

***GUIDELINES ON  
BEST PRACTICE FOR  
THE RECRUITMENT AND MANAGEMENT  
OF FIXED-TERM EMPLOYEES  
IN THE IRISH CIVIL SERVICE***

**Department of Public Expenditure and Reform  
April 2014**

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**INTRODUCTION**  
**THE PROTECTION OF EMPLOYEES**  
**(FIXED-TERM WORK) ACT 2003**

The *Protection of Employees (Fixed-Term Work) Act 2003* has fundamentally changed the employer's obligations towards fixed-term employees. The Act places a considerable onus on employers to ensure it is being administered correctly. Failure to comply fully with its terms can have major implications for employers, such as the granting of permanent status through contracts of indefinite duration.

While fixed-term contracts are a very useful management tool, Personnel sections should be fully aware of all matters in relation to the management of such contracts, in particular:

- the need for Personnel sections in all Departments and Offices to have procedures in place for dealing with the recruitment and employment of fixed-term employees and the management of their contracts.
- the need from the outset for the statement of clear and unequivocal reasons for the fixed-term (as opposed to a permanent) appointment. If a department/office cannot formulate such reasons the fixed-term employment process should not be entered into. Failure to state such reasons to the employee when the initial contract is entered in to and if there is a renewal thereafter may result in the creation of a contract of indefinite duration.
- any potential costings for the Department in relation to redundancy payments after the end of the contract period.

These Guidelines provide information on each stage of the process from recruitment to termination of contract, including information on forms of redress available to fixed-term employees.

## THE PURPOSE OF THE ACT

The purpose of the *Protection of Employees (Fixed-Term Work) Act 2003* (the Act) is:

- (i) To ensure that the principle of non-discrimination applies to fixed-term employees so that they are not treated less favourably than comparable permanent employees in relation to any and every term and condition of employment;<sup>1</sup>
- (ii) To prevent abuse arising from the use of successive fixed-term contracts by requiring the employer to demonstrate their necessity for the attainment of a legitimate business objective.

## TO WHOM THE ACT APPLIES

The Act covers all fixed-term employees including civil servants. While civil servants are regarded as office holders rather than employees they are specifically deemed to be employees for the purposes of the Act.

A fixed-term employee is defined as “*a person having a contract of employment entered into directly with the employer where the end of the contract is determined*”

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<sup>1</sup> Fixed-term workers are not entitled to the same tenure as comparable permanent employees: tenure is not a condition of employment.

*by an objective condition such as arriving at a specific date, completing a specific task or the occurrence of a specific event'' (Section 2(1)).*

**The following categories are NOT covered by the Act:-**

- Agency workers, individuals engaged in apprenticeships or vocational training, e.g. nurses or trainee Garda, and employees who have contracts concluded within the framework of a specific public or publicly-supported training, integration or vocational retraining scheme, e.g. Community Employment Schemes;
- Civil servants appointed to permanent positions on the basis of a 1-year probationary contract;
- Permanent civil servants who are assigned to temporary positions on secondment or otherwise. In such cases a Terms and Conditions of Appointment document should be given to the existing civil servant and not a fixed-term contract of employment. Permanent established civil servants should never be classified as fixed-term workers and, as with all established civil servants, should not receive a contract of employment.

## **ENTITLEMENTS OF FIXED-TERM EMPLOYEES UNDER THE ACT**

The 2003 Act provides for the following entitlements:

### No less favourable treatment

Fixed-term employees are entitled to be treated no less favourably than comparable permanent employees. Comparable permanent employees are permanent workers employed by the same or an associated employer, who perform the same work as the fixed-term workers under the same or similar conditions. Fixed-term employees are also entitled to no less favourable terms and conditions than a permanent employee if the work performed is different but of equal or greater value to that of the permanent employee.

### Contracts of Indefinite Duration

In certain circumstances where fixed-term contracts are mismanaged, fixed-term employees will be entitled to have their fixed-term contract, i.e. their contract of definite duration, converted into a contract of indefinite duration by operation of law.

It is essential, therefore, that the management of fixed-term contracts includes a system of monitoring to ensure that contracts are (i) compliant with the Act (and other legislation as appropriate) and (ii) do not become Contracts of Indefinite Duration (CIDs) through oversight.



## **SECTION 1**

### **THE RECRUITMENT PROCESS**

#### **1.1 The decision to appoint a person on a temporary basis**

There is an onus on Departments and Offices to consider carefully the business case for recruiting civil servants on a temporary basis. In examining the decision to engage temporary staff, the following questions need to be considered:

1. Why not a permanent appointment?
2. What is the legitimate objective or **real need** that requires a temporary appointment?
3. Are there any alternative means by which the objective could be achieved, e.g. the redeployment of existing staff?

#### **1.2 Examples of situations where a temporary appointment may be appropriate:**

- To fill vacancies arising from maternity, adoptive or parental leave.
- To clear a backlog of work in exceptional circumstances.
- Internships.
- Where there is an immediate need to fill a vacancy as a stop-gap measure prior to organising a recruitment competition under codes of practice.
- Special ‘once-off’ projects linked to deadlines.
- To meet seasonal demands.
- To fill appointments to senior civil service posts (such as Secretary Generals and other heads of departments and offices, CEO-type posts in civil service bodies, certain statutory and higher-level posts) where it is Government

policy, for reasons of good governance and management, not to make appointments on a permanent basis or where there is specific legislation limiting the term of appointment.

- Appointment of Ministerial Private Office staff. (For information on procedures for the appointment of Ministerial Private Office staff, refer to *Instructions to Personnel Officers - Ministerial appointments for the 31<sup>st</sup> Dáil – Department of Finance – 24 March 2011*).

### **1.3 Recruitment procedures**

Where a decision is made to employ a person on a temporary basis, the following recruitment procedures should be followed:

All temporary staff should be recruited by way of open competitions carried out by the Public Appointments Service (PAS) or a Government Department or Office under licence and in accordance with the Commission for Public Service Appointments (CPSA) Codes of Practice. The PAS is the central recruitment, assessment and selection body for the Civil Service, established under the *Public Service Management (Recruitment and Appointments) Act 2004*. The Act also provides for the issuing of recruitment licences by the CPSA to a Secretary General of a Department or Head of Office. The recruitment process for fixed-term employees must meet all the requirements of the Act and CPSA Codes of Practice.

