



Circular Pay 9/04

To the Management Authorities of Secondary, Community and Comprehensive Schools.

New Entrants to Employment from 1 April 2004:- Raising the minimum pension age to 65. Abolition of the maximum age for retirement.

1. I am directed by the Minister for Education and Science to inform you that the Public Service Superannuation (Miscellaneous Provisions) Bill 2004 has now been enacted. Its effect is to change the superannuation terms for new entrants to the public service appointed on or after 1 April 2004.
2. In the case of the majority of public servants, (including teachers), the Act provides that
 - 65 is the minimum age at which pension may be paid to new entrants;
 - new entrants will not be required to retire on grounds of age.
3. The Act also makes consequential provisions, such as removing penalties for new entrants who serve beyond the age of 65.
4. It is essential for Boards of Management to ensure that new appointees are made fully aware of, and are treated in accordance with the revised arrangements. **Accordingly, in the case of staff taking up duty on or after 1 April 2004, Boards of Management will need to determine, at the outset, whether an employee should be treated as a 'new entrant' for the purposes of the Act.** For this purpose, Boards of Management will need to establish the recent previous public sector employment history (if any) of each new employee. The form contained in **Appendix 1** is an aid to Boards in determining whether an appointee is, or is not a New Entrant. Once that has been established, the potential employee should be given a clear written statement as to which superannuation arrangements apply to him or her.

5. Attached at Appendix 2 are statements that should be used for this purpose – **Appendix 2A** sets out a statement in relation to employees who are deemed to be new entrants; **Appendix 2B** sets out a statement in relation to employees who are deemed not to be new entrants. The appropriate statement should form part of the offer of appointment so that the person is fully aware of his or her superannuation position before taking up appointment. It should be signed by the new appointee and retained in the school.
6. Extracts from the Act are enclosed in relation to the definition of new entrant and including the definition of “public service body” and “public service pension scheme”. These extracts, together with a copy of Schedule 1 of the Act, which lists certain bodies to which the definition of “public service body” does not apply, are attached as Appendix 3. **Appendix 3** should be copied and issued to all those appointed on or after 1 April 2004.
7. As stated, the full definition of new entrant as set out in the Act is included as Appendix 3 of this Circular.

In general terms, a new entrant to employment in a school is a person who enters employment on or after 1 April 2004, (including employment in a temporary or fixed-term capacity, whether full-time or part-time), and either:-

- (1) has not previously served, (whether in a pensionable or non-pensionable capacity), in a public service body or a body listed in Schedule 1 of the Act (see Appendix 3) or
 - (2) has served, (whether in a pensionable or non-pensionable capacity), in such a body prior to 1 April 2004 but whose employment by the body terminated more than 26 weeks prior to employment by the school.
8. There are a number of exceptions to this general rule. A person who enters employment in a school on or after 1 April 2004 will not be treated as a new entrant where any of the following circumstances apply:-
- (1) The person is taking up employment in the school on foot of a written offer of appointment which was made before 1 April 2004 and the terms of which would be contravened if the person were to be treated as a new entrant.

(Note that the person does not have to have accepted the offer before 1 April 2004.)
 - (2) The person, on 31 March 2004, is on secondment from the public service to a body not in the public service, either within or outside the State or both, and is entitled to resume his or her office or position or another office or position within the public service.
 - (3) The person, on 31 March 2004, is absent on leave with or without pay from the public service and is entitled to resume his or her office or position or another office or position within the public service.

(4) The person was serving in a public service body or a body listed in Schedule 1 of the Act (see Appendix 3) prior to 1 April 2004 and left their employment and took up employment as a public servant on or after 1 April 2004 –

- (a) under the same contract of employment, or
- (b) not later than 26 weeks following the last day of service prior to 1 April 2004.

(5) The person has, on or before 31 March 2004, held the office of President of Ireland.

