

Guidelines on Probation – Department of Finance

These guidelines are designed to support Departments and Offices in the introduction of the revised probationary arrangements required following the introduction of one year probationary contracts for all new recruits entering the Civil Service through open competition. It is the responsibility of Departments and Offices to ensure that the detailed arrangements for the management of probation within their own organisations are clearly defined and communicated to line managers.

These guidelines provide information on how to manage employees effectively while on probation. Line managers can obtain further advice from their Personnel Units/HR sections.

What is Probation?

1. Probation is the process of managing performance to integrate new employees into the Department or Office. Probation is in effect an extension of the selection process. The probationary process must be operated in an open, clear and supportive manner so as to ensure that a “full picture” of the employee’s suitability for the employment is obtained. This will enable the employer to make the appropriate decision as to whether the person should be retained in the employment.

Principles of Probation

2. Equity, effectiveness and accountability underpin the probationary process. For natural justice reasons, it is essential for managers to provide new employees with feedback on their performance; with training and development aimed at helping the employee to reach the required standard and with an opportunity to respond to comments on their performance.

Objectives of Probation

For the employee

3. Probation provides the employee with an opportunity to train up on the job and to show that he or she can demonstrate and maintain satisfactory standards of job performance and behaviour. It enables the employee to adapt to his or her new

environment and to become familiar with the working procedures of the Civil Service. It also allows new employees the opportunity to decide whether the Civil Service is the career for them. For those who satisfactorily complete the probationary process, their experience within the process should provide clear evidence that their employer is committed to the retention and development of staff who are motivated to do an excellent job. In addition, the employee should have gained an enhanced awareness of his or her strengths and areas for improvement.

For the manager

4. It allows the manager to monitor new employees' progress in the job in order to establish their suitability for continued or permanent employment from the viewpoint of conduct, work performance and health. For probation to work properly the employee must be fully aware on an ongoing basis of the standards of conduct and performance against which his or her conduct and performance will be measured, both job specific and generally. The manager must ensure that the employee is given the necessary support to enable him or her to meet the required standard. If the employee does not meet the required standard in the probationary period, the manager is responsible for recommending that the employment is terminated.

The Probation Framework

5. The Guidelines are intended to provide a flexible framework based on the stages of Probation from initial appointment and induction through the management of probation to confirmation of appointment or termination.

The Guidelines are intended to apply to persons appointed to the Civil Service on the basis of a one year probationary contract. However the guidelines provide a good guide to the procedures that may be applied to all employees serving in a probationary capacity - on promotion, or who have been appointed to the Civil Service on a fixed term contract.

Stages of the Probationary Process

A. Appointment and Induction

Appointment

6. The legislation governing probation is set out in Section 7 of the Civil Service Regulation Act 1956 as amended by Section 3 of the Civil Service Regulation Act

1958. In addition Section 5A of the Civil Service Regulation (Amendment) Act 2005 introduces changes to the way in which probation is managed. It provides that a person may be initially appointed to be an established civil servant on the basis of a probationary contract. In accordance with the agreement in Sustaining Progress, all new recruits to the Civil Service are being initially appointed on the basis of a one-year probationary contract. The Department of Finance has provided template contracts to Departments and Offices to be used for this purpose.

Induction

HR Responsibility

7. Departments and Offices must make sure that they have in place an induction policy and an established set of induction procedures for new entrants. A sub-committee of the Training and Development Committee formed under the Framework for Civil Service Training and Development 2004-2008, in consultation with the Civil Service Training and Development Centre, has produced Guidelines on Induction Policy and Practice entitled ***First Things First*** to assist HR sections in developing high quality induction practices. The Induction Policy Booklet is available under *Support Documents* at www.training.gov.ie.

8. As part of the induction process, employees should be provided with information on the Civil Service and on their terms and conditions of employment including the length of the probation period. Departments and Offices must make sure that at induction employees are made aware of the significance of probationary status and that appointment to a permanent position is subject to the satisfactory completion of the probationary period. Employees should also be informed of the requirements of the Civil Service Code of Standards and Behaviour 2004 which sets out the values of the Civil Service and the standards of behaviour expected of all civil servants. New recruits should be required to sign a document indicating that they have seen and noted the contents of the Code.

