

Chapter 6

Department of Education and Science

6.1 Payment of Salary in Lieu of Untaken Annual Leave

Annual Leave Regulations

Rules for the regulation and control of annual leave allowances for civil servants are set out in Department of Finance Circular 27/03.

These rules allow payment to be made to civil servants for untaken annual leave accrued at the date of cessation of employment *i.e.* resignation, retirement or death. Payment in respect of each day of untaken annual leave should be calculated on the basis of one fifth of the normal weekly salary, irrespective of whether staff are paid on a weekly, fortnightly or monthly basis.

The Circular sets out rules to be applied where it is not possible because of work requirements to allow staff to avail of annual leave in excess of the statutory minimum. Any such untaken leave may be carried over to the following year on the basis of a three-year cycle. However, leave carried over at the end of year two of the cycle is forfeit if not taken during the third year. Under the provisions of the Organisation of Working Time Act 1997, Departments are obliged to ensure that an officer takes his/her full statutory minimum annual leave entitlement within the year in which it is accrued or, with the employee's consent, within six months of the start of the next leave year. This allows for limited carryover of the untaken statutory balance into the new leave year.

Audit Findings

In the course of a payroll audit of the Department of Education and Science it was noted that the Department made payment for untaken leave of 120 days to a senior official who had recently retired. The gross amount of the payment made was €77,586.

As I was concerned that some of the untaken leave for which payment was made in this instance breached the regulations on carryover set by the Department of Finance, I asked the Accounting Officer for details of the untaken leave for which payment was made in this instance, the circumstances which gave rise to the payment, the extent of payments made by the Department for untaken leave in the past five years and the number of instances where the regulations regarding carryover of leave had been breached by the Department.

Accounting Officer's Response

Specific Case

The Accounting Officer stated that in this case, the untaken leave had accumulated over the period since 1994. She informed me that the official was unaware that this payment was not consistent with the Department of Finance Circulars. He had been informed by the Department's Personnel section at the time of his retirement that he was entitled to be paid for any untaken leave and had been requested to forward details of leave taken so that Personnel section could make the necessary calculations and arrange payment. When the matter was brought to his attention recently, he immediately indicated that he wished to repay to the Department the amount inadvertently received in respect of days in excess of those allowable had the Department implemented the provisions of Finance Circular 27/03 (and its predecessor 26/99) in relation to carryover of annual leave. If the circular provisions had been implemented he would have been paid for 37 days not 120. The gross overpayment was €53,664: the net amount worked out at €29,570 and arrangements are in train to repay this amount to the Department.

Department's Practice

The Accounting Officer informed me that it had been the practice in the Department to allow staff to carry over annual leave in excess of that allowed under Department of Finance Circular 27/03 and pay staff upon retirement for untaken leave. While the Department informed staff of the terms of the Circulars, in practice it had allowed the carryover of leave in excess of that allowed under these Circulars due to various pressures over a number of years.

She stated that in the late 1990s, the Department had serious concerns as to its capacity to deliver the range of educational services required of it in an increasingly demanding environment. A major programme of structural reform was recommended by a Task Force chaired by a former Secretary General of the Department of Finance. This led to internal reorganisation of the Department, the creation of a network of Regional Offices and the establishment of the State Examinations Commission and the National Council for Special Education. All of these reforms contributed to a significant turnover of staff in 2003. This was followed by Ireland's Presidency of the EU from January to June 2004, which also gave rise to additional pressures. As a result of these pressures, the Department took the position that staff should not suffer loss of untaken leave.

She confirmed that the Department had not sought the approval of the Department of Finance to set aside the provisions of Circular 27/03.

Extent of Payments for Untaken Leave

The Accounting Officer informed me that approximately €392,000 had been paid to 64 officials in the last five years on foot of untaken leave on cessation of employment. In respect of 16 of these (excluding the payment in the specific case), approximately €69,000 was paid in respect of untaken leave estimated to be in excess of that which would have been payable if the Circulars had been implemented by the Department over the period concerned. Payment for untaken leave ranged from as little as a half day to 151 days, with 22 payments in the period exceeding €5,000.

She also informed me that over the same five-year period the Department had permitted staff to exceed the maximum allowable carryover of annual leave in 137 separate instances.

Recovery of Amounts Overpaid

The Accounting Officer informed me that the Department had not sought repayment of any amounts paid in respect of untaken leave in excess of that which would have been allowed had the Department implemented the provisions of Circular 27/03 and its predecessor in relation to carryover of annual leave.

However, she stated that she was considering the position regarding the approach to be adopted in the cases where overpayments had been made.

