

## GUIDELINES ON CONTINUOUS SERVICE

| Version control table                                                                    |                                                                                                                                                                                                                                                           |
|------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Original version published:                                                              | August 2006                                                                                                                                                                                                                                               |
| Current version number:                                                                  | Version 2                                                                                                                                                                                                                                                 |
| Current date:                                                                            | January 2022                                                                                                                                                                                                                                              |
| Date current version published:                                                          | January 2022                                                                                                                                                                                                                                              |
| Due date for next review:                                                                | January 2024                                                                                                                                                                                                                                              |
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| Equality and Diversity Impact Assessment date:                                           | 24 <sup>th</sup> January 2022                                                                                                                                                                                                                             |
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## 1 Introduction

Managers should be aware of the The Redundancy Payments (Continuity of Employment in Local Government, etc.) (Modification) Order 1999. Under this Order, employees who are appointed to Scottish Borders Council from other Councils or any organisation specified in the Order have the right for their previous continuous service to be recognised by this Council.

The primary significance of the Order is in relation to redundancy.

Under the Employment Rights Act 1996 (ERA), an employee can count service with an 'associated employer' towards the service requirement (i.e. continuous service of 2 years) for a redundancy payment.

Local authorities are not associated employers under the definition in the Act. However, the effect of the Order is to make local authorities associated employers for the purposes of the redundancy provisions of the Employment Rights Act.

## 2 Assessing eligibility for a redundancy payment and calculating its amount

An employee must have at least two years' continuous service with the employer in order to qualify for a redundancy payment. The effect of the Order is that continuous service with any body listed in the Order will also count.

There are rules relating to continuous service contained in the ERA and their effect is that if there is a break of more than a week (running from Sunday to Saturday) between two contracts, continuity will be broken except where there is a redundancy and a new job is taken up within 4 weeks.

## 3 Where a new job offer is made by another Modification Order body

If an employee who is under notice of redundancy receives an offer of a job from another body/organisation listed in the Modification Order before the termination date of his or her employment and takes up the new employment within 4 weeks of the termination of the previous employment, there will be no entitlement to a redundancy payment.

The existing employer may not be aware that a job offer has been made to an employee under notice of redundancy. This is however why HR, in the letter to an employee giving notice of redundancy, advise the employee that if he or she takes up another job with a Modification Order body within 4 weeks of the termination date of his or her current job with Scottish Borders Council, there will not be any entitlement to a redundancy payment and any monies must be paid back if already paid.

If an employee leaves Scottish Borders Council and within four weeks takes up a new job with a Modification Order body in these circumstances, the legal provisions relating to a trial period with the new employer will apply. Therefore, if the employee decides not to continue with the new job during the first 4 weeks he or she will be able to terminate their contract with the new employer (with or without notice) and receive a redundancy payment from Scottish Borders Council.

#### **4 Where an employee unreasonably refuses a suitable alternative offer of employment**

If an employee unreasonably refuses an offer of suitable alternative employment from a Modification Order body, then they will not be entitled to a redundancy payment. We may not be aware that the employee is applying for other jobs and that one which was potentially suitable was turned down by the employee.

#### **5 Effect on unfair dismissal rights**

It is important to note that (if an employee does take up a job with a Modification Order body) their entitlement to a redundancy payment is removed, however:

- the employee can still claim unfair dismissal in relation to the redundancy from the original employer, but,
- the employee will need two years' continuous service in the new job before he or she has the right to claim unfair dismissal in the event that they are dismissed by their new employer.

#### **6 Continuous service for contractual purposes**

Continuous service with any body on the Modification Order counts for the purposes of annual leave, the occupational sick pay scheme and the occupational maternity scheme.

#### **7 Bodies on the Modification Order**

The latest published list (dated October 17) of admitted bodies can be found on the [website](#).

#### **8 Past service with a newly added body**

A common question is whether, when a new body is added to the Order, only service accrued with that body from the date it was added counts towards continuous service. The answer is no. Once a body is added all service with it will count.

The important factor is whether the body was on the Order at the date of redundancy. If it is on there at that point, all service will count.

#### **9 Which bodies are on the Order?**

Many of the bodies are specifically named.

However, there are several generic categories which refer to statutes which can cause confusion. It is impossible to create a list of every body on the Order by individual name as this would cover several thousand organisations.

It is useful to remember that the idea of the Order is that those employers who are in the local government 'family' are included. Therefore, non-local authority bodies on the Order are generally those that at some point have been funded wholly or partly by the local authority or provide a service that used to be entirely provided by the authority. An organisation wishing to be added to the Order must make an application and be accepted before being classified as an admitted body.

Guidance is given below on some of the areas which appear to cause most problems.

### **9.1 Police officers and support staff**

Police officers are not covered by the Order because they are servants of the crown and therefore not employees.

The Metropolitan Police Authority was placed on the Order after the Greater London Authority took over its control. Therefore, all support staff in police authorities are now covered.

### **9.2 Universities**

The basic rule is that universities which used to be polytechnics are included whereas those that were always universities are not e.g. Leeds Metropolitan University (formerly Leeds Polytechnic) is covered but Leeds University is not.

### **9.3 Further education colleges**

Colleges which were funded by the local authority before 1992 are included whereas those which have always been independent are not.

### **9.4 The Civil Service**

Central government bodies are not included.

### **9.5 The NHS**

NHS bodies are not included, except for Care Trusts set up under the s.45 of the Health and Social Care Act 2001.

Care Trusts are different from Primary Care Trusts which are not included. There are relatively few Care Trusts in existence,

### **9.6 Housing**

Housing Associations are not on the Order but Housing Action Trusts are.

### **9.7 Water authorities**

Service with a water authority does not count towards continuous service.

### **9.8 Geographical locations**

Generally speaking, English, Scottish and Welsh councils (including the Council of the Isles of Scilly) are covered but Northern Ireland, the Channel Islands and the Isle of Man are not.

### **9.10 Audit Commission**

The Audit Commission is not on the Order. However, Audit Scotland is.

## **10 What to do to find out whether a body is on the Order**

If the body you are looking for is not specifically named on the Order and you are not sure whether it fits into one of the generic categories, the first thing to do is to ring the body itself (if it still exists).

Because they will also have to count continuous Modification Order body service themselves they should know if they are on the Order.

If you are still unsure, queries can be addressed to the address stated above

## **12 Responsibility for establishing continuous service**

The Statement of the Main Terms and Conditions of employment issued to new starts with Scottish Borders Council advises that all continuous service and recognised service will be counted subject to the new start providing confirmation of any service not with Scottish Borders Council.