(6) The person, on 31 March 2004, holds or is on secondment from or is on approved leave, with or without pay, from the office or position of

- (a) a member of the judiciary
- (b) the Master of the High Court
- (c) a taxing master
- (d) a county registrar

9. Where on or after 1 April 2004 a public servant who is not a new entrant ceases to serve in a public service body or in a body to which Schedule 1 (see Appendix 3) relates and does so otherwise than for employment in another public service body or in a body to which Schedule 1 relates, then that person shall, if he or she subsequently applies for an office or position within the public service, be treated as a new entrant in respect of such subsequent service unless he or she takes up appointment—

(a) under the same contract of employment, or

(b) as a public servant no later than 26 weeks following the last day of service prior to cessation.

10. With regard to future appointments, Boards of Management will need to ensure that the terms and conditions of any posts advertised by them in the future reflect the provisions of the Act, both in terms of minimum pension age and the removal of the compulsory retirement age.

11. An information notice for circulation to all staff serving on 31 March 2004 is also enclosed, (**Appendix 4** refers).

P. Maloney,
Principal Officer,
Payroll Division.

May 2004

APPENDIX 1 of Circular PAY 09/04

Form NEW04 (page 1 of 3)

Appointment of a new employee

**Information needed to determine if the appointee is a New Entrant
for superannuation purposes**

(You should read Circular PAY 09/04 before completing this Form. The form is provided as an aid to the school in determining whether an appointee is or is not a New Entrant. Following completion, the appropriate documentation indicated in the Circular should be supplied to the employee. This Form should be retained in the school following completion.)

Name: _____

Date of Birth: _____

Appointment Date: _____

1. **Appointment Date before 1 April 2004?** Yes/No (Delete as appropriate)

If Yes, the appointee is not a New Entrant.

If No, continue.

2. **Appointment date on or after 1 April 2004?**

(a) **Was a written offer of appointment made before 1 April 2004? (See Note 1)**

Yes/No(Delete as appropriate)

If Yes, the appointee is not a New Entrant.

If No, continue.

(b) **Was the appointee employed in the public service, whether in a wholetime capacity or a part-time capacity, pensionable or non-pensionable, prior to the Appointment Date? (See Note 2)**

Yes/No (Delete as appropriate)

If No, the appointee is a New Entrant.

If Yes, continue.

(c) **Public service details of Employment prior to Appointment Date?**

Name and Address of the most recent public service employer:

Commencement Date of the most recent public service employment : _____

Date of Termination of the most recent public service employment (See Note 3) _____

Was Date of Termination more than 26 weeks before Appointment Date? Yes/No

If Yes, the appointee is a New Entrant.

If No, continue

(d) **Was Date of Commencement of the most recent public service employment prior to 1 April 2004?** Yes/No (Delete as appropriate)

If Yes, the appointee is not a New Entrant.

If No, the appointee will be a New Entrant, (unless the appointee has been in a public service employment which preceded the most recent public service employment :- in which case the Details at 2(c) should be completed on a separate sheet in regard to such employment).

Conclusion:- Complete Part A or Part B as appropriate.

Part A (New Entrant)

Following completion of the process outlined on this Form, and consultation with the Department where necessary, I have notified the employee named above that the employee is a New Entrant.

Signed _____

Date _____

Part B (Not a New Entrant)

Following completion of the process outlined on this Form, and consultation with the Department where necessary, I have notified the employee named above that the employee is not a New Entrant.

Signed _____

Date _____

Notes on completion of Form NEW04

Note 1 - Offer of appointment.

The person must be taking up employment in the School on foot of a written offer of appointment which was made before 1 April 2004 and the terms of which would be contravened if the person were to be treated as a new entrant.

The person does not have to have accepted the offer before 1 April 2004.

Note 2 - Public Service Employment.

Refer to Appendix 3 (Page 3) of Circular PAY 09/04 for the definition of “public service body” as set out in the Public Service Superannuation Act 2004.

Certain bodies are listed in the definition but the definition applies - through sub-paragraphs (g), (h) and (i) - to other bodies which, though not listed, are financed wholly or partly out of public funds and are bodies in respect of which a public service pension scheme exists or applies or may be made. For example, the Institutes of Technology and the Universities, though not listed in the Act, come within the definition of public service body. Similarly, service as a member of either House of the Oireachtas or of the European Parliament comes within the definition of service in a public service body.