In exceptional circumstances, it may be necessary to make an appointment outside the procedures of the 2004 Act by way of an excluding order, e.g. if a critical position in a professional/technical area is vacated without warning and there is an immediate need to fill the vacancy to ensure the successful delivery of a project.

(*Circular 37/07- Guidance Notes on the Use of Excluding Orders* refers).

Once a decision is made to appoint a person following the competition, a letter of offer must issue in accordance with provisions of Section 8(1) of the *Protection of Employees (Fixed-Term Work) Act 2003*. **The letter must state the objective condition determining the contract – for example:**

- (a) arriving at a specific date,
- (b) completing a specific task, or
- (c) the occurrence of a specific event.

#### **1.4 Fixed-term or fixed-purpose?**

Temporary contracts can be “fixed-purpose” as well as “fixed-term”. For the purposes of the 2003 Act, the term “fixed-term contract” is used as a generic term to cover both types.

When should a fixed-purpose contract be used?

Fixed-purpose contracts are typically used where the end date of the contract is not known or is uncertain. Examples would include where a temporary employee is engaged to provide cover for a permanent employee who is on maternity or sick leave.

Consider the following example:

- (1) The contract is for a fixed-term of six months to cover a maternity leave. The person on leave gives four weeks’ notice of their intention to extend the period of maternity leave for a further three months.

If the termination of contract is determined by arriving at a specific date only, it may be necessary to renew the contract if the named person extends maternity leave. **In such instances, the 2003 Act requires the employee to be informed in writing as to why the contract is being renewed and the reason for the failure**

**to offer a contract of indefinite duration, i.e. to make the appointment permanent. Failure to provide a written statement in keeping with the provisions of Section 8(2) of the 2003 Act can have legal consequences.**

In the case of the above example, if both the fixed purpose and fixed-term are defined in the contract, e.g. to fill the vacancy until the named person's maternity leave ends or on reaching specified date, whichever is earliest, there is flexibility to achieve the objective without having to renew the contract.

The Unfair Dismissals Acts provide specifically for this situation in Section 2 (2c) of the 1993 Act. It is advised that a fixed-term contract should be limited in this way – “DD/MM/YY (the latest day for the end of maternity leave as stated) or on the return of X from maternity leave, whichever is the earlier”. **All notice period requirements must be complied with, in accordance with the *Minimum Notice and Terms of Employment Acts 1973 to 2005*.**

It is important in this context not to confuse requests for annual leave or career breaks which in effect extend the period of absence beyond the limits of statutory maternity leave, as being included in the period of maternity leave for the purpose of determining the fixed-term contract. In all such circumstances, the contract should be terminated at latest when the end date for statutory maternity leave has been reached.

## SECTION 2

### THE CONTRACT OF EMPLOYMENT – Statutory Requirements

The fixed-term contract must include the following information in compliance with the following legislation:

#### 2.1 Protection of Employees (Fixed-Term Work) Act 2003

- The contract must contain the commencement date and the objective condition(s) for determining the end of the contract (i.e. arriving at specific date, completing a specific task, the occurrence of a specific event). Failure to state the objective grounds for giving a fixed-term rather than a permanent contract can lead to a contract of indefinite duration as can ambiguously worded objective grounds. This point cannot be overstressed.

**Note:** While, strictly speaking, the obligation to notify the employee in writing of the objective grounds justifying the fixed-term contract and the reason a permanent contract cannot be offered, does not arise in the context of the **first** fixed-term contract, it is strongly recommended that, even in the case of a first contract, such information is clearly stated. It is the overwhelming experience in the civil service that failure to provide such information in the initial contract can lead to a contract of indefinite duration.

- The contract should state that it is drafted in accordance with the *Protection of Employees (Fixed-Term Work) Act 2003* and that it is of a temporary nature and implies no right to a permanent position.

## 2.2 Unfair Dismissals Acts 1977-2007

- The contract must explicitly state that the provisions of the *Unfair Dismissals Acts 1977 - 2007* do not apply to a dismissal due to the expiry of the contract for the reasons specified in the objective conditions set out in the contract. The exact wording in the Act should be included, as follows:  
*'The Unfair Dismissals Acts 1977 – 2007 will not apply to the termination of your employment by reason only of the expiry of this contract without its being renewed or the cessation of the purpose of the contract.'*

## 2.3 Minimum Notice and Terms of Employment Acts 1973 - 2005

The *Civil Service Regulation Acts 1956 - 2005* extended the application of the *Minimum Notice and Terms of Employment Acts 1973 – 2005* to civil servants. As a result, **the following terms must be included in a contract:**

- The full names of the employer and the employee.
- The address of the employer in the State or, where appropriate, the principal place of the relevant business (i.e. Government Department).
- The place of work or, where there is no fixed or main place of work, a statement specifying that the employee is required or permitted to work at various places.
- The title of the job and the nature of the work for which the employee is employed.
- The date of commencement of the contract of employment.
- For temporary contracts, the date of their expiry or, if they are limited by purpose, the expected duration of the contract.

- The rate or method of calculation of the employee's remuneration and the pay reference period for the purposes of the *National Minimum Wage Act 2000*.
- That the employee may, under Section 23 of the *National Minimum Wage Act 2000*, request from the employer a written statement of the employee's average hourly rate of pay for any pay reference period as provided for in that section.
- The frequency of the payment arrangement, i.e. weekly, fortnightly, monthly.
- Any terms and conditions relating to hours of work (including overtime).
- Particulars of the terms and duration of the rest periods and breaks referred to in Sections 11, 12 and 13 of the *Organisation of Working Time Act 1997*.
- Any terms and conditions relating to paid leave and unpaid leave (other than paid sick leave).
- Any terms and conditions relating to incapacity for work due to sickness or injury and paid sick leave.
- Any terms or conditions relating to pensions.
- The periods of notice which the employee must give and is entitled to receive to determine the contract.
- Reference to any collective agreements which directly affect the terms and conditions of the employee's employment.
- Where the employee will be required to work outside the State for a period of not less than one month, particulars of -
  - (i) The period of employment outside the State;
  - (ii) The currency in which the employee is to be remunerated in respect of that period;

- (iii) Any benefits in cash or in kind for the employee attendant on the employment outside the State;
- (iv) The terms and conditions, where appropriate, governing the employee's repatriation.

