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Circular 0033/2009

**To The Management Authorities of Voluntary Secondary, Community
and Comprehensive Schools, and the Chief Executive Officers of
Vocational Education Committees**

To: The Management Authorities of Post Primary Schools.

Amendment to Circular 0056/2008

Circular 0056/2008 advises school authorities of the terms agreed for the implementation of the Protection of Employees (Fixed Term Work) Act 2003 insofar as it applies to persons who are deemed to be **incompletely qualified** or **unqualified** and employed in an approved teaching post wholly funded out of moneys provided by the Oireachtas with a contract of employment with the Vocational Education Committee/ or post primary school.

Section 1.2 of that circular states that the terms of the circular will be open to review in light of experience and precedent developments elsewhere.

The purpose of this circular is to set out a change to circular 0056/2008 necessary to bring it in line with case law. Circular 0056/2008 is hereby superseded.

The following changes are effective immediately:

1. 2.2 (ii) is hereby replaced with

(ii) s/he has had in excess of 4 years continuous service (those employed for the first time after 14th July 2003 must have two or more successive contracts of employment) with the same employer that were paid for out of monies provided by the Oireachtas,

2. 2.2 the first exclusion is hereby deleted and the subsections numbered.

Paragraph 2 of circular 0056/2008 now reads:

2.1 Par 9.(1) of The Fixed Term Work Act 2003 states

“Subject to *subsection (4)*, where on or after the passing of this Act a fixed-term employee completes or has completed his or her third year of continuous employment with his or her employer or associated employer, his or her fixed-term contract may be renewed by that employer on only

one occasion and any such renewal shall be for a fixed term of no longer than one year

Par 9 (4) *Subsections (1) to (3)* shall not apply to the renewal of a contract of employment for a fixed term where there are objective grounds justifying such a renewal.

2.2 In pursuant of this Act, agreement under the auspices of the Teachers Conciliation Council has now been reached on persons comprehended under par 1.5 above. In accordance with the FTW Act Par 9.1 outlined above and on an entirely exceptional basis the employer shall issue a contract of indefinite duration to any such member of the staff whose initial employment commenced before **7th September 2006** and who satisfies the following conditions;

- (i) s/he is registered with the Teaching Council
- (ii) s/he has had in excess of 4 years continuous service (those employed for the first time after 14th July 2003 must have two or more successive contracts of employment) with the same employer that were paid for out of monies provided by the Oireachtas

unless s/he is excluded by reason of one or more of the following

- (i) s/he is covering for a teacher or employee absent on an approved scheme of leave of absence and such a ground was set out as an objective ground in writing in the previous contract or
- (ii) the post will not be viable within a reasonable period and such a ground was set out as an objective ground in writing in the previous contract

The revised text of the implementation arrangements is enclosed at Appendix 1.

This circular and an Irish translation can be accessed on the Department's website www.education.ie

Queries concerning this circular letter should be emailed to: allocations@education.gov.ie

Huber Loftus
Principal Officer

June, 2009

Protection of Employees (Fixed Term Work) Act 2003 Implementation Agreement to address specific exceptional cases

Amended Text.