Line Managers

9. Line managers have the primary responsibility for the induction of new employees into the local unit. The line manager should ensure that the probationer completes the Role Profile Form under PMDS procedures, in line with local

arrangements. It is also the manager's responsibility, in consultation with the employee, to identify and make arrangements for formal or on the job training as required. Departments and Offices may wish to consider including in the PMDS Role Profile of managers, a provision for an assessment of the management of staff on probation.

B. Managing the Probationary Process

HR Responsibility

10. Departments and Offices should put in place a framework for probation management that is appropriate to their needs. As part of this framework, HR sections in Departments and Offices should provide information and support for managers on their role in the probationary process. Training materials and guidelines can also be used to support managers to manage probation effectively. HR should also ensure that arrangements are in place for the maintenance of records and the conduct of reviews in an agreed timeframe.

11. In accordance with procedures agreed with the staff panel at General Council, staff on probation will join the PMDS cycle and complete a Role Profile Form as soon as possible. It is not proposed that a specific minimum rating threshold would be applied in relation to probation. Instead, staff on probation will:

- complete the interim review and final review as appropriate in accordance with the normal PMDS cycle determined by their starting date
- complete probation reviews in accordance with the normal cycle determined by their starting date

The probationary reviews will explicitly take account of the PMDS assessments but will also involve a broader assessment of suitability.

12. It is recommended that at least three formal reviews should be conducted with the last review conducted, where possible, in month nine. Ideally ongoing monitoring and discussion should take place. Conducting the final assessment in month nine allows for the conclusion of consultations that may be part of the probationary procedures, such as consultation with the CMO, within the one year time frame of the probationary period.

13. To ensure consistency in the implementation of probation procedures, Departments and Offices should establish norms appropriate to local conditions in relation to the criteria contained in the probationary contract.

Line Manager

Conducting formal reviews of performance

14. The formal reviews of probation will be conducted by the line manager. The purpose of these reviews is to allow the manager to assess whether the employee meets the conditions set out in the probationary contract, i.e.

- Work has been performed to a satisfactory standard
- Sick leave record is satisfactory and does not exceed the limits set down for the probationary period
- Attendance, punctuality and conduct are good.

15. In assessing employees on the above basis, managers need to take the following matters into account:

Work has been performed to a satisfactory standard

The standard required will be a matter for determination at local level. Clearly the Role Profile Form and the work plan agreed with the employee will be vital to assessing performance. It may be necessary to review the Role Profile Form and if necessary clarify the requirements of the position.

A manager will be looking to see if an employee is able to complete a range of tasks that make up the job. If the employee is failing to achieve targets set for him or her and not matching the requirements of the role profile agreed, the line manager may conclude that work is not being performed to a satisfactory standard. The manager should also consider at the first review what training or development might be required to bring the employee up to the standard required. Interventions may include on the job training; coaching; self-managed learning and formal training.

Sick leave record is satisfactory and does not exceed the limits set down for the probationary period

The limits set out in the Sick leave circulars should be used as a set of standards against which an employees' attendance record may be assessed. The sick leave circulars are available in the Personnel Code on the Department of Finance website. The allocation of paid sick leave to an employee is at the discretion of the Personnel Officer. The standard to be applied to employees on 12 month probationary contracts should be based on a pro rata of a permanent employee i.e. 46 days paid leave and 45 days at half pay over the one year period at the discretion of the Personnel Officer.

If the line manager has concerns about the health of an employee on probation, the advice of the CMO should be sought. Where excessive absence is due to an exceptional and obviously non-recurring event such as an accidental injury or a non-recurring period of hospitalisation, the Head of the Department or Office may confirm the officers appointment without reference to the CMO. Departments and Offices should pay particular attention to attendance patterns of staff in their probationary period in order that remedial action can be taken to avoid a pattern of unsatisfactory attendance developing.

