AN ROINN OIDEACHAIS AGUS EOLAIOCHTA | DEPARTMENT OF EDUCATION AND SCIENCE

Circular 0078/2007

To the Chief Executive Officers of VECs.

Protection of Employees (Fixed-Term Work) Act 2003
Transitional Agreement 2007

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

1. The Minister for Education and Science wishes to advise you that following discussions between the IVEA, IMPACT and the Department of Education and Science a transitional agreement has been agreed in relation to the implementation of the Protection of Employees (Fixed Term Work) Act 2003. The agreement comprehends persons currently serving in VECs in administrative Grade III to Grade VII (inclusive) posts which are approved and funded by the Department of Education and Science and who have more than four years successive service as at 1st July 2007.

2. The transitional agreement provides for further discussions between the parties in September 2007 on a range of outstanding issues and for a review of the agreement in March 2008.

3. The outcome of discussions on the application of the agreement to grades other than those referred to above will be notified in due course.

4. VECs 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.

VECs are requested to bring the contents of this Circular to the attention of the administrative staff concerned.

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

Michael Keogh
Principal Officer

3 July 2007

Implementation of Fixed Term Work Act, 2003

Administrative Grades in the VEC sector

Transitional Agreement – July 2007.

Please refer to Circular 0078/2007

Following discussions between representatives of the Department of Education and Science, the Irish Vocational Education Association and IMPACT the following terms have been agreed in respect of the first phase of an overall comprehensive agreement for the implementation of the Protection of Employee, Fixed Term Work Act, 2003 in respect of administrative grades in the VEC sector. Also set out are the proposed phasing of negotiations and the elements for negotiation for the completion of a comprehensive agreement.

All elements of the transitional agreement are open to review in light of experience and precedent developments elsewhere.

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

Stage I –March 2007.

- Definition of Contract of Indefinite Duration (CID)
- Treatment of those with more than four years service as of 1st July 2007
- Hours of the Contract of Indefinite Duration
- Conversion process
- Mechanism for future recruitment of fixed-term personnel
- Access to permanent vacancies

Stage II –September 2007 .

- Conditions of employment

Stage III – March 2008

- Conclusion of outstanding issues
- Review of transitional arrangements in light of developments in the interim
- New contracts for sector to reflect changes in Employment law

1. General Principles

This Agreement applies to persons currently serving in Vocational Education Committees in administrative posts at Grade III to Grade VII inclusive and whose posts are approved and funded by the Department of Education and Science.

The terms of this Agreement are based on an agreed interpretation of the Fixed Term Work Act, 2003 taking into account existing law. It will be reviewed in the timetable 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 arrangement 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 service as at 1st July 2007 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 no later than the date of last renewal.

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 June 2003. Such persons 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 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.

6. Mechanism for future recruitment of fixed term personnel

The recruitment and interview procedures for future fixed-term workers will be the same as for permanent employees 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 if that arises.

Written contracts of employment shall be issued to all temporary (fixed-term) employees as soon as practicable after their appointment. It is considered best practice to issue the terms of contract no later than the date of commencement of

employment. This document shall be signed by the employee and the employer. The employee shall be given a copy of the document and the employer shall retain a copy on file.

Each statement of terms must contain the objective condition determining the contract whether it is;

- Arriving at a specific date
- completing a specific task, or
- the occurrence of a specific event.

Where an employer proposes to renew a fixed-term contract, the fixed term employee should be informed, at the latest by the date of renewal, in writing by the employer of the objective grounds justifying

(i) the renewal of the fixed-term contract and
(ii) the failure to offer a contract of indefinite duration.

7. Access to Permanent Vacancies in the Existing Employment

Fixed-term employees must be notified of the existence of a permanent vacancy. Vocational Education Committees 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 *"may be provided by means of a general announcement at a suitable place or undertaking or establishment".*

The method used to bring such vacancies to the attention of fixed-term employees shall be included in the written statement of terms given to each fixed-term employee. The methodology to be used is not prescriptive and may include, for example, any or all of the following:

- the use of the employer website,
- notifications to individuals outside of normal working time,
- the office/school/centre notice board during term time.

The objective is to ensure that the fixed-term employee is notified of the vacancy in a timely manner so as to provide him/her with the opportunity to apply for the position should s/he wish to do so. Fixed term employees on leave should be notified of such vacancies.