A number of public service employments to which the definition would otherwise apply, are listed in Schedule 1 of the Act – see Appendix 3 (Page 4) of Circular PAY 09/04. The effect of their being listed in the Schedule is to exempt the public service employments in question from the application of the Act to their pension schemes. At the same time, service in such a public service employment may be reckoned, in the same way as service in a public service employment defined as a public service body, for the purposes of determining whether an employee is a “new entrant”.

In summary, for the purposes of determining whether an employee is a “new entrant”, public service employment includes service in a public service body as defined in the Act, service in a body listed in Schedule 1 of the Act and service in certain offices or positions as specified in the Act. The offices/positions in question are (1) the President of Ireland, (2) a member of the judiciary, (3) the Master of the High Court, (4) a taxing master, (5) a County Registrar.

Where you have any doubt whether an employment is a public service employment, the Pension Section of the Department should be consulted.

Note 3 - Date of Termination.

The details provided by the appointee regarding the most recent public service employment should be confirmed with the employer in question.

Note in particular that Date of Termination does not necessarily mean the last day of paid employment. Where the last day of paid employment in the public service was followed by a period of approved leave of absence or by a period of secondment to a body not in the public service (either within or outside the State or both), the Date of Termination will be the last day of approved leave of absence or the day on which the secondment ended, as appropriate.

In exceptional cases, the appointee may claim a Date of Termination on the basis that his or her most recent contract of employment in the public service provided for such a Date. Full details of any such claim, together with a copy of the contract, certified by the employer in question, should be obtained and forwarded to the Pension Section of the Department for consideration.

Appendix 2A of Circular Pay 09/04

STATEMENT REGARDING SUPERANNUATION PROVISIONS AND RETIREMENT AGE TO BE GIVEN TO A PERSON WHO TAKES UP EMPLOYMENT IN A SCHOOL ON OR AFTER 1 APRIL 2004 AS A NEW ENTRANT.

1. The Public Service Superannuation (Miscellaneous Provisions) Act 2004 was passed on 25 March 2004. The Act introduces new superannuation and retirement provisions for new entrants to the public service. The term “new entrant” is defined in Section 2 of the Act. A copy of that Section, together with extracts from the Act defining “public service body” and “public service pension scheme” and listing certain bodies to which the definition of “public service body” does not apply, are attached for your information - (*Appendix 3 refers*).
2. On the basis of the information supplied by you in relation to your previous employment history, you are deemed to be a new entrant.

All persons newly-appointed to employment in the public service, including employment by schools, are, where eligible, admitted to membership of the appropriate pension scheme. Pension schemes have already been established in the case of teachers and Special Needs Assistants and, in the case of Community and Comprehensive Schools, non-teaching staff. A pension scheme also exists for clerical staff in certain voluntary secondary schools – this is a pilot scheme which is confined to the schools and the individual staff members who were admitted when the scheme was established in the 1980s; the scheme is not open to new members. Following the enactment of the Part-time Work and Fixed-term Work Acts, consideration is currently being given to the question of admitting other employees of schools to pensionability.

The superannuation position of “new entrants” who become pensionable is as follows:-

- 2.1 The minimum age for payment of pension to new entrants is 65.
 - 2.2 New entrants will not be required to retire on grounds of age.
 - 2.3 At retirement, a new entrant will qualify for a retirement gratuity at the rate of 3/80th of retiring pay for each year of service, subject to a maximum of 40 years’ service
 - 2.4 Pension will be payable at the rate of 1/80th of co-ordinated retiring pay for each year of service, subject to a maximum of 40 years’ service. Co-ordinated pay is pay less twice the maximum personal rate of Old Age Contributory Pension. Twice the maximum personal rate of OACP is, currently, €17,459.43(May 2004).
 - 2.5 New entrants will be liable for the Class A rate of PRSI and will be eligible for OACP (and other benefits) from the Dept of Social and Family Affairs.
3. **To be signed by appointee:**

The implications of the Public Service Superannuation (Miscellaneous Provisions) Act 2004 have been explained to me. A copy of the definition of “new entrant” has been given to me. I have considered that definition and I agree/do not agree with the decision in my case. (If you do not agree with the decision, please state your reasons.)

