

# The Educational Institute of Scotland

## Permanent Contracts

### Introduction

- 1.1 The following resolution was approved by the 2012 Annual General Meeting:

*"This AGM instructs Council to investigate and report on Local Authority policies and procedures in awarding permanent contracts to teachers".*

- 1.2 Information was sought from Scottish Councils on policies and practice and information was sought on the use of temporary contracts.

### Contractual Right to Permanence

- 2.1 In the Scheme of Salaries and Conditions of Service for Teaching Staff in School Education (the "Yellow Book") a teacher who had one year's satisfactory continuous service was entitled to seek a permanent contract.
- 2.2 Following a court decision the right was extended to part-time employees with one year's satisfactory service.
- 2.3 The 2001 Agreement, *A Teaching Profession for the 21<sup>st</sup> Century*, agreed that transfer to permanence should be devolved to Local Negotiating Committees for Teachers. In 2004 the SNCT issued further advice in SNCT/31 on the use of temporary contracts. That circular is now subsumed into the SNCT Handbook, Part 2, Appendix 2.8 as a Code of Practice.
- 2.4 The SNCT Code of Practice (Appendix A) makes it clear that a fixed term contract should have a clear end date relating to a specified reason for expiry, the completion of a specified task or the occurrence of a supervening event. The Code of Practice also makes it clear that the use of a fixed-term contract may be made in a number of circumstances including the following:
  - maternity leave
  - parental leave
  - adoption leave
  - career break
  - long term sickness absence
  - secondment
  - staffing from time limited funding; and
  - pattern of recurrent work
- 2.5 There is a statutory right to permanence. Under the Fixed Term Employees (Prevention of Less Favourable Treatment) Provisions

2002 an employee is considered to be a permanent employee unless the employer can objectively justify continuing the temporary arrangement after 4 years employment.

### **Transfer to Permanence**

- 3.1 In transfer to permanence there are three issues which relate to local policies. Firstly, local agreements refer to the qualifying period to make application for permanence. Secondly, local agreements refer to any conditions which may restrict transfer to permanence. Thirdly, it is important to consider the timing of transfer to permanence.
- 3.2 The qualifying period for transfer to permanence across the majority of LNCTs is set out at two years. The retention of one year's qualifying service applies in one LNCT, while another has a 16 month qualifying period. One LNCT has a 30 month qualifying period while in one LNCT the entitlement arises from statutory entitlements alone.
- 3.3 In terms of conditions which may restrict application it is clear that reference is retained to satisfactory service. While this appears to be straightforward in reality this can be relatively contentious. What constitutes satisfactory service or more particularly unsatisfactory service can be an issue for Local Association Secretaries. In general terms it is recommended that one unsatisfactory report should not be counted and only where there is a pattern relating to poor performance should the Council form a view on the conditions not being met.
- 3.4 A small number of LNCTs refer to permanence being subject to successful interview. In other words there is no right to permanence outwith statutory provisions but only a right to be interviewed.
- 3.5 Some Councils have taken a restrictive view of what is meant by transfer to permanence, holding the view that transfer can be applied to any post and that the contractual right can be satisfied by a transfer to a 0.1 FTE permanent vacancy regardless of the nature of the temporary contract being held. Thankfully, such practice has been challenged and is only permissible if the Council can demonstrate that no other permanent vacancy subsists.
- 3.6 In some areas an issue may arise if a teacher has worked on a number of part-time contracts of varying pointages over the qualifying periods. One approach is to aggregate the service over the qualifying period but in one Council area the contract is set out on the basis of the highest pointage over the qualifying period.
- 3.7 Finally, in relation to timing, transfer to permanence is defined by the time of year and by availability. Some LNCTs transfer to permanence only at the start of a school session. One LNCT

operates two occasions in the year when a transfer to permanence may occur. Others allow transfer when vacancies occur.

### **Temporary Contracts**

- 4.1 The EIS raised concern at the 2012 Annual General Meeting that there was increasing casualisation of the teaching profession. In 2011, according to the teacher census, 13% of the teaching profession were on temporary contracts. In 2012, this figure was 12%. While all LNCTs publicise the SNCT Code of Practice on the use of Temporary Contracts (Appendix 2.8, Part 2, SNCT Handbook) there appears to be a lack of LNCT monitoring of the occurrence and duration of vacancies.
- 4.2 From the evidence received it is clear that a number of Councils have, at any one time, a number of vacancies. What is not clear is the frequency of such Councils placing vacancies internally or externally through MyJobScotland. There is a practice across Scotland of some Councils not filling posts on a permanent basis, for budgetary reasons even if there is a genuine vacancy, for example, if rolls are likely to fall. This may explain why the level of temporary posts remains high but such stockpiling of vacancies appears to be unnecessary where primary school rolls, at least are stabilising.
- 4.3 It is recommended that this issue should be pursued through LNCTs. Agendas could include statistical evidence on the number and nature of fixed term contracts, the number of vacancies and whether such vacancies have been advertised.

