

**SUBJECT:**

**Termination of Employment on the Grounds of the Efficient Discharge of the Employers Function**

**CIRCULAR NUMBER:  
2014/11**

**DATE OF ISSUE:  
13 May 2014**

**AUDIENCE:**

- Principals and Boards of Governors of Grant-aided Schools;
- Education and Library Boards;
- Council for Catholic Maintained Schools;
- Comhairle na Gaelscolaíochta;
- Northern Ireland Council for Integrated Education;
- Governing Bodies Association;
- Teachers' Unions.

**SUMMARY OF CONTENTS:**

This Circular provides details on the requirements governing the operation of Efficient Discharge in the 2014/15 financial year.

**ENQUIRIES:**

Any enquiries about the contents of this Circular should be addressed to:

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**STATUS OF CONTENTS:**

Advice

**RELATED DOCUMENTS:**

Circular 2010/14

**SUPERSEDED DOCUMENTS:**

**EXPIRY DATE:**

Not applicable

**DE WEBSITE:**

This Circular is available on  
<http://www.deni.gov.uk>

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## INTRODUCTION

1. The Teachers' Compensation for Premature Retirement and Redundancy Regulations (Northern Ireland) 2010 (SR 2010 No. 136), set out the statutory basis by which employers may compensate teachers<sup>1</sup> for loss of employment through redundancy or in the interests of the efficient discharge of the employer's function.
2. This Circular, which should be read in conjunction with DE Circular 2010/14, deals only with the termination of employment on the grounds of efficient discharge of the employers function. This Circular does not purport to be a definitive interpretation of these Regulations.

## DEFINITION OF EFFICIENT DISCHARGE

3. Terminating teachers' employment on grounds of efficient discharge is a management tool to drive up standards.
4. Teachers' employment could be terminated on the grounds of efficient discharge where there is evidence to suggest that a teacher's performance and effectiveness has been significantly affected by the increasingly complex and demanding environment brought about by changes to the curriculum, and technology.
5. Efficient discharge may be considered in circumstances where re-training would be either an ineffective or inefficient use of resources, or where phased retirement/stepping down is not a viable option.
6. Termination on grounds of efficient discharge **should not be used** where other HR policies and practice would be appropriate, including:-
  - as a means of facilitating the release of teachers who simply want to leave;
  - for avoiding dismissal on the grounds of unsatisfactory performance;

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<sup>1</sup> Teachers: the term teacher/s is construed to include principals and vice-principals.

- where there is evidence of significant deficiencies in teaching and/or management or leadership;
  - where ill-health retirement or termination of employment on health grounds is the most appropriate route for individuals on long-term sickness absence;
  - to avoid dealing with cases which may fall within the terms of the disciplinary procedure; and
  - where a teacher has received a PRSD review which is inconsistent with an efficient discharge application and/or performance pay increase in the previous 2 years or where such an increase has been recommended by the employer.
7. Documentary evidence will be required, where relevant, to substantiate declarations as to why other personnel policies are not applicable.
  8. It should be noted that the efficient discharge scheme allows for the post to be re-filled, the details of which should be included in the application form.
  9. It is recognised that there may be circumstances of a unique nature where efficient discharge may be an appropriate course of action. It is for employing authorities in all cases to exercise judgement as to whether an application for efficient discharge is warranted. For any application, the circumstances should be very clearly articulated and supported by all relevant documentation.

## **OBJECTIVE OF EFFICIENT DISCHARGE**

10. Terminating teachers' employment on grounds of efficient discharge is a management tool anticipated to drive up standards by:-
  - re-energising and motivating pupils through exposure to improved levels of leadership, teaching and learning and allowing them to attain and sustain higher levels of achievement;

- enabling the recruitment of teachers with a different skillset, making learning more interesting and engaging for pupils;
- benefiting pupils in circumstances where aspects of existing teaching/leadership changes to bring about a more dynamic, collaborative approach which serves to impact positively at whole school level and enabling employers to encourage teachers who are unable to keep pace with change to exit the profession with dignity.

## **PARAMETERS OF EFFICIENT DISCHARGE**

11. Efficient discharge must be operated at the initiative of the employer and not the individual teacher. However, the individual has to agree that they will be efficiently discharged.
12. Once a teacher is released under the efficient discharge scheme, employing authorities will need to have a contingency plan in place taking into account the timescale for release.
13. Applications should fully meet the criteria (*as set out in Annex 1*).
14. Teachers should be made aware that they should not resign before a decision has been reached by the Efficient Discharge Panel.
15. Posts should not be advertised for replacement teachers before a decision has been reached by the Efficient Discharge Panel.