Revised Procedures

The Accounting Officer stated that, following an analysis of the position, the Department intends to put in place a range of measures designed to bring about compliance with Circular 27/03 for all staff on a phased basis and at the same time minimise the circumstances in which individuals receive payment in lieu of untaken leave.

Views of the Department of Finance

As the issues arising in the Department of Education and Science also have relevance for all other Departments and Offices, I sought the observations of the Accounting Officer of the Department of Finance on the matter.

He informed me that the day-to-day implementation of the Circular was a matter for Departments and Offices. He confirmed, however, that under the rules any untaken leave in excess of that allowed to be carried over by serving staff under a three year cycle provided for in the Circular was lost and that there was no provision for payment to be made in such circumstances. He informed me that separate arrangements under the Circular allow for payments to be made in respect of untaken leave accrued at the date of cessation of employment within the context of the three year cycle and, where appropriate, the provisions of the Organisation of Working Time Act 1997.

It was his view that Departments and Offices should as a matter of course consider recovering any overpayments that arise. He also indicated that it was a matter for Departments and Offices to consider whether it is possible or appropriate to pursue repayment in light of the circumstances of each individual case.

He also informed me that the Department of Finance was not immediately aware of other Departments or Offices where the provisions of the Circulars were not applied in recent years. He added that, in the light of my enquiries and the response of the Department of Education and Science, his Department had recently asked Departments and Offices to review their files to identify any cases where the annual leave carryover rules had not been properly applied and to rectify the matter. The Department of Finance had also advised all Departments and Offices of the need to apply the rules and procedures in the relevant Circulars and instructed them not to make any payments in respect of accumulated leave other than those set out in the Circular to cover the arrangements which apply on the cessation of employment.

6.2 Institiúid Teangeolaíochta Éireann

Institiúid Teangeolaíochta Éireann (ITÉ) was established in 1972 as a company limited by guarantee without share capital. Its primary objective as set out in its Memorandum of Association was: *“to initiate, promote, commission and carry out studies, research and experiments on language, language behaviour, language acquisition and the teaching of languages, such work to be primarily concerned with the Irish language, with promoting its development and extending its use”*.

In recent years a value for money report and an independent consultant’s report made recommendations in relation to the reorganisation of ITÉ. However, no progress was made in implementing these recommendations.

Due to some internal difficulties in the company the Director agreed to stand aside from his duties as Director in the first half of 2002. An Acting Director subsequently resigned in November 2002, citing personal reasons. The then Chairman of the company resigned his position in January 2003. At this stage the company was without a Director or Chairman. In January 2003, two members of staff served legal proceedings against the company.

The Department met a delegation of members of the Executive Committee of ITÉ in May 2003 and, having considered the history of discord in the company and the difficulties that members would have in trying to run the company, agreed that the prudent course would be to wind up the company. The Department’s desire was that the winding up process would be orderly and achieved without undue delay.

An Extraordinary General Meeting of ITÉ, held on 18 July 2003, agreed to initiate a process of voluntary liquidation. At a meeting of the Executive Committee of ITÉ on 5 December 2003 a timetable for appointment of a liquidator was agreed. The liquidator was subsequently appointed on 9 January 2004. The company agreed to issue redundancy notices to staff in advance of the liquidator’s appointment.

I have certified final accounts of the company to 9 January 2004. At that date ITÉ had total assets of €395,000, of which €393,000 was cash.

I noted that funding continued to be provided from the Vote for Education and Science during the liquidation process – €1.480 and €1.304 in 2004 and 2005 respectively (this compares with funding of €1.764 and €1.985 provided in the previous two years). I also noted that after two years the liquidation had not been completed and a further €889,000 has been provided for 2006 to meet expenditure on payroll, office expenses and liquidation fees. I asked the Accounting Officer to outline the reasons for the delay in finalising the affairs of the company.

The Accounting Officer informed me that the Department gave a commitment to provide every assistance to the company in giving effect to its decision and had been working closely with the liquidator since his appointment in this regard. This included exploring possible arrangements for the continuation of certain research activities previously carried out by ITÉ and, in the interest of assisting with an orderly wind-up, facilitating appropriate re-deployment or other appropriate arrangements for staff in line with public service policy in these matters.

The period of notice of redundancy for staff at ITÉ had been periodically extended by the liquidator to take account of the ongoing process of pursuing re-deployment options and of the interim operational needs of the company during the wind-up period. The entitlements of those employees for whom appropriate re-deployment arrangements were not made would be determined in accordance with the terms of their contracts. She stated that by the end of December 2005 seven of the original 26 staff remained in the employment of ITÉ; three of these left early in 2006. It was anticipated that by August/September 2006 all of the four remaining staff would either be redeployed or have been given their statutory notice to leave ITÉ.