Signed

Date

Appendix 2B of Circular Pay 09/04

STATEMENT REGARDING SUPERANNUATION PROVISIONS AND RETIREMENT AGES TO BE GIVEN TO A PERSON WHO TAKES UP EMPLOYMENT IN A SCHOOL ON OR AFTER 1 APRIL 2004 AND WHO IS NOT A NEW ENTRANT

1. The Public Service Superannuation (Miscellaneous Provisions) Act 2004 was passed on 25 March 2004. The Act introduces new superannuation and retirement provisions for new entrants to the public service. The term “new entrant” is defined in Section 2 of the Act. A copy of that Section, together with extracts from the Act defining “public service body” and “public service pension scheme” and listing certain bodies to which the definition of “public service body” does not apply, are attached for your information - (*Appendix 3 refers*).
2. On the basis of the information supplied by you in relation to your previous employment history, you are deemed not to be a new entrant.

All persons newly-appointed to employment in the public service, including employment by schools, are, where eligible, admitted to membership of the appropriate pension scheme. Pension schemes have already been established in the case of teachers and Special Needs Assistants and, in the case of Community and Comprehensive Schools, non-teaching staff. A pension scheme also exists for clerical staff in certain voluntary secondary schools – this is a pilot scheme which is confined to the schools and the individual staff members who were admitted when the scheme was established in the 1980s; the scheme is not open to new members. Following the enactment of the Part-time Work and Fixed-term Work Acts, consideration is currently being given to the question of admitting other employees of schools to pensionability.

The superannuation position of employees who are not “new entrants” and who become pensionable is as follows:-

- 2.1 The minimum age for payment of pension is 55, (with 35 years’ service) in the case of a teacher and in the case of non-teaching staff is 60 years.
- 2.2 Compulsory Retirement Date is the last day of the school year in which age 65 is attained.
- 2.3 At retirement, you will qualify for a retirement gratuity at the rate of $\frac{3}{80}$ th of retiring pay for each year of service, subject to a maximum of 40 years’ service.
- 2.4 Pension will be calculated as follows.
 - (a) Teacher liable at retirement for the Class D rate of PRSI:-

Pension is payable at the rate of $\frac{1}{80}$ th of retiring pay for each year of ongoing pensionable service, subject to a maximum of 40 years’ service.
 - (b) Staff liable for the Class A rate of PRSI, (ie all other pensionable staff).

Pension is payable at the rate of $\frac{1}{80}$ th of co-ordinated retiring pay for each year of service, subject to a maximum of 40 years’ service. Co-ordinated pay is pay less twice the maximum personal rate of Old Age Contributory Pension. Twice the maximum personal rate of OACP is, currently, €17,459.43.

2.5 Staff liable for the Class A rate of PRSI will be eligible for OACP (and other benefits) from the Dept of Social and Family Affairs.

3. To be signed by appointee

The implications of the Public Service Superannuation (Miscellaneous Provisions) Act 2004 have been explained to me. A copy of the definition of “new entrant” has been given to me. I have considered that definition and I agree/do not agree with the decision in my case. (If you do not agree with the decision, please state your reasons.)

Signed

Date

Appendix 3 of Pay 09/04 – Page 1 of 4

Extracts from the Public Service Superannuation (Miscellaneous Provisions) Act 2004

New entrant.

2 - (1) Subject to *subsections (2) to (6)*, reference in this Act to “new entrant” means a person who is not serving in a public service body¹, or a body to which *Schedule 1*² relates, on 31 March 2004 but becomes a public servant on or after 1 April 2004.

(2) Where a person is not a public servant (by virtue of the exclusions to “public servant” in *section 1*)³ but is a person to whom—

(a) *paragraph (i)* of those exclusions relates and such person holds, or had held on or before 31 March 2004, the office to which that paragraph relates, or

(b) *paragraph (ii), (iii), (iv) or (v)* of those exclusions relates and such person holds on 31 March 2004 an office or position to which one of those paragraphs relates or to whom *subsection (3)* would apply if the office or position were that of a public servant within the meaning of this Act,

then, where such person on or after 1 April 2004 becomes a public servant for the purposes of this Act, then that person shall be deemed not to be a new entrant.