## **APPLICATION/APPROVAL PROCESS**

16. The application form will be completed by the relevant Board of Governors and issued to the relevant Employing Authority/Funding Authority as follows:
  - Maintained Schools: CCMS to ELB
  - Controlled Schools: relevant ELB
  - VGS/GMI Schools: Schools' Finance Team

17. Each Employing Authority/Employer (as appropriate) is responsible for considering the eligibility and validity of all applications received for efficient discharge. This entails ensuring the eligibility criteria, detailed in Annex 1, are met.
18. Furthermore, in consideration of those eligible applications, Employing Authorities/Employer (as appropriate) must determine the validity of each and document their support for the applications.
19. The Employing Authority/Employer (as appropriate) submits its applications, with supporting documentation, to the Department for consideration.
20. The Department, on receipt of the applications will determine those cases that can have their employment terminated on the grounds of Efficient Discharge and advise the Employing Authority/Employer (as appropriate). There is no right of appeal in relation to these decisions.
21. A comprehensive record of proceedings will be kept by the Department.
22. ***The decision of the Department in respect of each application is final and binding and there is no right of appeal.***

## **CONSTITUTION OF THE EFFICIENT DISCHARGE PANEL**

23. The Efficient Discharge Panel will comprise the following:
  - Chaired by an internal DE official (Director of Education Workforce Development);
  - an ETI Inspector;
  - an individual nominated by Employers<sup>2</sup>; and
  - an individual nominated by Teachers Side<sup>3</sup>.
24. The Chair of the panel will hold a casting vote.

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<sup>2</sup> To avoid any conflict of interest, the Department will have a small pool of individuals (3) nominated from management side.

<sup>3</sup> To avoid any conflict of interest, the Department will have a small pool of individuals (3) nominated from teachers' side

## ASSESSMENT CRITERIA

25. Applications will be assessed against set criteria which are based on the [Department's Corporate Goals which are detailed below](#) and in greater detail at Annex 1.
26. In addition to evidence regarding contribution towards the DE Corporate Goals qualitative evidence regarding other expected improvements/benefits (arising from the efficient discharge) will also be considered.
27. Baseline statistical information and associated targets, as set out in each school's Development/Action Plan, should be set out along with the anticipated statistical increase.
28. Schools should explicitly state what the expected improvement and/or benefits will be and how they are to be achieved (See Annex 1).

## DEPARTMENT'S CORPORATE GOALS

### **(1) Raising Standards (*Essential Criteria*)**

*Through high quality teaching and learning, ensuring that all young people enjoy and do well in their education and that their progress is assessed and their attainment recognised, including through qualifications. Application forms **must** specify the improvements expected in this area.*

### **(2) Closing the Performance Gap (*Essential Criteria*)**

*Addressing the under-achievement that exists in our education system; ensuring that young people who face barriers, or are at risk of social exclusion, are supported to achieve to their full potential; and ensuring that our education service is planned effectively on an area basis to provide pupils with full access to the curriculum and Entitlement Framework. Application forms **must** specify the improvements expected in this area.*

### **(3) Developing the Education Workforce (*where relevant*)**

*Recognising the particular professional role of teachers and school leaders in delivering an effective curriculum and raising standards and also the important role of other education professionals and those who support them. Application forms will, where relevant, specify the improvements expected in this area. This may include qualitative evidence regarding other expected improvements/benefits.*

### **(4) Improving the Learning Environment (*where relevant*)**

*Making sure that strategic investment supports the delivery of area plans; that the premises in which young people learn are safe, fit for purpose and conducive to learning; and that the environment provides opportunities for sharing and for building a more cohesive society. Application forms will, where relevant, specify the improvements expected in this area. This may include qualitative evidence regarding other expected improvements/benefits.*

### **(5) Transforming the Governance and Management of Education (*where relevant*)**

*Ensuring that the arrangements for governing and managing education here are modern, accountable and child-centred and that education services are delivered efficiently and effectively in support of schools. Application forms will, where relevant, specify the improvements expected in this area. This may include qualitative evidence regarding other expected improvements/benefits.*

## **MONITORING & EVALUATION**

29. Where efficient discharge is approved, monitoring will be required to take place on the expected improvements outlined in the application. A report must be made to the relevant Employing Authority/Funding Authority on a yearly basis, using existing relevant data to monitor the expected improvements as a means of verification. It will be the responsibility of the Employing Authority/Funding Authority to address any issues highlighted in the monitoring report.

30. The Education and Training Inspectorate (ETI) will carry out a formal review of the overall Efficient Discharge process after 3 years. The Terms of Reference for this review will be set by the Department and will aim to determine whether the expected improvements and benefits have been achieved for the cohort of schools where Efficient Discharge has been used. The ETI report will be considered by the Department and published on the ETI website.

