|  |  |
| --- | --- |
|  | Schola Europaea  Office of the Secretary-General  Human Resources |

Ref.: 2017-10-D-37-en-2

Orig.: EN

REPORT ON THE IMPLEMENTATION OF THE REGULATIONS FOR LOCALLY RECRUITED TEACHERS

BOARD OF GOVERNORS

Meeting on 5, 6 and 7 December 2017

1. Introduction

The Board of Governors adopted in May 2016 by Written Procedure the ‘Service Regulations for Locally Recruited Teachers in the European Schools’ (hereafter: ‘Service Regulations’).

The Service Regulations entered into force on 1 September 2016 and are applicable to all Locally Recruited Teachers in the European Schools.

The implementation of the Service Regulations was accompanied by information sessions for the representatives of the Locally Recruited Teachers and the administrative staff in the Schools being in charge of the contracts of the Locally Recruited Teachers. These sessions took place in June and July 2016.

Moreover, the implementation process was addressed in a meeting of the Bursars in June 2016 and meetings of the Directors in June and September 2016.

Based on these information sessions and meetings a MEMORANDUM (2016-06-M-2) was established which aims to guide the Schools when applying the Service Regulations. Together with the MEMO harmonised model contracts in the language of the hosting Member States were provided.

In addition, a document addressing frequently asked questions was shared with the Bursars of the Schools in August 2016.

Since the entering into force of the Service Regulations the Locally Recruited Teachers Working Group has met five times in order to ensure a harmonised implementation of the Service Regulations and to address potential gaps of the Regulations.

Moreover, the Working Group discussed the staff representation of Local Recruited Teachers. The representation is ruled out in Article 19 of the Service Regulations. In Article 19.13 of the Service Regulations it is stated:

*“13. The current Article will be applicable until the end of the second year after the entry into force of these Service Regulations. If possible, a system of a unique representation of the teachers of the European Schools will be created.”*

This ‘sunset clause’ requires to forward a revised proposal concerning the staff representation to the Board of Governors by April 2018 at the latest.

The members of the Working Group agreed that already in December 2017 a report on the implementation of the Service Regulations should be presented to the Board of Governors.

A first draft of this report was discussed in the Locally Recruited Teachers Working Group on 22 September 2017. Based on this discussions and further written input this draft was finalised in October 2017.

The final report will be passed to the Budgetary Committee in November and to the Board of Governors in December 2017 for information. It addresses besides the question of staff representation also areas for further harmonization among the Schools, potential shortcomings and gaps of the Service Regulations.

Based on the discussions in the Budgetary Committee and the Board of Governors the Working Group seeks to provide concrete proposals for the meeting of the Board of Governors in April 2018.

1. **Areas of the implementation report**

This report seeks to address the most important aspects of the implementation of the Service Regulations.

1. **Recruitment and conclusion of contracts**
2. **Legal requirements of the Service Regulations**

The recruitment is carried out under the responsibility of the Director of the School. He/she shall consult a national inspector in order to validate the qualifications and the relevant supporting documents of the candidates.

Concerning the contracts, the Service Regulations make a distinction between school year(s) contracts, which can be for a limited or an unlimited period of time, and ad interim teaching contracts in order to replace teachers temporarily or in order to provide additional support (Article 6 of the Service Regulations).

Model contracts for those type of contracts, reflecting the formal criteria established in Article 9 of the Service Regulations, have been provided in the Annex of the MEMORANDUM 2016-06-M-2 and the Schools were asked to use these new model contracts as of 1 September 2016 when

* providing a new ad interim contract,
* providing the first or second fixed term contract or
* when replacing a fixed term contract by a contract for an indefinite period.

The recruitment procedure is also applied to candidates having been previously been seconded to the School. Like other candidates they receive a contract of an indefinite contract only after two fixed term contracts of two years each. Nevertheless, a probation period is dispensable.

1. **Observations**

With respect to the attribution of hour/periods the policy among Schools varies. While some Schools provide a minimum of hours/periods (so called ‘Sockel’) do others try to reflect in the basic contract the hours/periods as exact to the reality as possible.