(3) Where—

(a) a person on 31 March 2004—

(i) stands seconded from the public service to a body not in the public service, either within or outside the State or both, or

(ii) is absent on leave with or without pay from the public service,

and

(b) that person is entitled to resume his or her office or position or another office or position within the public service,

then that person shall not be treated as a new entrant if he or she resumes his or her office or position, or takes up another office or position, within the public service on or after 1 April 2004.

¹ Copy of definition from Section 1 of the Act follows for ease of reference.

² Copy of Schedule 1 follows for ease of reference.

³ **NOTE:** This subsection refers to exclusions in Section 1 of the Act and the offices referred to are: (i) the President, (ii) a member of the judiciary, (iii) the Master of the High Court, (iv) a taxing master, (v) a county registrar.

Appendix 3 of PAY 09/04 – Page 2 of 4

Extracts from the Public Service Superannuation (Miscellaneous Provisions) Act 2004

(4) Where—

(a) a person duly receives a written offer of appointment as a public servant before 1 April 2004 and takes up that offer after that date,

(b) a person was serving in a public service body or a body to which *Schedule 1* relates prior to 31 March 2004 and left such an office or position and takes up appointment as a public servant on or after 1 April 2004—

(i) under the same contract of employment, or

(ii) no later than 26 weeks following the last day of service prior to 31 March 2004,

or

(c) a person who immediately before 1 April 2004 stood admitted as a trainee Garda to the Garda College at Templemore,

and where—

(I) but for this subsection, *subsection (1)* would apply to him or her, and

(II) where *paragraph (a)* applies, the terms of the offer of appointment would be contravened if *subsection (1)* were to apply,

then, such person shall not be regarded as a new entrant and the provisions applicable to a public servant shall, but only in so far as the application of provisions relating to retirement age and superannuation, as the case may be, apply in the same manner as to a person serving in the public service on 31 March 2004.

(5) (a) Where before 1 April 2004 a person was a member of either House of the Oireachtas or the European Parliament, or was a holder of a qualifying office, then such person shall not be regarded as a new entrant for the purposes of any superannuation benefit payable in respect of membership of the Oireachtas or the European Parliament or in respect of any qualifying office.

(b) A person who holds or has held the office of Taoiseach shall not be regarded as a new entrant in relation to any superannuation benefit payable in respect of the holding of a qualifying office.

(6) Where on or after 1 April 2004 a public servant who is not a new entrant ceases to serve in a public service body or in a body to which *Schedule 1* relates and does so otherwise than for employment in another public service body or in a body to which *Schedule 1* relates, then that person shall, if he or she subsequently applies for an office or position within the public service, be treated as a new entrant in respect of such subsequent service unless he or she takes up appointment—

(a) under the same contract of employment, or

(b) as a public servant no later than 26 weeks following the last day of service prior to cessation.

(7) For the purpose of supplementing *subsection (5)*, the Act referred to in *columns 1* and *2* of *Part 1* of *Schedule 2* is amended to the extent specified in *column 3* of that Part opposite the references to the Act concerned.

Appendix 3 of PAY 09/04 – Page 3 of 4

Extracts from the Public Service Superannuation (Miscellaneous Provisions) Act 2004

“**public service body**” means—

- (a) the Civil Service,
 - (b) the Garda Síochána,
 - (c) the Permanent Defence Force,
 - (d) a local authority for the purposes of the Local Government Act 2001,
 - (e) a health board,
 - (f) a vocational education committee established under section 7 of the Vocational Education Act 1930,
 - (g) a body, other than a body set out in *Schedule 1*—
 - (i) established by or under any enactment (other than the Companies Acts 1963 to 2003), or
 - (ii) established under the Companies Acts 1963 to 2003 in pursuance of powers conferred by or under another enactment, and financed wholly or partly by means of moneys provided, or loans made or guaranteed, by a Minister of the Government or the issue of shares held by or on behalf of a Minister of the Government,
- and in respect of which a public service pension scheme⁴ exists or applies or may be made – (copy of definition from Section 1 of the Act below for ease of reference),
- (h) any body, other than a body set out in *Schedule 1*, wholly or partly funded out of moneys provided by the Oireachtas or from the Central Fund or the growing produce of that Fund and in respect of which a public service pension scheme exists or applies or may be made,
 - (i) any subsidiary of a body to which *paragraph (d), (e) or (g)* relates and in respect of which a public service pension scheme exists or applies or may be made,

and reference to “public service” shall be read accordingly;