#### **2.4 Other terms and conditions that should be included in the contract**

In addition to the statutory requirements, the contract should include clauses referring to the following terms and conditions:

- The contract should provide for a probationary period. (See section 3 below).
- The contract should state that it is subject to the *Civil Service Regulation Acts 1956 to 2005*, the *Public Service Management (Recruitment and Appointments) Act 2004* and any other Acts for the time being in force relating to the Civil Service.
- Reference should be made to the fact that the employee is subject to the *Official Secrets Act 1993* as amended by the *Freedom of Information Acts 1997 and 2003*; the *Civil Service Code of Standards and Behaviour* and the *Ethics in Public Office Act 1995* (paragraphs 13.1, 13.2 and 13.3 of the Template Contract).
- Reference should also be made to the Personnel Code.

It is recommended that the Personnel Section should assign an officer to read through the contract with the employee and draw their attention to any key terms. The officer must draw to the employee's attention the clause in the contract dealing with the Unfair Dismissals Acts (see 2.2 above). The employee should be informed



that the contract will be terminated on the occurrence of an objective condition as stated in the terms of the contract unless otherwise notified in writing by the Personnel Section, and that any verbal representations that may be made to the contrary will not impact on the expiry date.

The steps above provide clarity to the employee regarding the nature of the employment. Furthermore, unless they are followed, an employee may be entitled to make a claim of unfair dismissal before the EAT on the expiry of the fixed-term contract, in spite of the fact that the contract explicitly states that it is temporary and that its end is determined by a specific objective condition.

### **Summary**

The employer is under a statutory duty to include the terms specified in sections 2.1, 2.2 and 2.3 of the Guidelines in a fixed-term employment contract. Failure to do so has legal consequences and may result in the employee having an entitlement to make a claim before a rights commissioner. The terms outlined in 2.4 are recommended as they inform the employee of their statutory and other obligations as civil servants.

## SECTION 3

### TERMS AND CONDITIONS OF EMPLOYMENT

#### 3.1 General

In accordance with Section 6 of the *Protection of Employees (Fixed-Term Work) Act 2003*, fixed-term employees must be provided with no less favourable terms and conditions of employment than a comparable permanent employee.

For the purposes of the Act, a comparable permanent employee is a permanent employee who performs the same work as the fixed-term employee under the same or similar conditions. Fixed-term employees are also entitled to no less favourable terms and conditions than a permanent employee if the work performed is different but of equal or greater value to that of the permanent employee. Where there is no link to an existing grade, the fixed-term employee, for pay and pension purposes only, is treated in the same way as an employee in a Scheduled Occupation (Schedule 1 to *the Public Service Management (Recruitment and Appointments) Act 2004* refers).

When drafting the specific terms and conditions for inclusion in the contract, employers should, firstly, identify the range of duties and responsibilities attaching to the particular position in arriving at the level or grading of the position. In certain situations, the link may be obvious, e.g. Clerical Officers for Temporary Clerical Officers. Otherwise, the recruiting Department should look to the wider Civil

Service. Failing that, the recruiting Department should look to the wider public service (Section 5 of the 2003 Act).

In exceptional circumstances, different treatment can be justified on objective grounds where such treatment (which may include the renewal of a fixed-term employee's contract for a further fixed term) is for the purpose of achieving a legitimate objective and such treatment is necessary and appropriate for that purpose. It will be sufficient for the purposes of the 2003 Act if the terms of the fixed-term employee's contract, taken as a whole, are at least as favourable as the terms of the comparable permanent employee's contract of employment.

If there are objective grounds for treating a fixed-term employee less favourably during the course of his/her employment, i.e. in relation to his or her terms and conditions of employment or for renewing a fixed term contract, the employer is entitled to do so. However, it is generally recommended that this provision (section 7 of the 2003 Act) should not be used.

There are three strands to the test of objective justification (Section 7 (1) of the Act):

- (1) It must be based upon considerations other than the status of the employee as a fixed-term employee;
- (2) It must be for the purpose of achieving a *legitimate objective* of the employer, i.e. it must correspond to a real need on the part of the employer; and

- (3) The less favourable treatment in relation to contract terms or the renewal on a fixed-term basis must be *appropriate and necessary* for the purposes of achieving this legitimate objective.

Decisions of the rights commissioner and the Labour Court indicate that they will not accept an employer's contention of objective justification readily but will look behind it to the employer's organisation to establish whether a *bona fide* justification exists and to establish if the discriminatory treatment is appropriate and necessary for the attainment of the legitimate aim.

## **Remuneration and Pensions Entitlements**

### **3.2 Remuneration**

Fixed-term employees are entitled to the same remuneration as a comparable permanent employee. Remuneration refers to basic salary and all other benefits in cash or in kind as provided by the employer. Other benefits means overtime rates, travel allowances, accommodation allowances and any other remuneration whatsoever provided in respect of the employment relationship (see 3.4 below).

### **3.3 Incremental progression**

Persons appointed to Civil Service grades on a fixed-term contract should be placed on the same payscale as the comparable permanent employee. Fixed-term employees should also be treated no less favourably than comparable permanent employees for the purposes of incremental progression. The annual increment is normally paid on the anniversary of appointment provided performance during the year is satisfactory (see 3.25 on PMDS).

However, a promise or guarantee of incremental progression should not be given in the contract of employment. While fixed-term employees will receive increments in

the normal way there is no automatic right, as with permanent employees, to an increment.

Fixed-term employees appointed to specialist posts whose pay is not related to that of a Civil Service grade are not affected by the incremental progression policy. (*Circular letter 16/12/2004 LP – Payscales and Incremental Progression of Fixed-Term Workers* refers).

