



**Circular Letter
0048/2020**

To: The Chief Executives of Education and Training Boards

**ACTING-UP ARRANGEMENTS AND ACTING-UP ALLOWANCES FOR ALL
STAFF OTHER THAN PERSONS EMPLOYED AS TEACHERS AND SPECIAL
NEEDS ASSISTANTS IN EDUCATION AND TRAINING BOARDS**

The Minister for Education and Skills directs you to implement the regulations and procedures regarding acting-up arrangements and allowances for all eligible staff other than persons employed as teachers/special needs assistants (SNAs) in ETBs whose posts are wholly funded by monies provided by the Oireachtas.

The regulations and procedures outlined in this circular are to be implemented by each employer with immediate effect and all staff other than persons employed as teachers/SNAs must adhere to the terms of this circular.

This circular supersedes all previous circulars, memoranda, rules, regulations and arrangements in relation to acting-up arrangements and allowances for all staff other than persons employed as teachers/SNAs in ETBs. Circular 65/2018 is hereby revoked.

Please ensure that copies of this circular are brought to the attention of all staff other than persons employed as teachers/SNAs in your employment including those on leave of absence.

Queries should be sent in the first instance to hr@etbi.ie for collation and forwarding to Department of Education and Skills where appropriate.

This Circular can be accessed on the Department's website under www.education.ie

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04 August 2020

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Acting-up Arrangements and Allowances for all staff other than persons employed as teachers and SNAs

Definitions

For the purposes of this scheme the following terms shall have the meanings assigned to them here unless the context indicates otherwise:

Acting-Up Allowance – means an allowance payable for a sanctioned acting-up position in the form of an additional payment equal to the difference between current salary and the appropriate point on the new scale.

Employee – means a member of staff of an ETB other than persons employed as a teacher/SNA, who is in receipt of a salary under a permanent contract, contract of indefinite duration (CID), or fixed-term contract as defined in the Protection of Employees (Fixed Term Work) Act 2003.

Employer – means an Education and Training Board (ETB).

The Department – means the Department of Education and Skills.

1. Principles for Acting-up Arrangements

- 1.1 Acting-up positions may arise from time to time. An acting-up position is only allowable if sanctioned by the Department, whether directly or pursuant to a more general delegated sanction arrangement. In sanctioning acting-up positions the Department/ETB will be mindful that acting-up positions should not be offered in circumstances where the post is clearly a post that should be offered as a permanent or fixed-term post. An acting-up position may arise where an employee is required to act as a substitute for another employee in a higher grade when the employee in the higher grade is absent for a short to medium term absence due to, for example, sick leave, maternity leave, carer's leave or other such short to medium term absence. Thereby it follows that posts which arise due to circumstances such as retirements, resignations, death-in-service, additional posts required following organisational review or restructuring, etc., that such posts are generally deemed to be permanent or fixed-term posts as opposed to acting-up posts, unless there are objective grounds for filling such posts on an acting basis.
- 1.2 Where an ETB is appointing a person to an acting-up position, the appointment is subject to the following terms and conditions:
- The appointment must follow the terms of the sanction provided by the Department.
 - The appointment must not give rise to the filling of a position where this would be in contravention of the moratorium on recruitment in the public sector/Delegated Sanction Agreement. In approving acting-up arrangements and in operating this circular ETBs must be mindful of the need to act within sanctioned posts.
 - The appropriate terms and conditions relating to posts, including job specifications, are signed prior to any appointment being made.
 - Any contract entered into in relation to the temporary/acting-up posts clearly indicates the fixed purpose nature of these posts.
 - Any costs associated with the acting-up position must be met from within existing allocated resources.
 - Acting-up arrangements should only be considered where all options around re-organisation and re-allocation of work have been fully exhausted. This applies to the acting-up position and to any consequential backfilling that may be considered or approved.
 - The payment of an acting-up allowance must be in accordance with section 2 of this circular.
 - The payment of an acting-up allowance is always made by reference to the employee's substantive role.
 - Every effort should be made to keep the practice of temporary assignment to higher duties to a minimum, and where assignment to higher duties continues for 12 months the position should be reviewed and if possible the post should be filled by the promotion (to be conducted under normal recruitment processes) of a suitable and qualified person.
 - Instances of acting into several successive roles is only to be considered in exceptional circumstances.

