

Report To: Policy & Resources Committee **Date:** 13 November 2012

Report By: Head of Organisational Development,
Human Resources and Communications **Report No:** HR/18/12/BMcQ

Contact Officer: Barbara McQuarrie **Contact No:** Ext 2845

Subject: Revised Temporary Employee Protocol

1.0 PURPOSE

- 1.1 The purpose of this report is to ask the Committee to approve amendments to the Temporary Employee Protocol.

2.0 SUMMARY

- 2.1 Temporary employees can be defined as those whose contracts are only for a limited period of time. The Council currently has approximately 500 Temporary Employees within its services (380 not including Teachers or Inverclyde Leisure).

The Council has a Protocol covering the appointment of such employees. The purpose of the Protocol is to provide an explanation of the employment status of temporary (or fixed term) employees and to provide a range of measures designed to ensure that the engagement of temporary employees is consistently applied and in harmony with statutory requirements. As a result of developments in legislation in this area and to take account of the changing financial environment in local government and the resultant reduction in the number of alternative available posts, it was felt appropriate to review and update the current Protocol.

- 2.2 Details of the changes are included in section 4.0 background. The main changes to the Temporary Protocol are outlined in the proposals section of this report.

3.0 RECOMMENDATIONS

- 3.1 That the Committee agree to the amendments to the Temporary Employee Protocol as outlined in paras 5.2 to 5.7.
- 3.2 That the proposal made by the trade unions in para. 5.8 is not included and that the status quo remains in place.
- 3.3 That the changes once approved should also be reflected in changes to the Council's redeployment policy.

Head of Organisational Development,
Human Resources and Communications

4.0 BACKGROUND

4.1 Employees have the right not to be unfairly dismissed. In most circumstances employees will need to qualify before they can make a complaint to an employment tribunal. Legislation has recently changed the length of service requirement for an unfair dismissal claim from 1 year's continuous service to:

- at least one year's continuous service for employees in employment before 6 April 2012
- two years for employees starting employment on or after 6 April 2012.

Other legislative provisions have remained unchanged – for example:

There is no length of service requirement in relation to 'automatically unfair grounds'.

There can be redundancy claims, in a redundancy situation, following two years' continuous service

An employee can request under the Fixed Term Workers Regs a permanent contract after 4 year's continuous service – this should be granted unless there is an objective reason not to grant the request e.g. external funding

4.2 Under the Fixed Term Workers Regulations employers are required to consider other suitable vacancies for the employee on expiry of the temporary contract. Currently the period of time over which alternative vacancies or redeployment is sought is not defined and can therefore vary depending on circumstances and extend to up to 3 months. To standardise the period and limit it, certain timescales have been proposed linked to notice periods and detailed at para. 3.3.7 of the Protocol.

4.3 The review considered salary protection for temporary employees, up to a maximum of 1 year, in certain limited circumstances. Currently the Redeployment Policy does not exclude temporary employees from salary protection

4.4 In respect of teaching employees the amended Protocol clarifies that certain provisions in respect of temporary teachers are already covered by separate provisions in existing SNCT and LNCT circulars

4.5 To clarify the appeals process the Protocol distinguishes the level of appeal where the dismissal of a temporary employee is under terms of disciplinary policy as opposed to the natural expiry or non renewal of a fixed term contract.

4.6 Under the Fixed Term Workers Regulations, a temporary employee who has been working under a succession of temporary contracts within the same organisation has the right to request a permanent contract once he or she has been continuously employed for a period of four years or more; unless the employer is able to demonstrate good reason why it is reasonable to continue the temporary nature of the relationship.

The Unions requested that the right to request a permanent contract changes from 4 years to 3 years to fit in with the budget cycle – Human Resources recommended to the CMT and the CMT agreed that the 4 years should remain as it ties in with the Fixed Term Workers Regulations.

5.0 CURRENT POSITION AND PROPOSALS

5.1 The amended Temporary Employees Protocol is drafted and is attached as Appendix 1.

The changes that are being proposed are as follows

- 5.2 The changes to the qualifying period for unfair dismissal that have been introduced by the Government
- 5.3 The period of time over which redeployment will be sought has been reviewed in line with certain timescales that had been proposed linked to notice periods and are detailed in para 3.3.7 of the Temporary Employee Protocol.
- 5.4 It is proposed to include the protection of the existing salary (for a maximum period of 1 year) for temporary employees where their existing post is downgraded as result of service re-structure.
- 5.5 There may be occasions where exceptional circumstances exist, e.g. where an employee with over 4 years' temporary service is to be displaced and faces a "redundancy" situation then where an alternative post is sourced but at a substantially reduced grade it is proposed that protection (for a maximum of 1 year) may be applied at the discretion of the Head of Organisational Development, Human Resources and Communications.