### **3.4 Incremental credit**

Where there are incremental credit agreements in place for certain entry-level grades in the Civil Service, which provide for the granting of incremental credit for previous service to officers been employed in the public service in Ireland or an equivalent body in the EU in a relevant grade, the provisions in these agreements also apply to persons recruited to these entry level grades on the basis of a fixed-term contract

### **3.5 Pension**

A fixed-term employee is entitled to no less favourable pension arrangements than the comparable permanent employee. Fixed-term employees will, in general, become members of the Single Public Service Pension Scheme. In certain circumstances, as set down in the Public Service Pensions (Single Scheme and Other Provisions) Act 2012, new staff would not become members of the Single Scheme. The main such exception is where a person has worked in the public service in a pensionable (but non-Single Scheme) capacity in the 26 weeks preceding appointment. Fixed-term employees who are not members of the Single Public Service Pension Scheme will be members of the *Pension Scheme for Non-Established State Employees*.

For appointees who will not be members of the Single Scheme:

1. Section 52 of the Public Service Pensions (Single Scheme and Other Provisions) Act 2012 limits the amount of pension which can be accrued to a

maximum of 40 years' service or equivalent. In this regard where a fixed-term worker has accrued a full pension (i.e. 40 years or equivalent e.g. 30 years in a Garda position) in a previous Public Service employment(s) they will not accrue additional pension in the new position, the Department/Office should facilitate but not contribute to a PRSA for the individual.

2. In determining "new entrant" status as defined by the Public Service Superannuation (Miscellaneous Provisions) Act 2004 it is important to look at the full Public Service career history and any gaps in service between periods of employment.

Please note also that where an individual is in receipt of a Public Service pension or has a preserved Public Service pension which comes into payment during the contract he/she will have their pension abated in accordance also with section 52 of the Public Service Pensions (Single Scheme and Other Provisions) Act 2012.

## **Non-Pay Terms and Conditions**

### **3.6 Probation**

Persons employed on fixed-term contracts should be subject to a probationary period in the same way as permanent employees. The period of probation will depend on the terms of the contract of employment. The Department of Finance Guidelines ([Probation-Guidelines](#)) describe the process of probation for fixed-term employees at paragraph 27, as follows:

*"Although these guidelines are primarily directed at appointees on the one-year probationary contract, it is good HR practice to provide a mechanism for the early assessment of the performance of all staff appointed to the Civil Service. It is recommended that Departments and Offices provide for a trial*

*period of at least four weeks in all short term contracts such as term time and maternity leave replacements. Such a term would allow for an initial assessment of suitability by the local manager and early identification of any performance or conduct issues. At the end of the trial period, the local manager should be required to make a recommendation on retention for the contract period. If the person is retained, other assessments may be conducted as appropriate to the term of the appointment, in line with the recommendations in these guidelines.”*

It is recommended that a probation period should apply to each new contract, however short. This practice underlines the fact that each contract is separate. In many cases, the job requirements for the new contract or the Department/Office may be different. The probation period at the start of a contract facilitates discussion on the role profile, job targets and performance review. It is recommended that line managers are made aware that they will be required to assess any fixed term worker for completion of probation at a much earlier stage than would be the case for permanent employees in the Civil Service.

For fixed-term contracts of longer duration, e.g. a year or more, a probationary period of three months (with a provision to extend by a further three months) would be appropriate.

It is recommended that HR sections, in consultation with the line manager, conduct an exit interview with all fixed-term appointees for record purposes. This will ensure that the HR system has a record of the termination of all appointments and the reason for the termination. It would also be best practice to seek feedback from employees on their employment that can make the organisation itself more effective in its management of staff and to ensure any necessary knowledge transfer.

### **3.7 Annual Leave**

Fixed-term employees are entitled to the same annual leave as their permanent colleagues on a pro rata basis. The timing of, and access to, annual leave is subject to the same conditions that apply to the comparable permanent employee. ([\*Terms and Conditions for Employment in the Irish Civil Service - Staff Information Booklet refers\*](#))

### **3.8 Sick Leave**

Pay during properly-certified sick leave absence may be allowed on a full-time basis in accordance with the appropriate sick leave circular. However, as with full-time staff, fixed-term employees will initially have access to sick leave on a pro-rata basis during their probationary period. The arrangements in relation to sick leave are set out in a Circular 6/2014. (See Terms and Conditions for Employment in the Irish Civil Service – Staff Information Booklet)



### **3.9 Maternity Leave**

Fixed-term employees are entitled to the same maternity leave arrangements as apply to permanent established civil servants. Entitlements to pay in respect of the maternity leave cease from the date the contract expires.

### **3.10 Paternity Leave**

Fixed-term employees are entitled to the same paternity leave arrangements as apply to permanent established civil servants. (*Terms and Conditions for Employment in the Irish Civil Service – Staff Information Booklet refers*).

### **3.11 Parental Leave**

Parental leave is a statutory entitlement which allows the natural or adoptive parent of a child unpaid parental leave in certain instances. (*Terms and Conditions for Employment in the Irish Civil Service – Staff Information Booklet refers*).

Applications from fixed-term employees need to be considered on a case-by-case basis, taking into account their recent contract histories within the Civil Service (see 4.3 below).

### **3.12 Adoptive Leave**

Adoptive leave arrangements can only apply to fixed-term employees during the tenure of their contract, e.g. should the contract be terminated on the basis of reaching an objective condition specified in the contract during the period for paid leave, entitlements to pay in respect of the adoptive leave cease from the date the contract expires. (*Terms and Conditions for Employment in the Irish Civil Service – Staff Information Booklet refers*).

### **3.13 Carer's Leave**

Carer's leave, which is a statutory entitlement, allows staff to take temporary unpaid leave to enable them personally to provide full –time care and attention for a person who is in need of such care. (*Terms and Conditions for Employment in the Irish Civil Service – Staff Information Booklet refers*).

Applications from such fixed-term employees need to be considered on a case-by-case basis, taking into account their recent contract histories within the Civil Service (see 4.3 below).

### **3.14 Force Majeure Leave**

*Force Majeure* leave, i.e. paid 'emergency' leave, applies to all employees in the Civil Service, including fixed-term employees. (*Terms and Conditions for Employment in the Irish Civil Service – Staff Information Booklet refers*.)