In general, the basic contract should reflect the amount of hours/periods as exact as possible. Yearly amendments to the contract will have to be done in order to reflect the concrete teaching needs in a given school year.

A clarification in the text of the Service Regulations or in a revised MEMORANDUM could be considered in order to ensure a harmonised approach not only within the same School but among all Schools.

Another point for discussion had been the recruitment of teachers who are already teaching in the Schools either as Seconded Teachers or as Locally Recruited Teachers. Currently, they are treated in the recruitment process like all other candidates.

The members of the Locally Recruited Teachers Working Group agreed that also in cases where all other qualifications are equal with the ones of other candidates no priority should be given to the internal candidates.

The involvement of national inspectors in the recruitment process is another area for potential clarification.

In Article 7.6 of the Service Regulations it is stated that the *“Director shall consult a national inspector in order to validate the qualifications and the relevant supporting documents”* of the candidates.

In this context it should be clarified which inspector should be consulted. If possible, this should be the inspector of the country of origin of the pedagogical qualifications.

1. **Period of employment**
2. **Legal requirements of the Service Regulations and approach during the transitory period**

As a general principle contracts of employment with Locally Recruited Teachers shall be concluded for a fixed term period (Article 11 of the Service Regulations).

All contracts have to be signed before the Locally Recruited Teacher takes up his/her duties.

1. **Ad interim teaching contracts**

The duration of **ad interim teaching contracts** depends on the duration of the temporary teaching need to be covered (Article 13 of the Service Regulations). The ad interim teaching contract shall cover the School holidays in that period, but should end at the end of the ‘schooling period’ (meaning the beginning of the summer holidays – Article 15 of the Service Regulations.

1. **School year(s) teaching contracts**

In order to cover permanent teaching needs which cannot be covered by seconded teachers the Schools may offer **school year(s) teaching contracts**. The first contract has to be a fixed term contract of a maximum duration of two years ending at the end of the second school year (31 August). This contract might be prolonged once for another two years.

After this maximum period of four years a contract for an indefinite period may be concluded provided that the results of the evaluation of the teacher, which has to be carried out by the Director and **a** national inspector, are positive (Article 12 of the Service Regulations).

1. **Policy for the transitory period**

In the particular transitional period in summer 2016 the following policy had been foreseen provided that the teaching needs cannot be covered by a seconded teacher and provided that the school wants to continue the contractual relationship:

* Locally recruited school year(s) teachers with a fixed term contract who have been recruited as of 1 September 2014 should be offered a contract for an indefinite period as of 1 September 2016 provided that they have received a positive evaluation. As an exception from Article 12.3 of the Service Regulations which will be applicable as of 1 September 2016 this evaluation might be carried out by the Director without any involvement of a national inspector.
* Locally recruited school year(s) teachers with a fixed term contract who have been recruited as of 1 September 2015 should be offered as of 1 September 2016 a fixed term contract of two years ending on 31 August 2018. A contract for an indefinite period could be offered as of 1 September 2018 provided that the teacher will receive a positive evaluation carried out by the Director and a national inspector in line with Article 12.3 of the Service Regulations.
* Locally recruited school year(s) teacher recruited as of 1 September 2016 will receive a fixed term contract of maximal two years ending at the end of the second school year. This contract can be prolonged once for two further school years in accordance with Article 12.1 of the Service Regulations.

1. **Observations**

The policy for the transitory period has been applied in the Schools according to the information the Working Group has received.

Nevertheless, further harmonisation is needed when it comes to ad interim teaching contracts and when it comes to the prolongation of a school year(s) contract after the second year.

An ad interim contract should for example be offered when replacing a teacher (seconded or locally recruited) during her maternity leave.

School year(s) teaching contracts should be prolonged after the second year for another two years provided that the performance is good and the teaching need continues and no seconded teacher could replace the Locally Recruited Teacher.

1. **Termination**
2. **Legal requirements of the Service Regulations**

The contract ends either automatically in the cases defined in Article 15 of the Service Regulations or by termination of the contract in accordance with Articles 16, 17 or 18 of the Service Regulations.