The Committee should note that the current redeployment policy does not exclude temporary employees from protection.

- 5.6 The update includes clarification that Teachers will be covered where relevant by the SNCT/LNCT circulars in respect of temporary employees.
- 5.7 Where dismissal of a temporary employee is under terms of disciplinary policy (excluding absence disciplines) that any appeal would be heard in accordance with the Council's Disciplinary Appeals Process. An appeal against the natural expiry of the contract would be to a Corporate Director (other Senior Nominated officer not previously involved)
- 5.8 At this time where an employee has been employed under a temporary contract the Council applies the 4 year temporary service rule before considering that the employee be made permanent if they have worked in a post. The Unions requested that the right to request a permanent contract change from 4 years to 3 years to fit in with the budget cycle. It is Human Resources' recommendation, and agreed by the Corporate Management Team, that the 4 years remains as it ties in with the fixed term workers regulations.
- 5.9 Where a temporary employee is to be displaced by a permanent employee – for example due to service re-structure or redeployment exercise - then attempts will be made, where practicable, to identify a temporary employee with less continuous service.

6.0 IMPLICATIONS

- 6.1 Finance: There are no Financial Implications

Financial Implications – One off Costs

Cost Centre	Budget Heading	Budget Year	Proposed Spend this Report	Virement From	Other Comments

Financial Implications – Annually Recurring Costs/ (Savings)

Cost Centre	Budget Heading	With Effect from	Annual Net Impact	Virement From (If Applicable)	Other Comments

- 6.2 Human Resources: All Human Resources aspects included in report.
- 6.3 Legal: Due to the current uncertainty in respect of recent case law, the Council should be aware that there may be potential financial implications for the Council in the event that a successful challenge is made to the proposed policy.
- 6.4 Equalities: The practice of terminating temporary employees before permanent employees in order to prevent compulsory redundancies, could potentially result in claims that temporary employees have been treated less favourably than permanent employees. Less favourable treatment can be objectively justified in order to achieve a legitimate aim (i.e. avoidance of compulsory redundancies of permanent employees); however current case law provides mixed views on this. If we were to be challenged, a temporary employee could argue unfair dismissal and if the Employment Tribunal agrees, there could be an award provided which is currently capped at £68,400 (average pay-out in 2010/11 was £8,924).

7.0 CONSULTATION

- 7.1 At this time the consultation stage has taken place with the trades unions.

8.0 LIST OF BACKGROUND PAPERS

Appendix 1 : Temporary Employee Protocol

*Organisational Development, Human Resources
and Communications*

TEMPORARY EMPLOYEE PROTOCOL

Version 4



Produced by:

Policy Development Unit

Organisational Development, Human Resources and Communications

Inverclyde Council
Municipal Buildings
GREENOCK
PA15 1LX

Revised August 2012

INVERCLYDE COUNCIL IS AN EQUAL OPPORTUNITIES EMPLOYER

**THIS POLICY BOOKLET IS AVAILABLE ON REQUEST, IN LARGE PRINT, BRAILLE,
ON AUDIOTAPE, OR CD.**

CONTENTS

DOCUMENT CONTROL.....	3
1 INTRODUCTION	4
2 BACKGROUND	4
3 PROTOCOL	6
3.1 <i>Recruitment & Selection of Temporary Employees</i>	6
3.2 <i>Employment of Temporary Employees</i>	7
3.3 <i>Termination of Temporary Employees</i>	7
3.4 <i>Termination of Temporary Employees on Maternity Leave</i>	9
4 ROLE OF HUMAN RESOURCES	10

DOCUMENT CONTROL

Document Responsibility		
Name	Title	Service
	HR Team Leader – Policy Development	Organisational Development, Human Resources & Communications

Change History		
Version	Date	Comments
1	08/02/07	Approved at CMT
2	October 2009	Updated in relation to Statutory Dispute Resolution Procedures revoked.
3	March 2011	Clarification on appeal process.