### **3.15 Special Leave**

Fixed-term employees in the Civil Service are entitled to be considered for special leave, both paid and unpaid, in accordance with the provisions of the applicable circulars as they apply to permanent established civil servants. If the contract expires during the course of the leave, any entitlement to payment ceases.

### **3.16 Term Time**

Civil servants on fixed-term contracts may apply for term time subject to the operating requirements of the Department or Office not being adversely affected. (*Terms and Conditions for Employment in the Irish Civil Service – Staff Information Booklet refers*).

### **3.17 Career Breaks**

The grant of a career break to any civil servant, including a fixed-term worker, is subject to the operational requirements of the Department or Office.

The provisions in the career break circular are likely to be incompatible with most fixed-term contracts. **It should also be noted that if a career break is granted to a fixed-term worker, the contract term will not be extended by any career break period.** (*Terms and Conditions for Employment in the Irish Civil Service – Staff Information Booklet refers*).

### **3.18 Hours of Attendance**

The conditioned hours of various grades are set out in individual circulars. From 1<sup>st</sup> July 2013 most civil servants work 43 hours and 15 minutes gross per week (inclusive of lunch breaks). Extra attendance arrangements vary between grades. Civil servants on fixed-term contracts are entitled to the same attendance arrangements as apply to the comparable permanent employee. **The contract should specify whether payment will be made or not for any extra attendance.**

### **3.19 Flexi Time**

Most Government Departments and Offices operate a system of Flexible Working Hours (FWH) which is open to all civil servants, full-time or part-time (including those on fixed-term contracts), in grades covered by the scheme. (*Terms and Conditions for Employment in the Irish Civil Service – Staff Information Booklet refers*).

### **3.20 Worksharing**

All temporary staff may apply to workshare, subject to the operational requirements of the department/office. (*Terms and Conditions for Employment in the Irish Civil Service – Staff Information Booklet refers*).

### **3.21 Travel Pass Scheme**

Travel Passes are issued annually. Fixed-term employees are eligible to avail of the benefits of the scheme on the same basis as full-time employees.

### **3.22 Travel and Subsistence**

The regulations governing the payment of travel and subsistence allowances apply also to civil servants on fixed-term contracts. (*Terms and Conditions for Employment in the Irish Civil Service – Staff Information Booklet refers*).

### **3.23 Removal Expenses**

Removal expenses may be paid to fixed-term employees on the same basis as permanent officers. (*Terms and Conditions for Employment in the Irish Civil Service – Staff Information Booklet refers*).

## **Career Development**

### **3.24 Induction**

Fixed-term employees should be given a copy of the Department of Finance Guidelines “[An Introduction to the Irish Civil Service](#)” (the induction manual for new entrants to the Civil Service).

### **3.25 Performance Management and Development System (PMDS)**

The Performance Management and Development System in the Civil Service (PMDS) should be applied to fixed-term staff, with any modifications necessitated by the nature of the fixed-term contract. For short term contracts, such as term time and maternity leave cover, the full application of PMDS may not be appropriate.

**However, it is recommended that Goal Setting be completed by all staff and that their performance should be reviewed against these goals, whether over the short or longer term, in line with normal arrangements under PMDS.**

Section 10 (3) of the Act requires employers “*as far as is practical, to facilitate access by a fixed-term employee to appropriate training opportunities to enhance his or her skills, career development and occupational mobility*”.

PMDS is the mechanism for identifying training and development needs and for facilitating access to promotion opportunities and increments. The fixed-term employee is entitled to access to promotion opportunities and increments on the same basis as their comparable permanent employee.

It is recommend that an exit interview should be conducted at the determination of a fixed-term contract (see 3.6) and that it should include a discussion of performance against targets set, ensure any knowledge transfer and seek feedback from employees on their employment that can make the organisation itself more effective in its management of staff.

### **3.26 Promotion**

A fixed-term employee is entitled to compete for promotion in the same way as the comparable permanent employee, if they meet all eligibility requirements. The periods of temporary service in the eligible grades may be aggregated for eligibility purposes. Where a fixed-term employee is appointed to a permanent established position as a result of a confined competition, they are entitled to established status from the date of appointment to the new position.

**PLEASE NOTE:**

**References to all legislation, Department of Finance Circulars, Staff Guidelines**

**etc, are generally correct as of the date of these Guidelines.**

**All circulars are available on the website [www.circulars.gov.ie](http://www.circulars.gov.ie).**

**Further information on the civil service is available on the website**

**<http://hr.per.gov.ie/>**

**Please ensure when considering future Fixed Term Contracts that no additional, legislation, updated Circulars etc apply.**

## SECTION 4

### RENEWAL OF CONTRACTS

#### 4.1 The decision to renew a contract

Section 9 (2) of the *Protection of Employees (Fixed-Term Work) Act 2003* provides that where an employee is engaged in continuous employment on two or more fixed-term contracts, the aggregate duration of such contracts shall not exceed four years. **Should the aggregate be exceeded, the actual term of the contract will have no effect and the employee will be deemed to have a contract of indefinite duration. Renewal in this context includes extensions of a contract.**

The only exception to this statutory provision is where there are objective grounds justifying the renewal, i.e. where the employer can establish, to the satisfaction of a third party if necessary, that further renewal is appropriate and necessary for the attainment of a legitimate objective.

#### 4.2 Notification of renewal

Under Section 8(2) of the 2003 Act, where the employer proposes to renew the contract, he or she must notify the employee in writing of the intention to renew the contract stating, as fully and comprehensively as possible, the objective grounds for not issuing a contract of indefinite duration. This must be done, at the very latest, by the date of renewal.

Under Section 8(4) of Act, if it appears to a rights commissioner or the Labour Court in any proceedings before them under the Act, that an employer omitted to

provide a written statement or that a written statement was evasive or equivocal, they may draw any inference he or she or it considers just and equitable in the circumstances. The Labour Court has ruled that an employer is required to serve the required notice before the renewal of the contract and any omission to do so (even one due to inadvertence) “*can neither be overlooked nor excused*”.

Where a Department or Office is providing written notification to an employee of their intention to renew the fixed-term contract for a further fixed-term, the notification must specify the grounds which will bring about the termination of the contract.