The contract ends i.e. automatically at the end of the school year in which the Locally Recruited Teacher turns 66 years. As in some Member States the pension age is different, the School and the teacher may agree on a prolongation of the contract under the conditions laid down in Article 15 of the Service Regulations. Also the Locally Recruited Teacher may decide to terminate the contract before turning 66 by respecting the period of notice established in Article 16.2 of the Service Regulations.

The arrival of a seconded teacher is only one reason for the termination of the contract. Before ending the contract, the Director has firstly to verify the possibility to offer the teacher other teaching hours/periods in the same School. In a second step the director will verify the possibility of a transfer to another European School in the same city or – if this is also not possible – to another European School in another city. The Office of the Secretary-General will establish a system to promote such transfers in accordance with Article 38 of the Service Regulations.

Other reasons for termination of the contract might be linked to organizational requirements of the School (i.e. closure of a language section) or to the performance or non-performance of the Locally Recruited Teacher.

The periods of notice laid down in Article 16 of the Service Regulations are applicable to all locally recruited teachers no matter when they have been recruited and what was applicable to them before the Service Regulations entered into force, unless the new periods of notice would contradict with what has expressively been fixed in their individual contract (Article 52.3 of the Service Regulations).

**In summary the periods of notice are the following:**

|  |  |  |  |
| --- | --- | --- | --- |
| **Type of contract** | **period of employment** | **Period of notice** | **Legal basis** |
| **Ad interim teaching contracts** | During the probationary period (to be fixed in the contract) | To be fixed in the contract | Article 14.2 |
|  | After the probationary period | 4 weeks | Article 16.1 |
| **Fixed term school year(s) teaching contracts** | During the probationary period (ending at the schooling period of the first year) | 2 weeks | Article 14.1 |
|  | After the probationary period | 4 weeks | Article 16.1 |
| **unlimited school year(s) teaching contracts** | < 3 years | 3 months | Article 16.2 |
|  | 3 years up to 10 years | 1 month per completed year up to a maximum of 10 months | Article 16.2 |
|  | * 10 years | 10 months | Article 16.2 |

1. **Observations**

Also in this very crucial areal the practice among the Schools still varies.

In case a teacher has received a negative evaluation within the probationary period his/her contract should end at the end of the schooling period. In all other cases of a regular termination the contract should cover also the month of August and end on 31 August.

This should also be the case if one of the contracting parties indicates earlier in the school year that the contract will be terminated. This transparent approach will ensure that both parties can plan the coming school year early in advance without fearing negative consequences.

It needs to be discussed whether the Articles 15 to 17 of the Service Regulations need to be reviewed in this sense or whether a clarification in a MEMORANDUM would be sufficient.

1. **Staff Representation**
2. **Legal requirements of the Service Regulations**

The staff representation is ruled out in Article 19 of the Service Regulations.

The Schools were asked to ensure the election of the (new) representatives in September 2016.

The new committee are composed of two representatives of the Locally Recruited Teachers (one primary and one secondary cycle) per School and represent the interests of the Locally Recruited Teachers of their individual School and in the system of the European Schools. Together with the representatives of the ‘Inter Schools Staff Committee’ referred to in Article 8 of the Regulations for Seconded Staff Members of the European Schools they compose the ‘Teaching Staff Committee’ representing the whole teaching staff of the European Schools. In each School two representatives of the teaching staff, one from the primary and one from the secondary cycle shall be appointed by common assent as delegates with voting right to the Administrative Board of each of the Schools.

1. **Observations**

Based on Article 19 of the Service Regulations staff representations for Locally Recruited Teachers have been established in all 13 Schools.

Moreover, a ‘Locally Recruited Teachers Staff Committee’, composed of these representatives of the 13 Schools has been established.

This committee met since 1 September 2016 four times. In two of these meetings the Deputy Secretary-General of the European Schools could exchange with the representatives experiences gained in the implementation process.

The current provision shall be only inforce until 31 August 2018 and should be replaced by a more comprehensive provision aiming at a unique representation of all teachers of the European Schools.

A joint Working Group composed of members of the Locally Recruited Teachers Working Group and members of the Seconded Staff Regulations Working Group has met until now three times to work on a proposal for a unique staff representation for all teaching staff members.

The concrete proposal will be provided in a separate document and should be forwarded to the Board of Governors for decision in April 2018 at the latest.