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She provided me with examples of the type of work carried out by ITÉ during the liquidation period. These included projects in the areas of Sociology of Language, Psycholinguistics, Modern Languages and Structural Linguistics.

Another factor in the delay was the need to surrender leases on property occupied by ITÉ. ITÉ's interest in a property owned by the Office of Public Works would soon be transferred to the Dublin Institute for Advanced Studies; the Liquidator handed back another premises in April 2005, taking advantage of a break clause in the lease; while following lengthy negotiations, two further leases on a subdivided property were to be surrendered under a Deed of Surrender awaiting the landlord's signature. The need to deal with two separate legal actions taken against ITÉ also contributed to the delay.

The Accounting Officer provided details of the costs incurred since the start of the liquidation process in January 2004 as shown in Table 28.

Table 28

	To end 2005	Jan - May 2006
	€	€
Pay	2,152,115	170,821
Rent	479,800	-
Other Non-Pay	409,257	34,754
Liquidator Fees	80,504	-
Liquidator Expenses	167,645	-
Total	3,289,321	205,575

The Accounting Officer also informed me that when the remaining staff have left ITÉ a number of relatively minor items would remain to be finalised (mainly by the Department rather than the Liquidator), principally

- Future publication of ITÉ reports
- Relocation of ITÉ archives,
- Settlement of Litigation
- Transfer of ITÉ copyright.

She expected the liquidation would be completed in 2006.

6.3 Superannuation Schemes

In my 1995 and 2004 Annual Reports I drew attention to the failure of the Department of Education and Science to ensure that there was up to date legislative authority for amendments to superannuation schemes of teachers.

In the course of the 2005 audit, I noted that the Pensions Section of the Department had discovered, in April 2004 while reviewing another matter, that the terms of an agreement between the Department and teachers representatives contained in Agreed Report 4/87 had not been implemented. The intention was to bring certain provisions of the teachers' superannuation schemes affecting teachers who retired on ill health grounds or who died in service, into line with other public service schemes, but this had not occurred. As a result, these pensioners and their spouses were paid less than their full retirement benefits.

I asked the Accounting Officer to outline the circumstances that gave rise to this failure to pay the proper benefits to the pensioners concerned.

The Accounting Officer informed me that the Agreed Report was worded in such a way as to be open to misinterpretation and that the difficulties of interpretation were the subject of correspondence between the Pensions Section and the Conciliation and Mediation Section of the Department from October 1988. However, the matter had not been clarified at the time of transfer of the Pensions Section from Dublin to Athlone in 1991 and appeared to have been overlooked following the extensive staffing changes that occurred at that time.

The matter rested so until April 2004 when, in examining the file of Agreed Reports, the Pensions Unit identified a parallel between the intent of the Agreed Report in regard to primary and secondary teachers and the corresponding Local Government provisions in another scheme applicable to vocational teachers.

The Accounting Officer assured me that the terms of the Agreed Report have been correctly applied on an ongoing basis to primary and secondary teachers who have retired on ill health grounds or died in service since May 2004. A review of ill-health retirement cases and cases where teachers had died in service since the beginning of the 1986/87 school year had also been undertaken. A total of 655 awards had to be revised. In 428 cases arrears payments totalling €1.65m were made in 2005, a further 85 payments amounting to €98,000 have been made to date in 2006 while work is ongoing in the remaining 142 cases. It was expected that the total cost would be somewhat less than the €2.2m originally estimated. The payments include a cost of living compensation payment where, through no fault of the beneficiary, a delay of more than a year has arisen in paying superannuation benefits. The payments were in accordance with procedures sanctioned by the Department of Finance.

The Department was satisfied, as a result of the checks it had carried out, that the provisions of other agreed reports and approved changes are being correctly implemented for schemes for which it has operational control.

The Accounting Officer was of the view that the problem in this instance did not arise from the failure to update the statutory schemes but was due to the combination of circumstances outlined. In this regard she informed me that she had assigned an officer of the Department to the Pensions Unit on a full-time basis with the sole task of updating the statutory pension schemes, commencing with the Secondary Teachers' Pension Scheme. Updated drafts of three Spouses' and Children's Schemes for Secondary Teachers have already been forwarded to the Department of Finance for consent and to the Parliamentary Counsel. Work is continuing on the drafting of the updated main Secondary Teachers' Superannuation Scheme.