#### **4.3 Continuous service**

The computation of continuous service is regulated by paras 1 – 7 of the First Schedule to the *Minimum Notice and Terms of Employment Acts 1973 to 2005*. Service is deemed to be continuous unless the employee has voluntarily left employment or been dismissed (dismissal as defined in Section 1 of the *Unfair Dismissals Act 1977*). However where an employee is dismissed and immediately re-employed by the same employer, continuity is not broken. Section 2 (1) (a) of the *Unfair Dismissals Act 1977* as amended by Section 3 of the *Unfair Dismissals (Amendment) Act 1993* clarifies the concept of immediate re-employment by stating the continuity is preserved for the purpose of that Act if a person is re-employed by the same employer ***within 3 months*** of the previous contract and the Court or Tribunal forms the view that entering into the subsequent contract was for the purpose of avoiding liability under the Act.



Under the provisions of the Minimum Notice and Terms of Employment Acts, employment is deemed to be continuous in the following circumstances:

- If an employee is absent for not more than 26 weeks because of a lay-off, sickness or injury or by agreement with his employer, such period shall count as service.

Decisions of the Tribunals and Courts suggest that:

- The term “immediate re-employment” will not be interpreted literally.
- A break in service of less than three months may not necessarily affect continuous service.
- Re-engagement of temporary employees within a period of three to six months may be interpreted as constituting continuous service. (Each case will be decided upon its own facts).
- The Labour Court has held that, notwithstanding the issuance of a P45, if there was a legitimate expectation on the part of the employee and the employer of further employment at a future date, this can constitute a lay-off, thereby rendering the service of the employee continuous despite the breaks in service. In situations where there is a seasonal variation in the workload, it can easily be envisaged that when the excess demand has been catered for, the employee has a legitimate expectation of further employment in the next “high season”.
- Frequent re-engagement of employees from panels may lead the Court to determine that a particular employee has established continuous service for the purposes of the Act, particularly where the purpose of the original contract remains unchanged.

In the light of these issues it is recommended, as a matter of good practice, that the objective condition for ending the contract should not be determined by expiry date alone (see 1.3 and 1.4 above). Departments and Offices should seek to define both the purpose of a fixed-term contract and the expiry date and to include both in the contract such that the earlier occurrence of the objective condition will determine the termination of the contract. It may not be possible for some contracts to identify an end-date by virtue of objective conditions. However, in considering objective grounds, the fact that a source of funding may not be predictable cannot, by itself, be used as an objective condition. Although it is permissible under the Fixed-Term Work legislation to include only one objective condition determining the end of the contract, the inclusion of end-date only should be avoided if at all possible.

#### **4.4 Section 13 (d)**

When renewing a contract particular attention should be paid to [Section 13\(d\)](#) of the Protection of Employees (Fixed-Term Work) Act 2003. Under the provisions of this section:

*13.—(1) An employer shall not penalise an employee .....*

*(d) by dismissing the employee from his or her employment if the dismissal is wholly or partly for or connected with the purpose of the avoidance of a fixed-term contract being deemed to be a contract of indefinite duration under [section 9](#) (3).*

Under Section 13(d) if the failure to award a further contract when the individual concerned has four years service is based **in whole or in part** on the avoidance of the creation of a contract of indefinite duration, there is a breach of the Act. In such circumstances, the Rights Commissioner or the Labour

Court may make an award of compensation of up to two years salary or alternatively they may award the claimant a contract of indefinite duration.

Whether a contract of indefinite duration might be created may form no part of the deliberation in relation to the decision to renew a contract if we are to meet our obligations under the 2003 Act.

In a recent case of a nurse researcher, the Department of Health and Children wrote to the employer confirming in writing that they would not renew a contract because to do so “*might convey a right to permanent employment.*” The Rights Commissioner found that this was in contravention of Section 13(d) because the dismissal was at least partly connected with the purpose of the avoidance of a CID under Section 13(d). In such circumstances the Rights Commissioner has the discretion to do one or more of the following

- (i) Award up to two years compensation and/or
- (ii) Re-instate or re-engage the employee to include re-engagement or re-instatement on a contract of indefinite duration.

## **SECTION 5**

### **TERMINATION OF SERVICE**

#### **5.1 Notice of termination of contract**

The fixed-term employee must be given, and must give, the necessary notice of termination as required by the *Minimum Notice and Terms of Employment Acts 1973 to 2005*. Departments/offices should be aware of the resignation and retirement notice periods contained in Circular 10/2012 *Resignation and Retirement Notice Periods*.

Departments should decide the period of notice which should apply in the case of individual contracts having regard to the length of the contract; the nature of the appointment including the grade/level; legislation requirements and DPER Circular 10/2012.

#### **5.2 Redundancy Payments**

Fixed-term employees may qualify for redundancy payment if they meet the criteria for redundancy under the Redundancy Payments Acts 1967 to 2007.

## SECTION 6

### REDRESS

#### **6.1 Referral of a complaint**

Claimants are entitled to bring their case to a rights commissioner (of the Labour Relations Commission). A complainant must bring their claim to the rights commissioner within six months of the date of the contravention of the Act or the termination of the contract, whichever is the earlier, although in exceptional circumstances this time limit may be extended to eighteen months where the rights commissioner determines that the failure to present within six months was due to reasonable cause.

In response to the complaint, Section 14 of the 2003 Act provides that a decision of the rights commissioner shall do one or more of the following:

- (i) Declare whether the complaint was or was not well founded;
- (ii) Require the employer to comply with the relevant provision;
- (iii) Require the employer to re-instate or re-engage the employee (including on a contract of indefinite duration);
- (iv) Require the employer to pay the employee compensation not exceeding two years' remuneration.

Either party may appeal the matter to the Labour Court within six weeks of the date of the decision of the rights commissioner. The final appeal is to the High Court on a point of law.

**SECTION 7**  
**UNFAIR DISMISSALS ACTS 1977 – 2007**

**7.1 General**

It should be noted that in certain circumstances, fixed-term employees who do not have the qualifying length of service under the 2003 Act, i.e. three years' continuous service and a fourth contract for the purposes of the creation of a contract of indefinite duration, may be entitled to make a claim for unfair dismissal before the Employment Appeals Tribunal (EAT) in two scenarios, as follows:

**7.2 Fixed-term contract lasting more than a year**

As stated in Section 2, the contract must specify that the provisions of the *Unfair Dismissals Act 1977 to 2007* will not apply to the termination of employment by reason solely of the expiry of the fixed-term or fixed-purpose contract without it being renewed. It should be noted that if the contract is of more than one year's duration and the term above is not included, the Unfair Dismissals Act will apply.