Attendance, punctuality and conduct are good.

These are factual matters and Departments and Offices should ensure that procedures are in place to monitor and record patterns of attendance. Probationary staff at induction should be advised of the standards expected of them in this area.

Employee Assistance Service (EAS)

16. The involvement of the EAS may be considered if problems arise in the probationary period. The Service provides confidential support and assistance to civil servants who may be experiencing work or personal difficulties.

Written records should be kept

17. A written record should be kept of the assessment for the period under review. This should be signed by the supervisor (s) and the employee, in accordance with local arrangements, to confirm that it is a fair and accurate record of the meeting. Any follow up action agreed at the review meeting should also be recorded.

Where the performance of a probationer is not satisfactory

18. Where the performance of a probationer is not satisfactory a number of steps should be considered:

- Each unsatisfactory action/poor performance/period of sick leave should be discussed with the employee. The discussions should be recorded in writing by the line manager(s) and the record seen and noted by the employee
- The objective should be to advise the employee that management would like to help the employee to perform his or her duties well and to achieve an acceptable standard of conduct
- It should be made absolutely clear to the employee that help is available if required. Options in relation to coaching/training and development or other support that may help the employee improve his or her performance should be explored
- Where the problems relate to conduct or attendance the manager should make sure that the probationer fully understands the appropriate Civil Service rules and the relevant provisions in the Code of Standards and Behaviour
- If the line manager has concerns about sick certificates, the advice of the CMO should be sought.

C. Confirmation of appointment or termination

19. The line manager is responsible for making a recommendation about the future employment of the probationary employee. Each review meeting should inform the decision made by the line manager regarding the employee's continuation of employment. Where an employee consistently fails to meet standards, he or she should be informed at the review meetings of his or her deficiencies. The objective is to help the employee to improve while making it clear that failure to improve will result in termination. The employee should be in no doubt about the outcome if his or her performance and/or conduct does not improve. The line manager should make a recommendation to the HR section for confirmation or termination of the contract based on the performance reviews.

HR Section

20. Where the recommendation of the manager to the Personnel/HR Section, is that the employee has not established his or her suitability, the employee should be informed in writing by Personnel Section of that decision. The notification should state that the employment will be terminated on expiry of the probationary period or during the probationary period, subject to statutory notice. The employee should be given an opportunity to make verbal or written representations in relation to the proposed decision and these should be brought to the attention of the appropriate authority.

The case for termination of the employment should be submitted to the appropriate authority as soon as it is clear that, despite efforts having been made to assist the employee, he or she has not attained the required standard. Cases for termination of employment should be submitted to the appropriate authority well in advance of the end of the probationary period. A decision on the case will then be made by the appropriate authority. The decision will be given to the employee in writing.

Appointment following probation

21. An employee who has been appointed on the basis of a one year probationary contract on an established basis and who satisfactorily completes his or her period of probation will be appointed as an established civil servant in the Civil Service. An employee who is appointed on a fixed term contract and who completes his or her period of probation will continue in employment in the Civil Service for the duration of the contract.

Termination of Contract

22. In accordance with Section 7 of the Regulation Act 1956, and section 5(A) of the Civil Service Regulation (Amendment) Act 2005, an employee on a probationary contract who does not satisfactorily complete the period of probation will have their appointment to the Civil Service terminated [Appendix 1].

Provision for Termination in the Probationary Contract

23. The template contracts provided by the Department of Finance provide for a probationary period and a process of termination at the end of the contract term or at any time before the end of the contract term, provided that notice is given in

accordance with the Minimum Notice and Terms of Employment Acts 1973 – 2005. The Acts do not affect the right of an employer or an employee to terminate a contract of employment without due notice in the case of the misconduct of the other party.

Civil Servants holding an established position in the Civil Service

24. An employee on a probationary contract who does not satisfactorily complete the period of probation will have his or her appointment to the Civil Service terminated in accordance with procedures laid down in the Department or Office. Where the employee held an established position prior to his or her appointment on a one year probationary contract, he or she may be appointed to an established position in the same or equivalent grade or rank as the previous position, if the Minister consents. If the employee held the previous position in a probationary capacity, then the Minister may make the appointment subject to probationary conditions. The arrangements in this regard are set out in the Civil Service Regulation Act 1956, Section 7.

