



Ref: DG CS 4/2014; EDUC 187/04

31 January 2014

To: Permanent Secretary, Directors General, Directors and Heads of Entities

Subject: APPOINTMENT TO DEFINITE CONTRACTUAL POSITIONS

Circular

Please bring the attached PAHRO Circular No 2/2014 to the notice of all concerned.

Heads are advised to ensure that all employees concerned confirm that they have seen the Circular by signing a copy thereof.

A handwritten signature in black ink, appearing to read 'AVG' with a date '10/2/14' written below it.

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28th January 2014

To: Permanent Secretaries
Directors General
Directors
Heads of Public Sector Organisations

APPOINTMENT TO DEFINITE CONTRACTUAL POSITIONS

Reference is made to paragraphs 1.1.9.8 - 10 of the Public Service Management Code which, *inter alia*, stipulate that a public officer can hold concurrent appointments in a substantive grade and a definite contractual position only if the salary of the grade does not exceed that of the position, unless for reasons of progression.

As a further measure towards flexibility and for mobility purposes, this policy has been reviewed in consultation with the Public Service Commission, with the aim of allowing vertical (both higher and lower) and horizontal (lateral) appointment to a definite contractual position of a public officer who already holds a substantive grade/indefinite status.

Henceforth, a public officer holding a substantive grade/indefinite status may apply for a definite contractual position which is pegged to a salary scale which is at the same level or even lower than that of his/her substantive grade/indefinite status. If appointed, the officer will be paid the salary pertaining to the definite contractual position for the duration of his/her assignment and the same principle as laid down in paragraph 2.2.3.2 of the Public Service Management Code, with regard to pay structure and salary point, will apply. The officer will revert to the substantive grade/indefinite status if the engagement on an assignment basis is terminated or is not renewed.

In accordance with the same reasoning, a public officer who, whilst holding a definite contractual position, is appointed to a higher substantive grade/progresses to a salary scale which is higher than that of the position, will not be obliged to relinquish the position and take up the duties of the higher substantive grade. S/he will have the option of retaining his/her definite contractual position with the substantive appointment being a notional appointment¹ until the appointment in the position is terminated or is not renewed.

In this regard, it is hereby being clarified that the period spent performing the duties of a definite contractual position pegged to a salary scale which is lower than that of the substantive grade of a public officer does not count as "service in the grade" as defined in paragraph 1.3.16.1 of the Public Service Management Code. Conversely, in line with the principle of encouraging upward mobility, any period spent satisfactorily performing the duties of a position pegged to a salary scale which is higher than, or at the same level as, that of the substantive grade is reckonable as "service in the grade".

¹ A notional appointment is an appointment to a substantive grade made for the purposes of seniority (i.e. the effective date of appointment will be the date of the Prime Ministerial approval), future increments (if applicable) and entitlement to future progression/promotion opportunities (if applicable) but not for present pay purposes.

Subject to the provisions of regulation 7 of the “Contracts of Service for a Fixed Term Regulations” (SL 452.81), upon the lapse of 4 years in the position the officer concerned will attain indefinite status as ‘Officer in Scale’ on the basis of the definite contractual position, which indefinite status may be retained concurrently with the substantive grade and / or any other ‘Officer in Scale’ status which may have been attained on the basis of another definite contractual position.

Moreover, it is also clarified that, in the case of selected candidates who are public officers pensionable under the Pensions Ordinance (Chap. 93 of the Laws of Malta), their Treasury Pension/Gratuity shall be calculated on the basic salary of their substantive grade, or on the basic salary of their actual office, if lower, at the time of leaving the Service.

Existing clauses in contractual Agreements entered into with officers who are on a definite contractual position, the provisions of which may be in conflict with these arrangements (namely Clause 7 in Specimen Agreements ‘A’ and ‘B’ and Clauses 4.1, 6.3 and 7 in Specimen Agreements ‘C’ and ‘D’), are to be considered as repealed with effect from the date of this circular. The respective clauses in future Agreements are to be drawn up as follows:

“4.1² The salary tied to this assignment shall be € _____ / the minimum/mean/maximum point of salary scale _____ (currently € _____) / that of salary scale _____ (which in the year _____ is € _____ per annum rising by annual increments of € _____ up to a maximum of € _____)³, paid in thirteen four-weekly payments in a calendar year. Where applicable, the Treasury pension/gratuity under the 1937 Pensions Ordinance (Cap. 93) will be calculated on the basic salary of the substantive grade, or on the basic salary of the actual office, if lower, at the time of leaving the Service. In addition, the Officer shall receive the mid-year and Christmas bonus and any other benefits such as income supplement, including the approved cost of living increases announced in the Estimates provided however that these are not already being enjoyed by her/him under any of the provisions of the Social Security Act.

6.3⁴ In the case of reversion to a substantive grade and subject to positive performance during the assignment period, the incumbent will be accorded the salary steps to which he/she would have been entitled within the applicable salary scale had the officer continued uninterruptedly to perform the duties of his or her substantive grade only if the salary tied to this assignment is higher than, or equivalent to, the salary of the substantive grade.

7⁵ Service performed during the contractual period will be reckoned as service in the grade for the purposes of the Classification Agreements/Documents, where applicable, if the salary scale pegged to the position is higher than, or at the same level as, that of the grade in question. However, if the salary scale pegged to the position is lower than that of the grade in question, then service performed during the contractual period will not be reckoned as service in the grade. Seniority in the grade will not be affected.”

Furthermore, it is to be highlighted that these new arrangements impact upon the eligibility of public officers holding a substantive grade who apply for definite contractual positions, by widening the field of selection. In this regard, therefore, immediate action is to be taken by departments to publish notices in the case of calls for applications for definite contractual positions

² Applicable to Specimen Agreements C and D.

³ Delete/Update as applicable in terms of the call for applications.

⁴ Applicable to Specimen Agreements C and D.

⁵ Applicable to Specimen Agreements A, B, C and D.

which have been issued but whose closing date has not yet expired as on the date of this circular, drawing attention to the new parameters and extending the dead-line for applications by two (2) weeks.

Future calls for applications for the filling of definite contractual positions are to exclude the current standard paragraph stating that:

“If the selected candidate is a Public Officer holding a substantive grade in the Malta Public Service, and during the assignment period, is appointed to a grade with a Salary Scale higher than Scale _____, he/she will be required to relinquish the duties of _____ and be transferred to duties pertinent to his/her new grade. However, if the substantive salary of a selected officer becomes higher than the _____ through progression, he/she will be allowed to complete his/her term of engagement as provided by the assignment in force.”

Moreover, the standard paragraph making reference to the Treasury Pension in calls for applications for the filling of definite contractual positions should henceforth read as follows:

“If a selected candidate is a public officer pensionable under the Pensions Ordinance (Cap. 93,) his/her Treasury Pension/Gratuity shall be calculated on the basic salary of his/her substantive grade, or on the basic salary of his/her actual office, if lower, at the time of leaving the Service.”

The necessary amendments to the Public Service Management Code will be effected in due course.

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