**7.3 Break of less than three months in service**

Before 1993, the protection of the Unfair Dismissals Acts extended only to those individuals who had at least one full year's service. An employer who engaged a worker on a series of contracts for periods of less than one year, where there were breaks between each contract could therefore avoid his obligations under the legislation. *The Unfair Dismissals (Amendment) Act 1993* confirms continuity of service for the purposes of the employee asserting his rights under the Act where:

- (i) The break in service between the successive contracts is three months or less;
- (ii) The nature of the employment which is the subject matter of the contracts is the same or similar; and
- (iii) In the opinion of the adjudicating authority, the entry by the employer into the subsequent contracts was wholly or partly for the purposes of avoiding liability under the Act.

#### **7.4 Remedies under the Unfair Dismissals Acts**

The remedies provided for in the legislation are: reinstatement, re-engagement and financial compensation. The maximum monetary award is two years' remuneration subject to the obligation on the claimant to mitigate loss. The circumstances where the EAT have ordered reinstatement/re-engagement are rare. This reluctance has traditionally been rooted in a desire to avoid forcing people back into an employment relationship where relations have broken down. This reasoning may have more relevance for smaller private employers than it does in the context of employment in the Civil Service where, conceivably, the employee could be deployed elsewhere in the organisation.

**Appendix**  
**Template Contract for Fixed-Term Employees**

**Contract of Employment as Temporary [insert title of position] in the  
Department of \_\_\_\_\_**

**Employing Department/Office** .....

**Address** .....  
.....  
.....

**Employee** .....

**Address** .....  
.....  
.....

I am directed by the Minister for \_\_\_\_\_ to say that s/he is prepared to offer you an appointment as temporary **[insert position and description of position/nature of the work involved]** in the Department of \_\_\_\_\_ on the following terms and conditions with effect from **[insert date]**. This contract is issued in accordance with the Unfair Dismissals Acts 1977 to 2007 and the Minimum Notice and Terms of Employment Acts 1973 to 2005.

**1. General**

The appointment is subject to the Civil Service Regulation Acts 1956 to 2005, the Public Service Management (Recruitment and Appointments) Act 2004 and any other Act for the time being in force relating to the Civil Service.

**2. Pay**

The salary scale for this position is **[insert actual full scale (PPC/non-PPC)]**.

The rate of pay offered will be € **[insert amount]** which is the **[insert scale point]** point of the above salary scale and will be payable weekly/fortnightly in arrears by



Electronic Fund Transfer (EFT) into a bank account of your choice. Payment cannot be made until you supply a bank account number and bank sort code to the Personnel Section.

Pay may be adjusted from time to time in accordance with Government pay policy.

Statutory deductions from salary will be made as appropriate by the Department of \_\_\_\_\_.

You will agree that any overpayment of salary, allowances, or expenses will be repaid by you in accordance with Circular 10/2017: Recovery of Salary, Allowances, and Expenses Overpayments made to Staff Members/Former Staff Members/Pensioners.

Under Section 23 of the National Minimum Wage Act 2000, you may request a written statement of your average hourly rate of pay for any pay reference period.

### **3. Tenure**

3.1 The appointment is to a temporary, unestablished position in the Civil Service. It will cease on [dd/mm/yy].

3.2 In accordance with the Protection of Employees (Fixed Term Work) Act 2003, your contract is on a fixed-term contract basis only, on the following grounds:

**[insert objective conditions determining the contract].**

3.4 The Department of \_\_\_\_\_ reserves the right to terminate your employment prior to the date of cessation on giving of the appropriate notice set down in the Minimum Notice and Terms of Employment Acts 1973 to 2005. The Department of \_\_\_\_\_ also reserves the right to terminate your employment for stated reasons. In the event that you wish to terminate your employment prior to expiry of the contract you are required to provide **[insert number of weeks]** notice to the Department of \_\_\_\_\_.

3.5 In the event of serious misconduct the appointment may be terminated without notice.

3.6 In the event of the appointment being terminated under the terms of paragraph 3.5 above no remuneration or compensation will be payable other than that applicable to work carried out.

### **4. Probation <sup>2</sup>**

You must serve a probationary period, which normally will last for **[insert number of weeks/months]**.

Should your services be satisfactory as regards health, conduct, efficiency and performance generally during the probationary period, you will then, on completion of the period, be confirmed in your appointment for the period of tenure set out above.

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<sup>2</sup> This paragraph to be used when the fixed term is for a period longer than 3 months

## **5. Unfair Dismissals Act 1977-2007**

The Unfair Dismissals Acts 1977-2007 will not apply to the termination of your employment by reason only of the expiry of this fixed term contract without it being renewed or the cessation of the purpose of the contract.

## **6. Leave**

### **6.1 Annual leave**

The annual leave allowance will be **[insert number of days]** working days per annum. This allowance which is subject to the usual conditions regarding the granting of annual leave is on the basis of a five-day week and is exclusive of the usual public holidays.

### **6.2 Special leave**

Special leave, either paid or unpaid, is available in certain circumstances. Details are set out in the relevant circulars contained in the Personnel Code

### **6.3 Sick leave**

Pay during properly-certified sick absence, provided there is no evidence of permanent incapacity for service, may be allowed on a full-time basis, in accordance with the provisions of the appropriate sick leave circular. Initially, as with full-time staff, fixed-term employees will have access to sick leave on a pro-rata basis during their probationary period.

You will be required to sign a mandate authorising the Department of Social Protection to pay any benefits due under the Social Welfare Acts direct to the employing Department and payment during illness will be subject to you making the necessary claims for social insurance benefit to the Department of Social Protection within the required time limits.

## **7. Duties**

You will be required to perform any duties which may be assigned to you from time to time. You may not engage in private practice or be connected with any outside business which would interfere with the performance of official duties.