“**public service pension scheme**” means an occupational pension scheme or pension arrangement, by whatever name called, for any part of the public service which—

- (a) is provided for under the Superannuation Acts 1834 to 1963 or any other enactment to like effect, or
- (b) is made by a relevant Minister or which has been approved or requires the approval or consent, however expressed, of either or both a relevant Minister and the Minister, but is not a scheme or arrangement in respect of a body or category of bodies set out in *Schedule 1*;

Extracts from the Public Service Superannuation (Miscellaneous Provisions) Act 2004

SCHEDULE 1

BODIES TO WHICH THE DEFINITION OF “PUBLIC SERVICE BODY” DOES NOT APPLY

1. A body which has an occupational pension scheme or arrangement that is made or may be made under the agreement between the Government of Ireland and the Government of the United Kingdom of Great Britain and Northern Ireland establishing Implementation Bodies done at Dublin on 8 March 1999.
2. Aer Lingus Group p.l.c.
3. Aer Rianta c.p.t.
4. Arramara Teoranta.
5. Bord Gáis Éireann.
6. Bord na gCon.
7. Bord na Móna.
8. Córas Iompair Éireann.
9. Coillte Teoranta.
10. Electricity Supply Board.
11. A harbour authority within the meaning of the Harbours Act 1946 or company to which section 7 of the Harbours Act 1996 relates.
12. Horse Racing Ireland.
13. Irish National Stud Company Limited.
14. Irish Aviation Authority.
15. An Post.
16. An Post National Lottery Company.
17. Radio Teilifís Éireann.
18. Railway Procurement Agency.
19. Voluntary Health Insurance Board.
20. A subsidiary of any body to which this Schedule relates, including a subsidiary of any subsidiary.

Appendix 4 of Circular PAY 09/04

INFORMATION NOTICE REGARDING SUPERANNUATION PROVISIONS AND RETIREMENT AGES FOR CIRCULATION TO ALL STAFF SERVING IN SCHOOLS ON 31 MARCH 2004.

1. The Public Service Superannuation (Miscellaneous Provisions) Act 2004 was passed on 25 March 2004. The Act introduces new superannuation and retirement provisions for **new entrants** to the public service appointed on or after 1 April 2004.
2. In summary, the Act
 - introduces a minimum age of 50 at which pension may be paid to new entrants to the Permanent Defence Force;
 - increases to 55 the minimum age at which pension may be paid to new entrants to the Garda Síochána and the Prison Service; [*the minimum age at which pension may be paid to new entrant fire-fighters remains unchanged at 55*];
 - makes 65 the minimum age at which pension may be paid to all other new entrants to the public service;
 - increases the compulsory retirement age for new entrants to the Gardaí to 60, (subject to health, fitness and capability conditions); [*the compulsory age for members of the Prison Service remains unchanged at 60; the compulsory age for fire-fighters remains unchanged at 55; the compulsory retirement ages for members of the Permanent Defence Force remain unchanged*];
 - provides that all other new entrants to the public service will not be required to retire on grounds of age;
 - makes consequential provisions, such as removing penalties for new entrants who serve beyond the age of 65 and providing that fast accrual will not apply to new entrants to certain posts in the fire brigade or the psychiatric services.

3. Position of serving staff

The Act does not change the terms and conditions of public servants who are serving on 31 March 2004. Public servants who are serving on that date should, however, note the provisions of section 2(6) of the Act, which deals with the position of serving public servants who subsequently leave the public service.

2 (6) Where on or after 1 April 2004 a public servant who is not a new entrant ceases to serve in a public service body or in a body to which Schedule 1 relates and does so otherwise than for employment in another public service body or in a body to which Schedule 1 relates, then that person shall, if he or she subsequently applies for an office or position within the public service, be treated as a new entrant in respect of such subsequent service unless he or she takes up appointment—

- (a) under the same contract of employment, or*
- (b) as a public servant no later than 26 weeks following the last day of service prior to cessation.*

4. The full text of the Act is available on the Department of Finance website, www.finance.gov.ie.