Disciplinary Process for Probationers

25. The Civil Service Disciplinary Code (Circular 14/2006) does not apply to employees serving in a probationary capacity after initial appointment to the Civil Service. It applies to officers on probation following promotion or assignment to higher duties; but not in respect of underperformance issues, for the duration of the probationary period.

Length of Probation

26. The probationary period should be of sufficient length to allow Departments and Offices to gauge an employee's competency to carry out all aspects of the job. The Unfair Dismissals Act 1977 Section 3 recognises probationary periods of 1 year or less and the Act does not apply to a dismissal in that period, once the contract is in writing and the period of probation is specified in the contract. It is expected that a one year probationary period or less will apply in the Civil Service in line with the Unfair Dismissal Acts 1977 - 2005

Fixed Term Employees

27. 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.

For fixed term contracts of longer duration e.g. a year or more, a probationary period of six months (with a provision to extend by a further three months) would be appropriate. It is also recommended that HR sections conduct an exit interview with all fixed term appointees for record purposes. This would ensure that the HR system has a record of the termination of all appointments and the reason for same.

Extension of Probationary contract

28. While it not envisaged that probationary contracts will normally be extended, there are circumstances where an extension should be considered:

- where an employee is absent due to Maternity or Adoptive Leave **Maternity Leave (Circular 35/1995), Adoptive Leave (Circular 2/1997)**. Section 25 of the Maternity Protection Act 1994 (as amended) provides that during an employee's absence from work on protective leave, while on probation, the probation stands suspended during such absence and shall be completed by the employee on her (or his) return to work after such absence
- where an employee is absent on Parental Leave or Carer's Leave, Parental Leave (Circular 22/1998 as amended) and Carer's Leave (Circular 39/2005) the employer may require probation to be suspended if the absence is not considered to be consistent with a continuation of the probation
- where an employee is absent due to a non-recurring illness.

The extension of the contract must be agreed to by both parties. Departments and Offices should put in place procedures for extending contracts in appropriate

circumstances, in accordance with section 7 of the Civil Service Regulation Act 1956 and should inform probationers of the procedures in place.

29. In order that the probationary process can be properly conducted, requests for transfers should not normally be considered during the 12 month probation period.

Termination before the end of the probationary contract period.

30. Section 7 of the Civil Service Regulation Act as amended by section 3 of the Civil Service Regulation Act 1958, provides for termination of employment of a probationer at any time during the probationary period. It is important to remember that where a contract of employment is for a period of one year, termination of employment before the end of the year, even though within the probationary period, may amount to a breach of contract unless provision for termination at any stage during the probationary period is made in the contract of employment. The Departments of Finance template probationary contract provides an example of such a provision. HR sections should also routinely inform the PAS of officers whose probationary contract is terminated before expiry.

Probation on promotion

30. Employees who are promoted from an internal competition within the Civil Service will serve a one year 'probationary' period at the end of which, if their performance is satisfactory, the appointment to the grade will be made substantive. It is envisaged that such appointments will be subject to the PMDS procedures in relation to performance monitoring and to probationary reviews in accordance with local arrangements. An officer whose service is not satisfactory, or who opts not to remain in the post, may, at any time during the probationary period, be returned to his or her previous position. If a decision is made not to confirm an appointee in the new grade, the Personnel Officer may be asked by the employee to request that the Civil Service Disciplinary Code Appeal Board review the decision [Ref. Circular 14/2006 Civil Service Disciplinary Code, paragraph 11 and 50 (ii)].

Length of Notice

31. The employee is entitled to the statutory notice period if their employment is being terminated during their probationary period. In accordance with the Minimum

Notice and Terms of Employment Act 1973, the notice period for a person in employment for less than two years is one week. If the contract is being terminated for misconduct, no notice period is required. It is important to ensure that the conduct of the final review of performance takes place sufficiently early in the process to allow for the notice period.