## **8. Headquarters**

Your headquarters will be such as may be designated from time to time by the Head of Department, but will be in **[state exact location]** on the commencement of this contract.

When absent from home and headquarters on duty you will be paid appropriate travelling expenses and subsistence allowances, subject to the normal Civil Service regulations.

## **9. Hours of attendance**

Hours of attendance will be as fixed from time to time but will amount to on average not less than 43 hours and 15 minutes gross or 37 hours net per week.

**[insert the appropriate paragraph, either (i) or (ii), whichever is relevant to the grade:**

(i) Where extra attendance is necessary, overtime payments, or time off in lieu, will be allowed in accordance with the Civil Service overtime regulations.

(ii) No additional payment will be made for extra attendance (over and above 43 hours and 15 minutes gross or 37 hours net per week) as the rate of remuneration payable covers any exceptional extra attendance liability that may arise from time to time].

**[if the employee is under 18 years of age, insert the following:**

The Protection of Young Persons (Employment) Act 1996 will apply to your appointment until you reach 18 years of age].

**10. The Organisation of Working Time Act 1997**

The terms of the Organisation of Working Time Act will apply, as appropriate, to this appointment [insert particulars of terms and duration of rest periods and breaks referred to in Sections 11, 12, 13 of the Act].

**11. Superannuation and retirement**

**INSERT A, B, C or D**

**A) [Insert for those who will be members of the new Single Pension Scheme, 2012 Act:**

Based on the information which you have supplied, you are deemed to be a member of the Single Public Service Pension Scheme (as defined in the Public Service Pensions (Single Scheme and Other Provisions) Act 2012. The terms of the Single Public Service Pension Scheme will apply to this appointment. The minimum age at which pension is payable is set, initially at 66 years (rising in step with State Pension age increases to 67 in 2021 and 68 in 2028). Retirement is compulsory on reaching 70 years of age or on expiration of your contract whichever is the earlier.

*Or*

**B) [Insert for those who are not members of the Single Scheme and are ‘new entrants’ 2004 Act:**

Based on the information which you have supplied, you are deemed to be a member of the Pension Scheme for Non-Established State Employees and its associated Contributory Spouses’ and Children’s Pension Scheme. The terms of those schemes will apply to this appointment. As you are deemed to be a new entrant (as defined in the Public Service Superannuation (Miscellaneous Provisions) Act 2004), the minimum age at which pension is payable is 65, there is no specified maximum retirement age in respect of your appointment to this position. Retirement will be on expiration of your contract. Please note: you will cease to accrue pensionable service once your pensionable service in your previous Public Service employments combined with your pensionable service in this employment exceeds 40 years.

*Or*

**C) [Insert for those who are not members of the Single Scheme and who are not ‘new entrants’ 2004 Act:**

Based on the information which you have supplied, you are deemed to be a member of the Pension Scheme for Non-Established State Employees and its associated Contributory Spouses’ and Children’s Pension Scheme. The terms of those schemes will apply to this appointment. As you are deemed not to be a new entrant (as defined in the Public Service Superannuation (Miscellaneous Provisions) Act 2004) the minimum age at which pension is payable is 65, retirement is compulsory

on reaching 65 years of age or on expiration of your contract whichever is the earlier. Please note: you will cease to accrue pensionable service once your pensionable service in your previous Public Service employments combined with your pensionable service in this employment exceeds 40 years.

**Or**

**D) [Insert for those who are not members of the Single Scheme and who have accrued more than 40 years' service or equivalent in a pre-existing scheme:**

Based on the information which you have supplied, and as you are in receipt of, or have an entitlement to, a Public Service pension from previous employment(s) which gives you the maximum allowable pension benefit (40 years' or equivalent) in accordance with the Public Service Pensions (Single Scheme and Other Provisions) Act 2012 you are not entitled to superannuation benefits in respect of this employment. This Department will facilitate but **not** contribute to membership of a PRSA.

**Abatement**

[INSERT WHERE APPROPRIATE

As you are currently in receipt of a public service pension or will have a preserved public service pension which will come into payment during this employment your pension will be subject to abatement in accordance with Section 52 of the Public Service Pensions (Single Scheme and Other Provisions) Act 2012.]

**Pension-Related Deduction**

This appointed is subject to the pension-related deduction in accordance with the Financial Emergency Measures in the Public Interest Act, 2009

**12. Secrecy, confidentiality and standards of Behaviour**

**12.1 Official secrecy and integrity**

You will, during the term of your appointment, be subject to the provisions of the Official Secrets Act 1963 as amended by the Freedom of Information Acts 1997 and 2003. You will agree not to disclose to third parties any confidential information especially that with commercial potential either during or subsequent to the period of employment.

**12.2 Civil Service Code of Standards and Behaviour**

You will be subject to the Civil Service Code of Standards and Behaviour.

**12.3 Ethics in Public Office Act 1995**

The Ethics in Public Office Act 1995 will apply, where appropriate, to your employment.

**12.4 Prior approval of publications**

You will agree not to publish material related to your official duties without prior approval by the Minister.

**12.5 Political activity**

During the term of your employment you will be subject to the rules governing civil servants and politics.

**13. Changes to terms of Employment**

The Minister for [XXXX] reserves the right to change the terms and conditions of your employment as s/he sees fit and in accordance with Government pay and employment policy generally as it affects the civil service. The Department/Office of [XXXX] will give you as much notice as is feasible of such changes.

**14. Personnel Code**

All circulars are available on the website <http://circulars.gov.ie/> or from the Personnel Section.

If you accept the appointment on these terms, please complete and return the form of acceptance to me at the above address.

**Signed**

\_\_\_\_\_  
**Personnel Officer**

**Department of**

\_\_\_\_\_

**Date**

\_\_\_\_\_

**Form of Acceptance**

I accept the offer of appointment as Temporary **[insert position]** in the Department of \_\_\_\_\_.

I agree to be bound by the above terms and conditions as set out in the above contract (a copy of which I acknowledge to have received for retention by me).

**Signed** \_\_\_\_\_  
**Employee**

**Date** \_\_\_\_\_

**Signed** \_\_\_\_\_  
**Personnel Officer**

**Department of** \_\_\_\_\_

**Date** \_\_\_\_\_