

# **The Educational Institute of Scotland**

## **Temporary Contracts**

### **Introduction**

- 1.1 The following resolution was approved by the 2011 Annual General Meeting:

“This AGM instructs Council to prepare a campaign of action to ensure that teachers on temporary contracts are not denied employment rights through deliberate breaks in their continuous contracts”.

- 1.2 Employment rights are established after one year’s continuous employment but in addition there is a statutory right to seek permanence after 4 years.
- 1.3 Additionally, under local agreements set out by LNCTs replacing paragraph 8.5 of the Yellow Book, teachers will acquire permanence.
- 1.4 The SNCT has also set out a Code of Practice on the use of temporary contracts.

### **Employment Rights**

- 2.1 An employee in employment until 6 April 2012, could bring a claim for unfair dismissal after one year’s continuous employment. This laid an obligation on an employer to ensure that, where a contract comes to a natural end, other work is sought.
- 2.2 The Coalition Government increased the qualifying period for raising an unfair dismissal claim to two years from 6 April 2012. This will have a significant impact in removing workplace protection from temporary teachers.
- 2.3 After two years’ continuous employment, an employee is entitled to statutory redundancy pay if a contract is brought to an end and no other work is forthcoming.
- 2.4 After 4 years’ continuous employment, an employee is generally entitled to a permanent contract unless the employer can provide an objective justification for the continuation of a temporary contract.

### **Contractual Right to Permanence**

- 3.1 In the Scheme of Conditions of Service for Teaching Staff in School Education (the “Yellow Book”) a teacher who had one year’s full-time satisfactory continuous service was entitled to seek a permanent contract.

- 3.2 Following a court decision the right was extended to part-time employees with one year's satisfactory continuous service.
- 3.3 In 2004 arising from the 2001 Agreement, "A Teaching Profession for the 21<sup>st</sup> Century", the SNCT devolved the transfer of permanence to LNCTs in SNCT/31 which was issued on 29 March 2004.

### **Casualisation of Teaching Posts**

- 4.1 The 2011 teacher census reveals that 13% of the teacher workforce are on temporary contracts. It is clear that across Scotland's councils there is considerable casualisation of the profession.
- 4.2 Part of any campaign will require further evidence to be gathered on this issue.

### **The Use of Fixed-Term Contracts**

- 5.1 The SNCT Code of Practice is appended.
- 5.2 The Code of Practice sets out the purposes under which fixed-term contracts should be issued. These relate to a contract being defined by a specific purpose (e.g. maternity cover), for a specific time (i.e. a specified end date) or for a specified purpose (e.g. curriculum development).
- 5.3 Part of the problem lies in the indiscriminate use of fixed-term contracts which are for a specific time and which may not be renewed if the teacher is on the cusp of acquiring employment rights or acquiring permanence under the local LNCT agreement. If that teacher is not offered further work then a break is created which cuts across both employment rights and access to a permanent post.
- 5.4 The approach taken by some councils is to end a contract at a holiday period (most commonly in the summer) or in secondary schools when study leave commences in May. The teacher is often not re-engaged if a continuous period of engagement would lead to that teacher acquiring employment rights if the work continues.
- 5.5 There is little scope for legal remedy if the council has handled the notice period correctly. While there is scope to argue a breach of contract if a contract for a specific time or specific event is prematurely brought to an end, it is difficult to argue a break if the contract comes to a natural end. While it is poor employment practice to stand down a teacher if the work continues unless there is a breach of contract it is difficult to argue the case legally and there is no scope to pursue on unfair dismissal since that teacher will not have the qualifying service.

### **Action**

- 6.1 Any campaign on this matter will require current evidence. Therefore, it is recommended that, in the autumn, the EIS should write in the first

instance to all 32 councils asking for details of the number and nature of fixed-term contracts.

- 6.2 At the same time LA Secretaries should be asked to forward names and numbers of teachers who have been denied continued employment to avoid employment rights being conceded.
- 6.3 Once evidence is gathered and mindful of individual identities the EIS should publicise any abuses and mount a campaign with local and national politicians thereafter.
- 6.4 LNCTs should continue to monitor the issue of fixed-term contracts to ensure compliance with the SNCT Code of Practice and thereafter to establish good practice in discussion with councils.

# **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 REQUIREMENTS**

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.