Distribution		
Name/ Title	Date	Comments
Corporate Directors & Heads of Service	28/10/09	
Trade Unions	28/10/09, 01/03/11	
Corporate Directors, Heads of Service, Trade Unions & ICON	03/06/2011	
Trade Unions	Nov 11/August 12	

Distribution may be made to others on request

Policy Review		
Review Date	Person Responsible	Service
	HR Team Leader – Policy Development	Organisational Development, Human Resources & Communications

Copyright

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system or transmitted in any form or by any means, electronic, mechanical, photocopying or otherwise without the prior permission of Inverclyde Council.

1 INTRODUCTION

- 1.1 The purpose of this protocol is to provide an explanation of the employment status of temporary (or fixed term) employees and to introduce a range of measures designed to ensure that the engagement of temporary employees is consistently applied and in harmony with statutory requirements, including the Fixed Term Employees (Prevention of Less Favourable Treatment) Regulations 2002. .
- 1.2 This protocol does not apply to sessional / casual workers for which there is a separate document titled 'Sessional Worker Protocol'. This protocol is available on ICON or from Human Resources.

2 BACKGROUND

- 2.1 The employment of temporary and fixed term employees will be required in certain circumstances. In particular, this would be to provide cover for the absence of a permanent member of staff, for fluctuations in workload, or where fixed term funding exists.

Temporary employees are defined as those:

- a) employed to cover the absence of a substantive employee for reasons of secondment, sickness or maternity, and;
- b) normally employed for not longer than a 51 week period. The length of service requirement for an unfair dismissal claim being :
 - at least one year's continuous service for employees in employment before 6 April 2012
 - two years for employees starting employment on or after 6 April 2012.

However, there is no length of service requirement in relation to automatically unfair grounds'.

Fixed Term employees are defined as those:

- a) employed to work on a specific project or task, and;
 - b) employed in posts that are subject to continuing funding being available
- 2.2 Temporary and fixed term employees have the right not to be treated less favourably than comparable permanent employees under the Fixed Term Employees (Prevention of Less Favourable Treatment) Regulations 2002. Throughout the remainder of this protocol the term 'temporary employee' will be used in reference to both temporary and fixed term employees.
- 2.3 With the exception of the following three differences, temporary employees enjoy the same statutory and contractual rights as their permanent colleagues:
- (a) the contract will be short-term;

- (b) where this short-term arrangement is for less than 3 months the temporary employee will not be eligible to join Strathclyde Pension Fund. Where however, the arrangement is for 3 months plus, or an extension to an already existing temporary contract which provides that employee with 3-months plus service, then eligibility to join Strathclyde Pension Fund will apply. Teachers, whose pension scheme is the Scottish Teachers Superannuation Scheme, are eligible to join from their first day of employment. From May 2013 employees will be assessed for Auto-enrollment under the new Workplace Pensions regulations.;
- (c) notice periods may be shorter depending on the length of the contract and will be highlighted at the outset within the written statement of particulars of employment. Details of notice period are undernoted:

Teachers

The minimum period of notice a temporary teacher is entitled to receive by the employer to terminate their employment is:

4 weeks, where service is less than 4 years*.

1 week for each year of continuous service, where total service is at least 4 years but less than 12 years.

12 weeks, where service is 12 years or more.

*For short term temporary contracts it is vital however that the terminology reflects the need for flexibility and such posts would normally be terminable by one weeks notice. Teachers who work for periods of less than 4 weeks do not have any statutory notice entitlement and contract can be brought to an end immediately. It is good practice however to ensure there is clear communication between the parties. If a post is to cover sickness absence then it should be made clear that the appointment is temporary for up to 26 weeks, or earlier subject to one weeks notice. Such measures aim to ensure that the rights of the permanent post holder are safeguarded, the temporary post holder is clear about the nature of employment, and there is some flexibility to manage the situation.

Local Government Employees & Craft Workers

The minimum periods of notice to be given by an employer are governed by the Employment Rights Act 1996:

Continuous Service	Period of Notice
One month or more but less than two years	Not less than one week
Two years or more but less than twelve years	Not less than one week for each year of continuous service
Twelve years or more	Not less than twelve weeks

2.4 Under the Employment Rights Act all employees are entitled to redundancy payments, in a redundancy situation, after two years continuous service, even if that employee is temporary/fixed term.