## **FINANCIAL CONSIDERATIONS**

31. The number of successful applications in each financial year will ultimately be managed by the Department, subject to affordability.
32. From 30 April 2010, Regulation 6 of the Compensation Regulations enables teachers' employers to make enhanced severance payments to teachers who have not been granted premature retirement.
33. The compensation payable under Regulation 6 of the Compensation Regulations is at the employer's discretion. Whilst the maximum payment that can be made is 104 weeks pay, decisions on the level of compensation to be awarded should be guided by the principle of maximum economy, consistent with effectiveness. Employing Authorities must have regard to the extent to which the use of their discretionary powers, unless properly limited, could lead to a serious loss of confidence in the public service.
34. In determining the compensation payable, Employing Authorities must also have regard to the age discrimination provisions of the Employment Equality (Age) Regulations (NI) 2006.
35. The exemption in Regulation 35 allows employers to calculate a lump sum compensation payment as a multiplier of the statutory redundancy payment due and thus not need to objectively justify the use of age and length of service.
36. However, the exemption only applies to redundancy payments. If an employer was, therefore, to adopt a formula for calculating the discretionary compensation payment on termination of employment, in efficient discharge cases, using criteria that took into account age and/or length of service or other criteria that could be

indirectly discriminatory, it would have to be reasonably assured that it would be able to defend any claim of age discrimination by satisfying a tribunal that its policy is objectively justified.

37. To objectively justify less favourable treatment, the employer must be able to demonstrate that the policy pursues a legitimate aim and that it is proportionate, ie it is an appropriate and necessary means of achieving that aim.
38. Costs incurred should be met by the relevant Employing Authority/Funding Authority.

## **RE-EMPLOYMENT OF TEACHERS**

39. Wherever possible, preference should be given to newly qualified or experienced non-retired teachers seeking to return to employment when filling vacancies, including those of a temporary nature. The Northern Ireland Substitute Teachers Register (NISTR) will assist employers in this respect.
40. As a general principle, and in view of the significant compensation costs that will have been incurred, it is particularly hard to justify the re-employment of teachers released under the Efficient Discharge Scheme.
41. Where the application raised concerns relating to the teacher's effectiveness, re-employment, especially in the same capacity and/or the same school which the individual has left, is not considered appropriate in efficient discharge cases.

## **APPLICATION FORM**

42. Application form can be downloaded from - [http://www.deni.gov.uk/index/school-staff/64\\_teachers-pensionscheme\\_pg/64-teachers-pension-scheme-circulars\\_pg.htm](http://www.deni.gov.uk/index/school-staff/64_teachers-pensionscheme_pg/64-teachers-pension-scheme-circulars_pg.htm)

**ASSESSMENT CRITERIA – Guidance Notes for Measuring Benefit Realisation**

**Baseline statistical information and associated targets, as set out in each school's Development/Action Plan should be set out along with the anticipated statistical increase.**

In addition to evidence regarding contribution towards the DE Corporate Goals, qualitative evidence regarding other expected improvements/benefits (arising from the Efficient Discharge) will also be considered.

**Raising Standards**

**(a) Post-Primary Schools**

Schools should provide statistical information on:

- (i) the current number and percentage of their pupils who have achieved 5 GCSEs at Grades A\*-C (or equivalent) including GCSE English and GCSE Maths in accordance with the existing School Development/Action plan; and
- (ii) the anticipated increase in each year over a 3-year period if Efficient Discharge was to be approved. This statistical information will be measured against the NI average statistics to determine how the school is currently performing and the anticipated performance.

**(b) Primary Schools**

Schools should provide statistical information on:

- (i) the current number and percentage of their pupils who have achieved Key Stage 2 Communication in English or Irish (as appropriate) and Key

Stage 2 Maths in accordance with the existing School Development/Action plan; and

- (ii) the anticipated increase in each year over a 3-year period if efficient discharge was to be approved. This statistical information will be measured against the NI average statistics to determine how the school is currently performing and the anticipated performance.

### **Closing The Performance Gap**

#### **(a) Post-Primary Schools**

- (i) Schools should demonstrate a proposed increase in the number of young people from disadvantaged backgrounds who leave school with at least 5 GCSEs including English and Maths.
- (ii) Schools should demonstrate an improvement on the statistics that show in 2011/12 only 34.1% of school leavers with free school meals entitlement (the main indicator of social disadvantage) achieved at least 5 GCSEs A\*-C including English and Maths, compared with 67.9% of those without free school meals.

#### **(b) Primary Schools**

Schools should set out what their baseline information on the proportion of pupils at the expected level in Key Stage 2 communication in English or Irish (as appropriate) is, in accordance with the existing School Development /Action plan. Schools should state clearly what their expected improvements will be within a 2-year period.

### **Developing the Education Workforce**

Schools should provide detail on how they will ensure that the staff will have the necessary skills set to deliver an effective curriculum and raise standards. Additional specific improvements not included in the previous sections should be included, if

appropriate. This may include qualitative evidence regarding other expected improvements/benefits anticipated as a result of the efficient discharge.

### **Improving the Learning Environment**

Schools should set out current pupil attendance levels for all pupils and for pupils in receipt of free school meals and the expected improvement over each of the next 3 years.

Schools should provide information on the current proportion of year 12 pupils staying on into years 13/14 and the expected impact on this.

Schools should set out current sickness levels for teachers and other staff and the expected reduction in each year for the next 3 years.

This may include qualitative evidence regarding other expected improvements/benefits.

### **Transforming the Governance and Management of Education**

Schools should provide detail on how there will be an improvement in governance and the effective use of their budget allocation.

This may include qualitative evidence regarding other expected improvements/ benefits.