In case no agreement should be achieved at that time, a prolongation of the ‘sunset clause’ should be envisaged.

1. **Evaluation**
2. **Legal requirements of the Service Regulations**

Locally Recruited Teachers have to be evaluated during their probationary period (Article 14 of the Service Regulations), at the end of the second two years fixed term contract in case a contract for an indefinite period of time is envisaged (Article 12.3 of the Service Regulations) and further on at minimum every four years (Article 22.3 of the Service Regulations).

The evaluation at the end of the probationary period is carried out by the Director. He may consult a national inspector. This inspector does not necessarily have to have the nationality of the Locally Recruited Teacher who is going to be evaluated.

The evaluation at the end of the second fixed term contract and the statutory evaluation every four years will be carried by the Director and a national inspector. Also in these cases the inspector does not necessarily have to have the nationality of the recruited teacher who is going to be evaluated. In the event of disagreement between the Director and the Inspector, the Director’s judgment shall preponderate.

In order to create synergies with other visits and inspections of the inspectors in the Schools the Service Regulations state that the interval between the statutory evaluations have to be finalised within a period of a maximum of four years. This means that nothing hinders the school to start the evaluation already in the third year by respecting the four years’ interval.

The steps linked to a positive evaluation will be provided nevertheless in a strict four years’ interval. If the evaluation is delayed due to circumstances which are not lying in the responsibility of the Locally Recruited Teachers, the step will be paid with retroactivity as of the date where the teacher could have received the step.

1. **Observations**

A specialised Working Group has been mandated by the Board of Governors in December 2016 to deal with the evaluation of Locally Recruited Teachers.

The Locally Recruited Teachers Evaluation Working Group has provided the Board of Governors in April 2017 with a first report and concrete proposals how to deal with the evaluation requirements. Concerning the evaluation at the end of the second consecutive fix term contract and the evaluations in the context of the merit based step system it was proposed to establish evaluation teams composed of national inspectors and to evaluate as a matter of priority as many teachers as possible in the same School.

In two pilot projects (one at the ES Luxembourg I and one at the ES Mol) in total 72 teachers have been evaluated.

In the evaluation process the ‘tool kit’ for the evaluation of the teaching staff has been used. Moreover, a particular template for the evaluation of Locally Recruited Teachers had been developed.

A Mid-Term Report of the Locally Recruited Teachers Evaluation Working Group (document 2017-09-D-24-en-2) addressing the experiences gained in the two pilots and providing concrete proposals will be forwarded to the Board of Governors in December 2017 for decision.

1. **Teaching hours/periods and their adaptation**
2. **Legal requirements of the Service Regulations**

On recruitment or on renewal of his/her contract the Locally Recruited Teacher shall be assigned a number of weekly teaching hours/periods established in the contract.

There is no legal minimum of teaching hours/periods foreseen.

According to Article 30 of the Service Regulations the number of teaching hours/periods may be adapted to the needs of the School. A change of the number of hours/periods will lead to a correlating change to the remuneration without the Locally Recruited Teacher being entitled to any kind of compensation.

If the teacher does not agree on the change the School may terminate the contract by respecting the periods of notice established in Articles 15 and 16 of the Service Regulations.

1. **Observations**

The practice among the schools varies. While some schools provide only a contract with a minimum number of hours/periods, others try to reflect in the basic contract as many hours/periods as possible. As stated above, further harmonisation within each School and among the 13 Schools needs to be achieved.

In this context also the question should be addressed, whether a maximum limit of hours/periods needs to be set.

The representatives of the Locally Recruited Teachers did underline, that besides the quality of teaching also the seniority of the teacher should be taken into account when allocating hours/periods.

1. **Other duties**
2. **Legal requirements of the Service Regulations**

Article 31 of the Service Regulations reflects the judgment 12/12 of 21 August 2012 of the Complaints Board of the European Schools clarifying that supervision is part of the tasks of Locally Recruited Teachers which are already covered by the remuneration fixed in Article 35 and Annex 1 respectively Annex 2 of the Service Regulations.

