



Circular Letter 0065/2018

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.

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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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 incremental 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 re-structuring, 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.

2. Payment of Acting-up Allowances

2. Payment of an acting-up allowance - 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. In the case of the latter, and with effect from 9th December 2014, the arrangements for salary calculations should be revised and the arrangements of this circular letter should be applied (worked example for the latter is attached at Appendix 1). These procedures supersede DES letter of 03 March 2015 in regard to payment of acting-up allowances.
- 2.1 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.
- 2.2 Where a person who obtains the acting-up position is currently earning a salary less than the minimum point of the acting-up position scale then they are eligible to receive an acting-up allowance. This acting-up allowance shall take the format of an additional payment equal to the difference between their current salary and the first point on the new scale.
- 2.3 Where a person who obtains the acting-up position is currently earning a salary which is between the minimum and the maximum of the acting position scale then they are eligible to receive an acting-up allowance. The person should be placed on the higher scale on the nearest point not below their existing salary plus one increment. The sequence is existing point on pay scale and then move to nearest point not below plus one increment on the higher pay scale.
- 2.4 Where a person who obtains the acting-up position is currently on a long service increment, the following will apply:
- Employees on an LSI I – the person should receive the most favourable of:-
 - 1) the minimum of the higher scale, **or**
 - 2) existing pay plus two increments on the higher scale
 - Employees on an LSI II – an employee in receipt of the second long service increment, on appointment to an acting-up position, should receive the most favourable of the following:
 - 1) The minimum of the higher scale, **or**
 - 2) The first long service increment plus two increments on the higher scale, **or**
 - 3) The second long service increment plus one increment on the higher scale

In the case of both LSIs, where the increment(s) option is selected, the sequence will be existing point on the substantive pay scale and then move to nearest point not below plus increment(s) on the higher pay scale.

- 2.5 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.
- 2.6 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 sections 2.2, 2.3 and 2.4 of this document. Total remuneration payable will be determined by reference to the arrangements in paragraphs 2.2, 2.3, and 2.4 so as 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.

(Worked example attached at Appendix 2a)

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 accordingly¹.

(Worked example attached at Appendix 2b)

- 2.7 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.
- 2.8 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.

¹ The principle of nearest point not below plus one increment, as set out in paragraph 2.3, does not apply in this instance as that principle has already been applied to the position.

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 3.

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

In January 2013 an employee is employed at Grade VI in an ETB at Point 4 the Grade VI pay scale - €49,796 with an increment date of 27th October. This is the employee's substantive post. The employee is appointed to a sanctioned acting-up post at Grade VII on 2nd January 2013.

As per DES Letter of 3 March 2015, where an employee who obtains an acting-up position is earning a salary which is between the minimum and the maximum of the new scale they should be placed on the higher scale on the nearest point not below their existing salary. If they remain in the position and fall eligible for the payment of an increment they can have incremental progression as normal **but can only advance up the new scale to the nearest point not below the maximum of their existing salary scale.**

The arrangements in DES Letter of 3 March 2015 are replaced with the arrangements in this circular. Where a person who obtains the acting-up position is currently earning a salary which is between the minimum and the maximum of the acting-up position scale then they are eligible to receive an acting-up allowance. The person should be placed on the higher scale on the nearest point not below their existing salary plus one increment. The sequence is existing point on pay scale and then move to nearest point not below plus one increment on the higher pay scale.

With effect from 9th December 2014, the arrangements for salary calculations should be revised and the arrangements of circular 65/2018 letter should be applied. These revised arrangements 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 and the arrangements in this circular will be applied retrospectively to that cohort also. The employee should be appointed to the point on scale that would have applied if an increment was awarded as appropriate on each anniversary (or the appropriate date when HRA freezing of increments is applied) of the assignment to higher duties and any arrears arising as a consequence should be paid to the employee.

Substantive Post	Grade VI	
Increment Date	27 th October	
Point on scale (at January 2013)	Point 4 – €49,796	
Max of Grade VI Salary Scale (at January 2013)	€55,031	
Acting-up Post	Grade VII**	
Appointment Date to acting post	2 nd January 2013	
	Arrangements Under DES Letter 03/03/2015	Revised Arrangements under CL 65/2018
DES letter 3 March 2015: To point on Grade VII scale - nearest point not below point on substantive post pay scale. Circular 65/2018 To Point on Grade VII scale - nearest point not below their existing salary plus one increment. The sequence is existing point on pay scale and then move to nearest point not below plus one increment on the higher pay scale.	4 - €50,935	N/A
2 nd January 2014 - HRA increment freeze of 3 months applies, bringing increment date to 2nd April 2014 . Employee progresses to next point on acting post scale.	5 - €52,313	N/A