2. Payment of an acting-up allowance

- 2.1 The following procedures apply to all acting-up positions made on or after the 9th December 2014 made in accordance with Section 1 of this circular or apply to those employees who on that date were in a sanctioned acting-up post that was made in accordance with Section 1 of this circular. The arrangements for salary calculations should be made in accordance with the Circular **47/2020** *'Revised arrangements applying to starting pay for all staff other than persons employed as teachers and SNAS in Education and Training Boards'* (or by any future circular(s) that may supersede circular 47/2020).
- 2.2 Any acting-up allowance will not be payable unless the acting-up period exceeds a continuous period of 84 days. This means that the person who is appointed to act up in a sanctioned acting-up position will not receive payment until day 85 of their acting-up period has been reached. They can then receive arrears back to day 1. Where a person has been appointed to act up into successive roles this section will apply to each acting position.
- 2.3 a) A person, for the duration of the assignment to the acting-up position, should continue to be treated for pay and incremental progression purposes as if s/he had been promoted to the higher grade viz. her/his total remuneration (*salary and allowance*) should be equivalent to the pay s/he would be in receipt of if s/he had been promoted to the higher grade.
- b) On the first anniversary of the date of assignment to the acting-up position, the allowance should be increased such that total remuneration corresponds to the next incremental point on the scale of the higher grade and increments on the higher scale awarded as appropriate. This process should cease when the person reaches the max of the higher scale.
- c) The allowance should continue to be reviewed thereafter on each anniversary of the date of assignment to higher duties.
- 2.4 If, following assignment to an acting-up position, an increment is awarded on the person's substantive scale (the lower scale), overall pay should not change because overall pay is calculated by the appropriate pay in the higher grade and in accordance with the provisions of circular 47/2020 *'Revised arrangements applying to starting pay for all staff other than persons employed as teachers and SNAS in Education and Training Boards'*. Total remuneration payable will be determined by reference to these arrangements to ensure that, at any point in time, an officer assigned to higher duties is in receipt of total remuneration equivalent to the pay s/he would be receiving if s/he had been promoted to the higher grade. The award of an increment on the substantive scale will not therefore result in an increase in the total remuneration payable but will affect the balance between pay and allowance.
- 2.5 If, following assignment to an acting-up position, an increment is awarded on the person's substantive scale before the first anniversary of their appointment to the acting-up post which results in the substantive point of scale being higher than their acting-up scale, the person should be placed on the next point of the higher scale, to ensure the acting-up position is remunerated accordingly.

- 2.6 Where a person who obtains the position is currently earning a salary which exceeds the maximum of the new position's scale then they may be appointed to the position on the maximum of the new position's scale only. No acting-up allowance is payable in this situation. No derogation from this principle will be considered.
- 2.7 When the acting up position ceases the employee will revert to the appropriate point on the payscale of their substantive post, which will take account of incremental progression on the payscale of the substantive post during the period of acting up.
- 2.8 (a) If an employee, while in receipt of an allowance for higher duties, is promoted into the grade to which they are acting (with no break in service in the acting grade) the employee's starting pay on promotion will be the more favourable of the following:
- (i) calculated by reference to the normal starting pay on promotion rules.
- or**
- (ii) the equivalent of the employee's total remuneration i.e. salary plus allowance, on the date of promotion. The date of promotion, or if it is more favourable, the date on which the next revision of the higher duties allowance would have arisen (i.e. anniversary of assignment/accrual) becomes the officer's new incremental date.
- (b) There may be situations where the combination of an employee's salary on his substantive scale and the higher duties allowance calculated in accordance with 2.8 (i) or (ii) above gives rise to a total figure which is equivalent to, or greater than, the normal maximum point (i.e. exclusive of long service increments) of the higher scale. If an employee in this situation is promoted, the period of time during which the employee was in receipt of total remuneration equivalent to, or in excess of, the normal maximum point may be taken into account in calculating the service required to qualify for long service increments (for grades that have agreed long service increments).
- 2.9 In applying the rules set out under 2.8 under no account should an employee on promotion into a higher grade be granted a salary in excess of the LSI2 of the new scale.
- 2.10 In the context of the foregoing paragraphs salary is to be taken to mean salary inclusive of allowances in the nature of pay which are fixed periodic pensionable allowances.
- 2.11 The ETB is responsible for ensuring that an employee in an acting up position, or an employee whose acting duties cease and who revert to their substantive scale, or an employee in receipt of an allowance for higher duties who is promoted into the grade to which they are acting, is at all times placed on the correct point of the scale.

- 2.12 Queries should be sent in the first instance to hr@etbi.ie for collation and forwarding to Department of Education and Skills where appropriate.

3. Superannuation Contributions

The acting-up allowance will be reckonable for pension purposes in accordance with the rules of the Pension Scheme of which the holder is a member. Superannuation contributions will be deducted from the acting-up allowance. In the case of members of the Public Service Single Pension Scheme the allowance while in payment will reckon in the calculation of Referable Amounts under that scheme.