Like other duties the extent of the supervision should correlate with the number of teaching hours/periods and the timetable scheduled for the Locally Recruited Teacher. In each School the concrete correlation between supervision and the number of weekly teaching hours/periods shall be subject to consultations of the ‘Locally Recruited Teachers Staff Committee’. As a matter of principle the time foreseen for ‘unpaid’ supervision should not exceed 10% of the total number of weekly teaching hours/periods. Moreover, other tasks like for example the task of a ‘class teacher’ should be taken into account.

1. **Observations**

Also in this area the practice varies from School to School although the ceiling of a maximum of 10% has been fixed in the individual contracts and is respected all over the system. The variation is caused by the different staffing of the Schools. The number of supervisions mainly depends on the number of seconded teachers at the School.

Moreover, the practice how other duties are weighted, varies among the Schools.

Finally, it has to be underlined that ‘replacement’ has to be remunerated in accordance with Article 31.7 of the Service Regulations.

Based on these observations the representatives of the Locally Recruited Teachers are asking for more precise rules in a revised MEMORANDUM.

1. **Remuneration**
2. **Legal requirements of the Service Regulations**

Locally Recruited Teacher recruited prior to 1 September 1994, those recruited between 1 September 1994 and 31 August 20111 and those recruited as of 1 September 2011 until 31 August 2016 kept their salary scales provided in Annex 2 of the Service Regulations unless they opted in accordance with Article 35.2 of the Service Regulations for the new salary scales established in Annex 1 of the Service Regulations. This possibility to opt for the application of Annex 1 has been of particular interest for those teachers who had been recruited between 1 September 2011 and 31 August 2016. By opting for the new salary scheme they are entitled to benefit from the merit based step system. Opting for the Annex 1 did not have any negative impact for the teachers and will in particular not influence the calculation of the years in service referred to in Article 16 of the Service Regulations.

1. **Observations**

The Schools received in September 2016 a sample of a draft letter to be addressed to the teachers recruited as of 1 September 2011 in order to allow them to opt for the new merit based step system **by the end of November 2016**. The signed declaration had to be added to the personal file of the Locally Recruited Teacher. It was clarified that an amendment of the existing contract is not mandatory.

According to the Schools the majority of the teachers recruited as of 1 September 2011 had opted for the new salary.

As a matter of fact, teachers recruited before September 2011 do not merit from any step system. This has been subject to strong criticism.

Moreover, it has to be stressed that the salaries applicable since September 2011 are no longer competitive in all places where European Schools are located. In some hosting Member States not only the salaries of other international schools, but also of the national schools are more attractive.

Members of the Working Group stressed the need to tackle the competiveness of the salaries in a comprehensive manner. In this context also the salaries of other staff categories should be addressed.

1. **Removal costs**
2. **Legal requirements of the Service Regulations**

As of 1 September 2016 Locally Recruited Teachers recruited for a minimum of one year are entitled to the reimbursement of their removal costs in accordance with Articles 59 and 62 of the Regulations for Seconded Staff Members of the European Schools.

According to Article 59.1 of the Regulations for Seconded Staff Members only the expenses are reimbursed, which the staff member has incurred **on taking up his/her engagement**. In consequence only locally recruited teachers taking up their engagement as of 1 September 2016 should be entitled to the reimbursement of their removal expenses.

In case the contract ends within the first 12 months due to circumstances lying in the responsibility of the Locally Recruited Teacher the school shall ask back the paid sum. This is in particular the case if the contract is terminated by the Locally Recruited Teacher on his own will or by the Director due to obvious incompetence established in the ordinary or in an extraordinary evaluation during the probationary period referred to in Article 14 of the Service Regulations or due to the outcome of a disciplinary procedure in line with Article 43 to 48 of the Service Regulations.

In the case of a change of the school and at the end of the contract the Locally Recruited Teacher is also entitled to the reimbursement of removal costs under the conditions laid down in Article 37 of the Service Regulations and Article 62 of the Regulations for Seconded Staff Members of the European Schools.

Besides the removal costs no other allowances are foreseen.