2.5 Transfer to Permanent Status

a. LGE/Craft Employees

An LGE /Craft employee who has been working under a succession of temporary contracts within the same organisation will automatically receive permanent employment status once he or she has been continuously employed for a period of four years or more; unless the employer is able to demonstrate good reason why it is reasonable to continue the temporary nature of the relationship. However, if only one contract is issued (with reason for cover stated at outset) which covers a 4 year period or more, then the employee does not automatically become permanent. Services require to carefully review the requirement to issue successive contracts, except where the duration of external funding is not determinable. For certain large occupational groups services may apply approximate 80% permanent, 20% temporary rule, in accordance with CMT guidelines.

b. Teachers

Temporary Teachers may transfer to Permanent Status in accordance with the provisions of LNCT 27

A teacher, who has been employed continuously on one or more fixed term contracts for twenty four months, post full registration with the General Teaching Council, will be eligible for a transfer to the permanent staffing complement of the Council where there is a teaching vacancy unless there is objective justification for not doing so. The timing of a transfer will normally be confirmed during the annual staffing exercise, normally concluded at the end of May of each year.

Under the Fixed Term Employees (Prevention of Less Favourable Treatment) Regulations 2002, the Council is required to limit the use of fixed term contracts for any employee to a maximum period of four years, unless objectively justified. After this period, teachers who have continued to be employed on fixed term contracts will automatically become permanent members of staff, unless there is a good reason why this should not happen.

2.6 Every temporary employee has the right not to be discriminated against or otherwise victimised on grounds of sex, marital status, race or ethnic origin, religion or belief, sexual orientation, age or disability.

3 PROTOCOL

3.1 Recruitment & Selection of Temporary Employees

3.1.1 The engagement of temporary employees may be progressed in a variety of ways depending on the circumstances:

a. External advert

-
- b. Internal advert
 - c. Internal restricted (to section or service) advert
 - d. Teachers Circulars LNCT 20; LNCT 27 and LNCT Circulars or Guidance Documents on Allocation of Supply Work for Teachers will be referred to where applicable
- 3.1.2 Prior to the engagement of a temporary employee the Council's Central Redeployment Register on ICON must be considered. Should a possible match be identified, managers will be required to interview the individual prior to the vacancy being advertised in the Internal Vacancy Bulletin and/or the external press. Further details on this process can be found under the Council's 'Redeployment Policy and Procedures'.
- 3.1.3 A temporary employee must only be engaged after they have gone through the Council's recruitment and selection procedure and all pre-employment checks are satisfactory and complete. All paperwork relating to the recruitment must be passed to Human Resources for inclusion in the temporary employee's personal file.
- 3.1.4 Managers must ensure that when completing a 'Request to Advertise' form, the reason for the temporary nature of the appointment and the likely termination date are clearly detailed. Human Resources will use this information to create and issue the contract of employment. Failure to provide this detail may delay the recruitment process.
- 3.1.5 Temporary Appointments will normally be offered for 1 month, 3 month, 6 month, 51 weeks, 23 month periods

3.2 Employment of Temporary Employees

- 3.2.1 LGE/Craft Employees -Should the temporary status of a post be revised to permanent then the post holder may be offered the permanent position if they have been in place over one year and have been engaged following interview. In the event that a permanent position arises but there is more than one temporary employee engaged in that particular role, in the interests of fairness and equity a competitive interview must take place.
- 3.2.2 Where there are problems of conduct or performance with a temporary employee, the employee should be managed in the same way as their permanent counterparts. **In no event should the matter simply be ignored with a view to non-renewal of the contract upon expiry.**

3.3 Termination of Temporary Employees

- 3.3.1 There will be no guarantee that a temporary employee's contract will be extended beyond the date or reason stated in the offer of appointment.
- 3.3.2 On occasions where a temporary employee is to be displaced by a permanent employee – for example due to service re-structure or redeployment exercise- then

attempts will be made where practicable to identify a temporary employee with less continuous service.