4. Enhanced Controls in relation to Terms and Conditions of Employment Agreed with effect from 30 November 2015

- 4.1 Employers are advised that the Ministers and Secretaries (Amendment) Act 2011 has been amended under the FEMPI Act 2015 to introduce enhanced controls in relation to terms and conditions of employment agreed between public servants and their public service body employers with effect from 30 November 2015. The relevant sections of the Act are included at Appendix 1. Overpayments must be managed in accordance with Circular 32/2016.

5. Further Information

- 5.1 In accordance with the introductory paragraph the regulations in this circular are to be implemented by the employer. Thus all queries should initially be brought to the attention of the HR Unit in a staff member's ETB.

Appendix 1

Section 12 of the Financial Emergency Measures in the Public Interest Act 2015 Amendment of Ministers and Secretaries (Amendment) Act 2011

The Ministers and Secretaries (Amendment) Act 2011 is amended by the insertion of the following section after section 16:

Control of terms and conditions of public servants

16A. (1) Where—

(a) the Minister has approved a term or condition as being a term or condition that shall apply for the time being in respect of the employment of a class or category of public servant (whether that approval takes the form of an approval as such, any other form of sanction or the giving of consent by the Minister to a decision of another person in the matter), and

(b) a contract of employment in respect of a public servant falling within that class or category is entered into that contains a term or condition that corresponds or is equivalent to the term or condition standing so approved but which is more favourable to the public servant than that term or condition, the contract shall have effect as if the term or condition standing so approved (referred to in subsections (2) and (3) as the 'approved term or condition') were substituted for the first-mentioned term or condition in paragraph (b) (referred to in subsections (2) and (3) as the 'unapproved term or condition').

(2) Any amount paid to the public servant concerned in purported compliance with the unapproved term or condition that is in excess of the amount payable to the public servant under the approved term or condition shall be disregarded for the purpose of calculating any pension entitlement (including an entitlement to a lump sum and an entitlement to periodic payments of pension) of that public servant.

(3) Where an amount is paid to the public servant concerned in purported compliance with the unapproved term or condition that is in excess of the amount payable to the public servant under the approved term or condition then—

(a) the public servant shall hold the overpayment in trust for the public service body, and

(b) the public service body shall recover the amount of the overpayment from the public servant, either directly or by a deduction taken from remuneration subsequently payable to that public servant or otherwise.

(4) Where—

(a) a contract of employment is entered into in respect of a public servant, and

(b) the contract contains a term or condition in relation to remuneration that does not correspond or is not equivalent to any term or condition standing approved by the Minister in respect of the employment of a class or category of public servant into which the first-mentioned public servant falls (whether that approval takes the form of

an approval as such, any other form of sanction or the giving of consent by the Minister to a decision of another person in the matter), the term or condition shall be void.

(5) Any amount paid to the public servant concerned in purported compliance with a term or condition voided under subsection (4) shall be disregarded for the purpose of calculating any pension entitlement (including an entitlement to a lump sum and an entitlement to periodic payments of pension) of that public servant.

(6) Where an amount is paid to the public servant concerned in purported compliance with a term or condition voided under subsection (4) then—

(a) the public servant shall hold the amount in trust for the public service body, and

(b) the public service body shall recover the amount from the public servant, either directly or by a deduction taken from remuneration subsequently payable to that public servant or otherwise.

(7) Subsections (3) and (6) shall not be taken as limiting the liability under statute of any person to account for such overpayment.

(8) Where an amount to which subsection (3) or (6) relates has not been recovered by the public service body concerned, the Minister may direct in writing that body to recover, by a specified date, the amount in accordance with subsection (3)(b) or (6)(b), as the case may be, and, where that body fails to so recover the amount, the Minister may deduct the amount from any grant or vote of, or other payment to, that body out of money provided directly or indirectly by the Oireachtas or from the Central Fund or the growing produce of that Fund.

(9) This section applies to a term or condition agreed after the commencement of *section 12* of the *Financial Emergency Measures in the Public Interest Act 2015*.

(10) This section has effect notwithstanding—

(a) any other enactment,

(b) any pension scheme or arrangement,

(c) any other agreement or contractual arrangement, or

(d) any understanding, expectation, circular or instrument or other document.

(11) In this section—

“public servant” means a person who is employed by, or who holds any office or other position in, a public service body;

“remuneration” means emoluments to which Chapter 4 of Part 42 of the Taxes Consolidation Act 1997 applies or is applied.”.