1 PURPOSE OF THIS CIRCULAR

- 1.1 The purpose of this circular is to advise school authorities that terms agreed for the implementation of the Protection of Employees (Fixed Term Work) Act 2003, advised in Circular [55/2008](#) and applicable to qualified teachers may also be applied, where relevant, to those of persons who are deemed to be **incompletely qualified** or **unqualified** and employed in an approved teaching post wholly funded out of moneys provided by the Oireachtas with a contract of employment with the Vocational Education Committee/ or post primary school.
- 1.2 Interpretation of the terms of this circular, where necessary, is a matter to be decided under the auspices of the Teachers Conciliation Council. Any difficulties arising should be brought to the attention of the appropriate representative organisation for the purpose of clarification. The terms of this circular will be open to review in light of experience and precedent developments elsewhere.
- 1.3 The mechanism for future recruitment of fixed term personnel is outlined clearly in Circular 0124/2006 dated 7 September, 2006. This circular states:
3.2 "Registerable teachers (in accordance with Circular Letters [101/2006](#), [102/2006](#) and [103/2006](#)), who are appropriately qualified for the advertised post, shall be recruited for all vacancies. In exceptional circumstances where the employer can demonstrate to the satisfaction of the Department of Education and Science that every reasonable effort has been made to recruit an appropriately qualified teacher, an unqualified person may be recruited pending the recruitment of an appropriately qualified teacher and this provision must be inserted in the terms of contract issued to that applicant. There is, however, an ongoing commitment on behalf of the employer to seek to recruit a fully qualified teacher for all vacancies".
- 1.4 This policy is restated in Circular [55/2008](#) :
- 2.3 "To be eligible for recruitment to a teaching post, the teacher shall be registered by the Teaching Council and shall satisfy the recruitment policy in the relevant second-level sector as approved from time to time by the Minister.
- 2.4 An employer is obliged to select for appointment only those candidates whose qualifications are suited to the purpose of the post for which s/he is proposed. Every reasonable effort shall, therefore, be made by an employer to recruit a suitably qualified teacher.
- 2.5 In exceptional circumstances, where the employer can satisfactorily demonstrate to the Department of Education and Science that every

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reasonable effort has been made to recruit an appropriately qualified teacher, an unqualified person may be recruited pending the recruitment of an appropriately qualified teacher and this provision must be inserted in the terms of the contract issued to that applicant. The recruitment of an unqualified person shall be fully documented in the school records and these records shall be made available for inspection by the Department if requested. The employer shall repeat the process to recruit an appropriately qualified teacher within the period of such a contract. This provision will be reviewed prior to the commencement of Section 30 of the Teaching Council Act 2001.”

- 1.5 Notwithstanding the provisions of paragraph 1.3 and 1.4 above it is recognised that certain schools/VECs have employed incompletely qualified/unqualified persons in approved teaching posts for a number of years prior to the issue of Circular [0124/2006](#) and that a number of such persons may now have entitlements under the Fixed Term Workers Act 2003.

2 Entitlement to CID

- 2.1 Par 9.(1) of The Fixed Term Work Act 2003 states
“Subject to *subsection (4)*, where on or after the passing of this Act a fixed-term employee completes or has completed his or her third year of continuous employment with his or her employer or associated employer, his or her fixed-term contract may be renewed by that employer on only one occasion and any such renewal shall be for a fixed term of no longer than one year
Par 9 (4) *Subsections (1) to (3)* shall not apply to the renewal of a contract of employment for a fixed term where there are objective grounds justifying such a renewal.
- 2.2 In pursuant of this Act, agreement under the auspices of the Teachers Conciliation Council has now been reached on persons comprehended under par 1.5 above. In accordance with the FTW Act Par 9.1 outlined above and on an entirely exceptional basis the employer shall issue a contract of indefinite duration to any such member of the staff whose initial employment commenced before **7th September 2006** and who satisfies the following conditions;
- (i) s/he is registered with the Teaching Council
 - (ii) s/he has had in excess of 4 years continuous service (those employed for the first time after 14th July 2003 must have two or more successive contracts of employment) with the same employer that were paid for out of monies provided by the Oireachtas,
- unless s/he is excluded by reason of one or more of the following
- i) s/he is covering for a teacher or employee absent on an approved scheme of leave of absence and such a ground was set out as an objective ground in writing in the previous contract or
 - ii) the post will not be viable within a reasonable period and such a ground was set out as an objective ground in writing in the previous contract

3. **Other terms of employment**

- 3.1. Access to the Incremental scale/incremental credit applies only to fully qualified teachers.

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- 3.2 The arrangements for redeployment are those which are set out in the agreements between unions and employers in the relevant sectors from time to time.
4. Management Authorities are requested to identify relevant personnel comprehended by the provisions of this agreement and to implement the terms of the agreement.

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Hubert Loftus
Principal Officer

June 2009