9 th December 2014 (Circular 65/2018)		
Increment Date (substantive grade)	27 th October	
Point on scale (at 9 th December 2014)	Point 5 - €51,294	
Max of Grade VI Salary Scale (at January 2014)	€55,031	
Acting Post	Grade VII**	
Appointment Date to acting post	2 nd January 2013	
	Arrangements Under DES Letter 03/03/2015	Revised Arrangements under CL 65/2018
DES letter 3 March 2015: To point on Grade VII scale - nearest point not below point on substantive post pay scale. Circular 65/2018 To Point on Grade VII scale - nearest point not below their existing salary plus one increment. The sequence is existing point on pay scale and then move to nearest point not below plus one increment on the higher pay scale.	5 - €52,313	6 - €53,545
2 nd April 2015 – HRA increment freeze of 3 months applies, bringing increment date to 2nd July 2015 . Employee progresses to next point on acting post scale.	6 - €53,545	7 - €55,800
2nd July 2016 – acting allowance to be reviewed on the anniversary of the date of assignment to higher duties and increments awarded on this date on the higher scale as appropriate, taking account of HRA increment freezes	7 - €54,800	8 - €57,020
2nd July 2017 - acting allowance to be reviewed on the anniversary of the date of assignment to higher duties and increments awarded on this date on the higher scale as appropriate, taking account of HRA increment freezes Under DES Letter of 3 March 2015 incremental progression was not to exceed the nearest point not below the max of the substantive pay scale post. Therefore this was the maximum point this employee could reach on the Acting scale and no further increments would be awarded. Under the revised arrangements in Circular 65/2018, the employees will continue to receive an increment on the anniversary of the acting appointment, taking account of HRA freezes, until they reach the max of the Acting Scale.	8 - €56,020	9 - €58,234

Appendix 2a

An employee is employed at Grade VI in an ETB at point 2 on the Grade VI payscale - €45,954 with an increment date of 7th March. This is the employee's substantive post. The employee is appointed to a sanctioned acting-up post at Grade VII on the 24th April 2017. Where a person who obtains the acting-up position is currently earning a salary less than the minimum point of the acting position scale then they are eligible to receive an acting-up allowance. This acting-up allowance shall take the format of an additional payment equal to the difference between their current salary and the first point on the new scale.

On the first anniversary of the date of assignment to the acting up-position (i.e. 24th April 2018), the acting-up allowance should be increased so that total remuneration corresponds to the next incremental point of the higher grade and increments awarded on the higher scale as appropriate.

If, following assignment to the acting-up position an increment is awarded on the person's substantive scale, overall pay in the acting-up post will not change. The acting-up allowance will be reviewed on each anniversary of the date of assignment to higher duties and increments will be awarded on this date on the higher scale as appropriate. This process will cease when the employee reaches the max of the higher scale.

When the acting-up position ceases the employee will revert to the appropriate point on the pay scale of their substantive post which will take account of incremental progression on the substantive post pay scale during the period of acting up.

Substantive Post	Grade VI
Increment Date	7 th March
Point on scale	2 - €46,954
Acting-up Post	Grade VII
Appointment Date to acting-up post	24 th April 2017
To point on Grade VII scale - to the first point on the Grade VII scale	1 – €48,013
Acting-up Allowance -difference between point on scale in the substantive post and the acting-up post. (allowance will not be payable unless the acting-up period exceeds a continuous period of 84 days – see Section 2.1)	€1,059
7 th March 2018 - Increment due on employee's substantive post, to point 3 on Grade VI pay scale, €48,289. This does not affect overall pay in the acting position.	€48,289
24 th April 2018 - Increment due on acting-up post pay scale, to point 2 on Grade VII pay scale	€49,697
Acting-up Allowance w.e.f. 24 th April 2018 (difference between point on scale in the substantive post and the acting-up post).	€1,408

Appendix 2b

An employee is employed at Grade VI in an ETB at point 3 on the Grade VI pay scale - €48,771 with an increment date of 7th March. This is the employee's substantive post. The employee is appointed to a sanctioned acting up post at Grade VII on the 1 February 2018. Where a person who obtains the acting position is currently earning a salary which is between the minimum and the maximum of the acting position scale then they are eligible to receive an acting-up allowance. The person should be placed on the higher scale on the nearest point not below their existing salary plus one increment. The sequence is existing point on pay scale and then move to nearest point not below plus one increment on the higher pay scale – P.3 €51,064.

On 7th March 2018, the employee receives an increment on their substantive pay scale – P.4 €51,304.

This results in the substantive pay being greater than the acting-up pay.