### **Conclusion**

- 5.1 The current supply situation offers an opportunity to revisit transfer to permanence. Councils will be keen to retain good staff and to avoid losing such staff. Therefore, Councils should, particularly if pupils rolls are stable, endeavour to retain staff.
- 5.2 Local Associations should seek to negotiate on the qualifying period to be 2 years or less; the transfer should be subject to satisfactory service and should be to a post of the same, or better, contractual pointage as the post held on a temporary basis. A model agreement based on best practice will be issued to LA Secretaries in due course.
- 5.3 Local Associations should place staffing matters on the agenda for LNCTs. The issuing of fixed term contracts, the duration of such contracts and the filling of vacancies should be kept under review.

**PART 2**

**APPENDIX 2.8**

**CODE OF PRACTICE ON THE USE OF FIXED TERM TEMPORARY CONTRACTS**

**1. INTRODUCTION**

- 1.1 The aim of this Code of Practice is to establish good practice on the use of fixed term temporary contracts. Fixed term temporary contracts will be issued for engagements which extend beyond 5 days. Teachers on fixed term temporary contracts will fulfil the full range of duties of teachers and will be engaged for 35 hours per week or on a pro rata basis according to the contract.
- 1.2 The SNCT recognises the important contribution made by teachers on fixed term temporary contracts, many of whom go on to hold permanent contracts. The SNCT believes that it is essential that teachers on fixed term temporary contracts are treated in the same way as permanent staff and given access to appropriate induction, training and support.
- 1.3 The Code of Practice takes into account the Employment Rights Act 1996, as amended by the Employment Relations Act 1999 and the Employment Act 2002, as well as Part-Time Workers (Prevention of Less Favourable Treatment) and the Fixed Term Employees (Prevention of Less Favourable Treatment) Regulations 2002.

**2. PURPOSE**

- 2.1 The purpose of the Code of Practice is to enhance the principles of a professional service by helping councils to manage their staffing requirements in a co-ordinated and structured way. This must be responsive to service needs whilst, at the same time, providing teachers with access to secure employment opportunities, wherever possible.
- 2.2 The Code of Practice aims to ensure that employees on fixed term temporary contracts are not treated less favourably than permanent employees.
- 2.3 It is recognised that there will be teachers who may be employed on fixed term temporary contracts for significant periods of time. In such cases the letter of appointment must clarify the expected length of appointment or the event that will bring a contract to an end.

### **3. Fixed-Term Requirement**

The SNCT recognises that a council may need a teacher to work other than on a permanent basis.

3.1 Where it becomes clear that the need for a temporary replacement is likely to be ongoing or lengthy, then the individual should be issued with a fixed-term temporary contract as set out in 3.2 below.

3.2 Where it is known from the outset the reasons for the temporary requirement and its likely duration or in circumstances set out in 3.1 above, a fixed term temporary contract of employment will be issued as soon as possible, specifying entitlement to pay and conditions of service and detailing the expected duration and reason for the appointment.

3.3 A fixed term temporary contract will have a clear end date which relates to:

- a specified expiry date;
- the completion of a specified task;
- the occurrence of a supervening event;

3.4 The use of a fixed term temporary appointment may be made in a number of circumstances including the following:

- maternity leave;
- parental leave;
- adoption leave;
- career break;
- long term sickness absence;
- secondment;
- sabbaticals
- staffing from time limited funding; and
- pattern of recurrent work

#### **4. RECRUITMENT**

- 4.1 Every teacher recruited to undertake work on a fixed term temporary basis will be appointed in accordance with that council's recruitment procedures.
- 4.2 Following this process, such teachers will be placed on a register of approved teachers maintained for these purposes.

#### **5. TRANSFER TO PERMANENT STATUS**

- 5.1 Movement to a permanent post will be open to temporary teachers through normal application. Temporary teachers should be provided with the same access to information on vacancies for permanent posts as is provided to existing permanent post holders.
- 5.2 Transfer to a council's permanent staff will also be through arrangements agreed by the LNCT.
- 5.3 Under the Fixed Term Employees Regulations 2002 any temporary contract extended beyond four years will be made permanent, unless the authority can objectively justify not doing so.
- 5.4 Fixed term temporary employees should not be selected for redundancy on the grounds of their employment status. Any selection for redundancy must be objectively justified.

#### **6. SNCT HANDBOOK**

- 6.1 The pay, duties and hours of work of teachers on fixed term temporary contracts shall be set as for teachers (other than short term supply teachers) as set out in the SNCT Handbook.