- 3.3.3 A Permanent employee who has been occupying another post on a temporary basis will either revert back to their own post at the end of the temporary appointment or will have a right to an alternative reasonable post on their substantive grade. As permanent employees they are not regarded as fixed term or temporary employees
- 3.3.4 Notice periods will be in accordance with para 2.3 (c)
- 3.3.5 Despite the fact that the setting up of a temporary contract will have involved agreement that the contract is time-limited, its expiry amounts to a dismissal under the Employment Rights Act 1996. Consequently an employer must follow a fair dismissal procedure prior to terminating a temporary employee and managers must ensure that they have a fair reason for dismissal.
- 3.3.6 In the interests of clarity, the procedure to be followed is:
- a. The employee must be advised, in writing, that the end of a fixed term /temporary appointment is being considered and the reasons for this i.e. the impending expiry of the contract
 - b. The employee must be invited to a meeting to discuss the circumstances, to establish whether the contract might be extended or whether there is any alternative work the employee could do
 - c. The employee must be advised of the outcome of the meeting and given the right of appeal
 - d. The right of appeal is one internal stage and to a Corporate Director (or nominated senior officer not previously involved). Where a dismissal is under the terms of the disciplinary policy (excluding disciplines related to absence) then the appeal will be in accordance with the Councils Disciplinary Appeals process.
 - e.
 - f. The employee must be given their contractual notice
- 3.3.7 For temporary employees who are due to be terminated, redeployment to a suitable alternative position or vacancy will be sought in accordance with undernoted. Temporary teachers will be dealt with in terms of the relevant LNCT AND SNCT provisions.

There can be no guarantee, that a suitable alternative position will be found and if not, this will result in the termination of employment in the normal manner.

- a. <1 years service – contract terminated . No requirement to redeploy.
- b. >1 year's service < 2 years service – redeployment register checked (during the temporary employees 1 week notice period). If no **immediate** suitable alternative vacancy found then contract terminated – if suitable redeployment found then existing contract terminated and new contract offered at rate for the post (no

salary protection consideration) – if offer of new position rejected employee terminated on grounds some other substantial reason (sosr).

- c. 2 years service < 4 years service – redeployment register checked (for up to 4 weeks). If no suitable alternative vacancy found then contract terminated with redundancy payment, in redundancy situation – if suitable redeployment found then existing contract terminated and new contract offered at rate for post (no salary protection consideration).
 - d. >4 years service – redeployment register checked for same number of weeks as employee’s service in years – if no suitable alternative position found then contract terminated with redundancy payment, in redundancy situation –
 - Where suitable redeployment found then existing contract terminated and new contract offered at rate for the post (no salary protection will be applied).
 - Where the temporary employees **existing** post is downgraded as result of a service restructure then the temporary employee will be given protection of the existing salary for the period remaining of existing temporary contract or up to a maximum of 1 year.
 - Notwithstanding above the Council may exercise discretion in exceptional circumstances e.g where an employees with over 4 year’s temporary service is to be displaced and face a “redundancy” situation and where an alternative post is sourced but at a substantially reduced grade. In such cases employees may be eligible for salary protection up to a maximum of 1 year.
 - Where the temporary contract ends while protection is still in place then all protection arrangements cease.
- n.b. Conservation arrangements for teachers are contained within the SNCT Handbook.

3.4 Termination of Temporary Employees on Maternity Leave

- 3.4.1 A temporary employee on maternity leave retains all her statutory rights in respect of dismissal/ non-renewal of contract. Therefore, in the event that the contract of a temporary employee on maternity leave expires whilst the women is on maternity leave, it is essential that the procedure outlined in paragraph 3.3.4 is followed.
- 3.4.2 An employee on maternity leave may be made redundant if the employer can fairly justify their choice .If an employee is made redundant during the statutory maternity leave period they have special rights in respect of being offered suitable alternative employment however this exception allowing special treatment of women in relation to pregnancy and childbirth will be limited by the principle of proportionality
- 3.4.2 If the temporary employee’s contract expires during the maternity leave period but the contract is to be renewed, the temporary employee must be advised of this and an extension to contract issued as soon as possible.

- 3.4.3 In all cases, the Head of Organisational Development, Human Resources and Communication must be notified by the relevant Service of the impending expiry of a temporary contract of an employee who is pregnant or on maternity leave in advance of the contractual notice period due before termination of contract takes place.**

4 ROLE OF HUMAN RESOURCES

- 4.1 The role of Human Resources will be to:
- a. provide advice and guidance to managers on the implementation of the Protocol; in particular, advising managers on the appropriate dismissal procedures;
 - b. will issue the employee with an extension to contract or a termination letter as appropriate;
 - c. where a temporary employee has a succession of contracts which gives him/her 4 year's service or more, Organisational Development, Human Resources and Communications will consult with the Service and issue a permanent contract if appropriate.

(END OF DOCUMENT)