Substantive Post	Grade VI
Increment Date	7 th March
Point on scale	3 - €48,771
Acting Post	Grade VII**
Appointment Date to acting post	1 st February 2018
To point on Grade VII scale - to the 3 rd point on the Grade VII scale	3 - €51,064
Acting Allowance -difference between point on scale in the substantive post and the acting post. (allowance will not be payable unless the acting-up period exceeds a continuous period of 84 days – see Section 2.1)	€2,293
7 th March 2018 - Increment due on employee's substantive post, to point 4 on Grade VI pay scale, €51,304.	€51,304
The substantive pay is now higher than the acting-up position.	
7 th March 2018 – Apply further increment on Grade VII scale	
7 th March 2018 – Point GVI scale – 4 th	€51,304
To point on Grade VII scale – 4 th point	€52,454
Acting Allowance	€1,150
1 st February 2019 - Increment due on acting post pay scale, to point 5 on Grade VII pay scale	€53,846
Acting Allowance	€2,542
(Difference between point on scale in the substantive post and the acting post).	
7 th March 2019 – increment due on substantive post – P.5	€52,817
Acting allowance (Difference between point on scale in the substantive post and the acting post).	€1,029

Appendix 2c

Worked Examples for employees on Long Service Increments being appointed to an Acting-Up position.

Substantive & Acting Grade	Options	Sequencing
<p>Grade V on LSI I €48,457</p> <p>Acting Grade VI Minimum of pay scale €46,308</p>	<p>Option 1: The minimum of the scale for the higher grade</p> <p>Option 2: Existing pay plus two increments on higher pay scale.</p>	<p>1) €46,308</p> <p>2) Nearest point but not below existing pay is €48,771 plus two increments is €52,817</p>
<p>Grade V on LSI II €49,990</p> <p>Acting Grade VI Minimum of pay scale €46,308</p>	<p>Option 1: The minimum of the scale for the higher grade</p> <p>Option 2: First long service increment plus two increments on higher pay scale.</p> <p>Option 3: Second long service increment plus one increment on higher pay scale.</p>	<p>1) €46,308</p> <p>2) First long service increment on substantive pay scale is €48,457. Nearest point on higher pay scale but not below LSI I is €48,771, plus two increments is €52,817.</p> <p>3) Second long service increment on substantive pay scale is €49,990. Nearest point on higher pay scale but not below LSI II on substantive pay scale is €51,304 plus one increment is €52,817.</p>
<p>Grade V on LSI I €48,457</p> <p>Acting Grade VII Minimum of pay scale €48,493</p>	<p>Option 1: The minimum of the scale for the higher grade</p> <p>Option 2: Existing pay plus two increments on higher pay scale.</p>	<p>1) €48,493</p> <p>2) Nearest point but not below existing pay is €48,493 plus two increments is €51,064</p>

Grade V on LSI II €49,990	Option 1: The minimum of the scale for the higher grade	1) €48,493
Acting Grade VII Minimum of pay scale €48,493	Option 2: First long service increment plus two increments on higher pay scale.	2) First long service increment on substantive pay scale is €48,457. Nearest point on higher pay scale but not below LSI I is €48,493 plus two increments is €51,064.
	Option 3: Second long service increment plus one increment on higher pay scale.	3) Second long service increment on substantive pay scale is €49,990. Nearest point on higher pay scale but not below LSI II on substantive pay scale is €51,064 plus one increment is €52,454.

Grade V, VI and VII Salary Scales

	1/1/10	1/4/17	1/1/18	1/10/18
Grade VII				
1	€ 47,013	€ 48,013	€ 48,493	€48,978
2	€ 48,187	€ 49,187	€ 49,679	€50,175
3	€ 49,559	€ 50,559	€ 51,064	€51,575
4	€ 50,935	€ 51,935	€ 52,454	€52,979
5	€ 52,313	€ 53,313	€ 53,846	€54,385
6	€ 53,545	€ 54,545	€ 55,091	€55,642
7	€ 54,800	€ 55,800	€ 56,358	€56,921
8	€ 56,020	€ 57,020	€ 57,590	€58,166
9	€ 57,234	€ 58,234	€ 58,817	€59,405
1st Long Service Increment	€ 59,322	€ 60,322	€ 60,925	€61,534
2nd Long Service Increment	€ 61,418	€ 62,418	€ 63,042	€63,673
	1/1/10	1/4/17	1/1/18	1/10/18
Grade VI				
1	€ 44,849	€ 45,849	€ 46,308	€46,771
2	€ 45,954	€ 46,954	€ 47,423	€47,898
3	€ 47,289	€ 48,289	€ 48,771	€49,259
4	€ 49,796	€ 50,796	€ 51,304	€51,817
5	€ 51,294	€ 52,294	€ 52,817	€53,345
1st Long Service Increment	€ 53,157	€ 54,157	€ 54,698	€55,245
2nd Long Service Increment	€ 55,031	€ 56,031	€ 56,591	€57,157
	1/1/10	1/4/17	1/1/18	1/10/18
Grade V	€ 40,213	€ 41,213	€ 41,625	€42,042
	€ 41,524	€ 42,524	€ 42,949	€43,379
	€ 42,836	€ 43,836	€ 44,274	€44,717
	€ 44,147	€ 45,147	€ 45,599	€46,055
	€ 45,458	€ 46,458	€ 46,923	€47,392
1st Long Service Increment	€ 46,977	€ 47,977	€ 48,457	€48,941
2nd Long Service Increment	€ 48,495	€ 49,495	€ 49,990	€50,490

Appendix 3

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.”.