Forms and Guidance notes for Departments and Offices

32. Sample guidance notes for managers and forms for use in the probationary review process are available on the Department of Finance website

www.personnelcode.gov.ie

Appendix 1 Legislative Background

Probation

The legislative provisions governing probation are set out in Section 7 of the Civil Service Regulation Act, 1956 as amended by Section 3 of the Civil Service Regulation Act, 1958 and in Section 5A of the Civil Service Regulation (Amendment) Act 2005.

Civil Service Regulation Act 1956, Section 7 as amended by Section 3 Civil Service Regulation (Amendment) Act, 1958

“Where, in respect of a civil servant who has been appointed to an established position (in this section referred to as his probationary position) and who under his conditions of service is serving in a probationary capacity, the appropriate authority is at any time during the civil servant’s probationary period or such (if any) extension thereof as the appropriate authority may from time to time fix, satisfied that he has failed to fulfil the conditions of probation attaching to his probationary position, then, subject to section 4 (where applicable), the following provisions shall have effect—

(a) the appropriate authority shall, notwithstanding section 5, terminate the services of the civil servant, unless, immediately prior to his appointment to his probationary position, he held another position in the Civil Service;

(b) if the civil servant held, immediately prior to his appointment to his probationary position, an established position (in this paragraph referred to as his previous position), the appropriate authority shall terminate his appointment to his probationary position and, in that event, the civil servant may, if the Minister consents, forthwith be appointed to an established position (being a position which is, either, (i) in the same grade as that of his previous position, or (ii) in a grade or rank which, in the Minister's opinion, is equivalent to or lower than the grade of his previous position) to be designated by the Minister;

(c) where—

(i) the civil servant is appointed to an established position under paragraph (b) of this section, and

(ii) he held, immediately prior to his appointment to his probationary position, his previous position in a probationary capacity,

then, the established position to which he is appointed shall have attached thereto such conditions of probation and such other conditions as the Minister may fix;

(d) if the civil servant held, immediately prior to his appointment to his probationary position, a position which is not an established position (in this paragraph referred to as his previous position), the appropriate authority shall terminate his appointment to his probationary position and, in that event, the civil servant may, if the Minister consents, forthwith be appointed to a position which is not an established position (being a position which is, either (i) in the same grade as that of his previous position or (ii) in a grade or rank which in the Minister's opinion is equivalent to or lower than the grade of his previous position) to be designated by the Minister.”

The “appropriate authority”

The Civil Service Regulation (Amendment) Act 2005 in section 6 defines appropriate authority as:

‘the Government’, in relation to a civil servant appointed by Government or a Revenue Commissioner

‘the Minister’, in relation to a civil servant at Principal level or equivalent or superior grade, and

‘the Secretary General/Head of the Scheduled Office’, for civil servants below Principal level or equivalent.

Section 4(1)(f) and 9(1)(h) of the Public Service Management Act 1997 provide that the appropriate authority may assign to officers, or to a grade or grades of officers, responsibility for the performance of functions in respect of appointments, performance and discipline of personnel.

The Civil Service Regulation (Amendment) Act 2005

Appointment of civil servants on probationary contract

The Civil Service Regulation Act 1956 is amended by the substitution of new sections 5 and 5A for section 5. Section 5A deals with appointment of civil servants on probationary contracts as follows:

“5A (1) Notwithstanding any other provision of this Act, a person may initially be appointed to be an established civil servant on the basis of a probationary contract.

(2) Where a civil servant to whom subsection (1) refers completes the probationary period concerned to the satisfaction of the appropriate authority, that civil servant shall be appointed as an established civil servant and subsection (1) shall cease to apply to that appointment.

(3) Where a civil servant to whom subsection (1) refers does not complete the period of the probationary contract to the satisfaction of the appropriate authority, the provisions of section 7 shall apply.

(4) Nothing in this section shall prevent the termination of an appointment under subsection (1) in accordance with the terms and conditions of the probationary contract prior to the expiry of the term of the contract.”