more than four years service as of 1st September 2005.
- Hours of the Contract of Indefinite Duration.
- Conversion process.
- Appeal mechanism for aggrieved individuals.

Stage II – November 2005

- Mechanism for future recruitment of fixed-term personnel.
- Access to permanent vacancies.
- Access to training.
- Conditions of employment.
- Mechanisms for the alignment of posts and available personnel.
- Treatment of unqualified teachers.

Stage III – February 2006

- Conclusion of outstanding issues.
- Review of transitional arrangements in light of developments in the interim.

1. General Principles

This Agreement applies to persons comprehended by the Teachers Conciliation Council.

The terms of this Agreement are based on an agreed interpretation of the Fixed Term Work Act, 2003 taking into account existing case law. It will be reviewed in the timescale set out in the Transitional Agreement and thereafter to take account of relevant case law as it emerges. It is recognised by the parties that relevant determinations will take precedence over the terms of this or any other Agreement so as to ensure the correct application of the Act in the educational sector.

2. Definition of 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 arrangements for the particular sector or the application of the relevant statute, as the case may be.

3. Treatment of those with more than four years service

Those fixed term employees with more than 4 years successive teaching service as at 1st September 2005 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 2001. Such persons (who

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

4. Hours of the Contract of Indefinite Duration

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).

5. Conversion Process

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 3 above.

The recruitment and interview procedures for future fixed-term workers will be addressed in the November Stage of the agreement process and will provide for a formal procedure for the recruitment and retention of fixed-term workers so as to ensure that those appointed on fixed-term contracts meet the necessary requirements and standards for the holding of positions both while engaged as fixed term workers and following the conversion of their contracts to that of Contract of Indefinite Duration.

6. Appeal System Aggrieved Individuals

Any individual who is not issued with a contract of indefinite duration or is dissatisfied with the terms of the contract issued shall have a right of appeal to an agreed adjudication process.

An adjudicator will be appointed by agreement between the Official Side and the Teacher Unions. The adjudicator will hear submissions from both parties and, unless the matter is settled, shall issue a written determination within fourteen days of the conclusion of the hearing.

The adjudicator shall have regard to the principles and terms of the Fixed Term Work Act, 2003 and will be provided with the support facilities, including access to independent legal advice, necessary to provide an efficient and effective adjudication process.

Either party shall have the right to reject the determination of the adjudicator, in which case, the determination will be set aside and will not be cited or revisited by either side in any statutory proceedings brought by the aggrieved individual. Nothing in this clause shall negate the right of the aggrieved individual to prosecute a grievance through the mechanisms provided for in the legislation.