1. **Observations**

Article 37 of the Service Regulations refers to Articles 59 and 62 of the Regulations for Seconded Staff Members of the European Schools. Different from their seconded colleagues Locally Recruited Teachers quite often do not have a full time table. The current Article in the Service Regulations does not make a distinction between a teacher with a full time table and a teacher providing only a small number of hours/periods. Moreover, Locally Recruited Teachers may be recruited from all over the world. As a consequence, also a teacher coming from a state outside the EU and teaching two hours/periods per week is entitled to the reimbursement of the removal expenses.

In order to tackle this phenomenon a certain threshold for the reimbursement of the removal costs could be established. Moreover, a specific solution for the teachers coming from non EU Member States should be developed.

On the other hand, it could be considered to foresee additional allowances for Locally Recruited Teachers in order to keep the schools competitive. Many of the European Schools face more and more problems to attract Locally Recruited Teachers due to the salary conditions which are no longer competitive.

A possible measure could be the introduction of an installation allowance which might in particular attract teachers coming from abroad.

1. **Mobility**
2. **Legal requirements of the Service Regulations**

The mobility of locally recruited is promoted, but Article 38 of the Service Regulations does not establish a right for mobility.

Locally recruited willing to change the school may apply in another European School and the Director of this School may in accordance with Article 7.2 of the Service Regulations derogate from the requirement of the publication of the vacant post. Nevertheless, the Director is free and autonomous in his/her selection decision.

If a transfer takes place the Locally Recruited Teacher does not have to pass a probationary period, will receive a contract for an unlimited period if he had one in the previous School, will maintain his/her salary scheme in accordance with the rates paid for the Locally Recruited Teacher in the new School and will keep his/her seniority with respect to the steps.

1. **Observations**

Within the first 15 months of implementation of the new Service Regulations ‘Mobility’ has not been a very frequent issue. Nevertheless, the members of the Working group shared some good examples of mobility. In this context it was underlined again that the final decision to take on board a Locally Recruited Teacher lies within the autonomy of the Director as potential future employer of the teacher.

1. **Legal proceedings**
2. **Legal requirements of the Service Regulations**

The Service Regulations are reflecting Article 27 of the Convention defining the Status of the European Schools and the decision C-464-13 of the European Court of Justice (ECJ) interpreting Article 27 of the Convention.

The Complaints Board of the European Schools has the sole jurisdiction in any dispute between the School and Locally Recruited Teachers regarding the legality of an act implementing the Service Regulations adversely affecting the Locally Recruited Teachers.

Only disputes concerning civil or criminal liability of the Locally Recruited Teacher or disputes between Locally Recruited Teachers and the national social security or tax administration shall be subject to the jurisdiction of the country hosting the School.

This means in particular that the Locally Recruited Teacher has first to launch an administrative appeal with the Secretary-General of the European Schools by respecting the one-month deadline.

Different from Article 79.1 of the Regulations for Seconded Staff Members the Secretary-General will take a decision without prior consultation of the Administrative Board of the School.

If a Locally Recruited Teacher decides to launch an appeal with a national court the School has to challenge the admissibility of the appeal by referring to the decision of the European Court of Justice and to Article 51 of the Service Regulations. Before replying to the Court the school will inform the Office of the Secretary-General in order to ensure a harmonized approach.

1. **Observations**

Up to now (October 2017) only one contentious appeal has been lodged by Locally Recruited Teachers.

The applicants contested the decision of the Board of Governors of May 2016 adopting the new Service Regulations and were seeking for the annulment of the Service Regulations.

In its decision of 25 January 2017 the Complaints Board (Appeal No 16/58) has decided that the appeal is inadmissible and therefore to dismiss the appeal. In this decision the Complaints Board clarified that the applicants can only challenge concrete decisions of the school management which affect the teacher directly.

In parallel some teachers lodged an administrative appeal against the concrete allocation of hours/periods in their contracts. This administrative appeal was rejected by the Secretary-General. No contentious appeal was lodged.

1. **Conclusions of the Budgetary Committee**

The Budgetary Committee expressed a favourable opinion on the ‘Report on the implementation of the Service Regulations for Locally Recruited Teachers in the European Schools*’* and congratulated the Working Group on its proposals.

1. **Proposal**

The members of the Board of Governors are invited to discuss the ‘Report on the Implementation of the Service Regulations for Locally Recruited Teachers in the European Schools’.