

MANAGING TRANSFERS OF EMPLOYEES ON TEACHING CONDITIONS TO NEW STRUCTURES

1. SCOPE

- 1.1 These procedures apply to all employees on teaching conditions of service, whether on full-time or part-time contracts. Employees on temporary or fixed-term contracts are also included if they have been employed continuously for a minimum of one year.
- 1.2 The procedures exclude Agency staff, freelance or self-employed people, Supply Staff and anyone else who is not directly employed by the Council under a contract of employment.
- 1.3 The procedures deal with the handling of employee transfers from an existing organisational structure to a new structure.
- 1.4 This excludes the annual transfer of teachers between schools due to the demographic changes. There is a separate protocol in place to deal with annual changes in roll numbers.

2. AIMS

- 2.1 Organisational change can result in new organisational structures being put in place in departments. As a result, posts will need to be filled in the new structures and, wherever possible, employees will transfer from the old structure to the new one. The aim of these procedures is to ensure that the process is managed in a fair and consistent way.
- 2.2 Scottish Borders Council is committed to safeguarding the employment of employees. These procedures should be read in conjunction with the following policies:
 - Retention and Redeployment Policy
 - Redundancy Policy
- 2.3 All employees will be treated fairly. Scottish Borders Council is committed to ensuring that these procedures do not discriminate directly or indirectly on grounds of race, colour, ethnic or national origin, religion or belief, gender, gender reassignment, sexual orientation, marital status, disability, age, or trade union membership and activity. Under employment law, priority for redeployment may be given to employees who are on maternity leave and employees with disabilities in certain circumstances (refer to the Human Resources Department for advice).

3. PURPOSE

- 3.1 The purpose of these procedures is to:
 - ensure business continuity
 - ensure employees are treated fairly and consistently to minimise uncertainty and anxiety during periods of organisational change.
 - support organisational change and minimise disruption

- fill posts in new structures efficiently and fairly, following consistent procedures

4. PRINCIPLES

- 4.1 Employees who are at risk of redundancy will be given priority consideration for suitable alternative posts.
- 4.2 The Human Resources department can provide advice, support and guidance to managers throughout their restructuring process. Managers should contact HR in the early stages of their planning process.
- 4.3 Managers will seek to gain cooperation and support from employees, for example through regular communication.
- 4.4 Within the framework of Council policies and procedures, everyone involved will be expected to be flexible in their approach to restructuring, keep an open mind and be receptive to different ideas and ways of working.
- 4.5 Managers will keep a clear and thorough record of actions, correspondence etc throughout the process of managing employee transfers in line with this procedure.
- 4.6 When organisational restructuring is being contemplated the rationale will be discussed with employees and the Trade Unions before plans are finalised.
- 4.7 Consultation will take place with employees and Trade Unions to ensure that effective two-way communication continues throughout the period of restructure.
- 4.8 No appointments will be made to a re-organised structure until the proposals have been issued and consultation has taken place.
- 4.9 Senior managers will normally be appointed first to enable them to continue with appointments in areas within their remit in the new structure. Thereafter, posts will normally be filled with the most senior posts first, through to the most junior posts.
- 4.10 Employees will be assisted as necessary in identifying suitable job opportunities.
- 4.11 Employees will be supported as necessary with training and development.
- 4.12 There will be restricted competition (a 'closed list' process) for employees who are eligible for redeployment (see para 7.15).
- 4.13 Appointments to posts of Headteachers and Deputies may only be made by appointment panels. Parent Councils will be involved when required by the Director of Education and Lifelong Learning.

5. TEMPORARY AND FIXED TERM CONTRACTS

- 5.1 The Council is undertaking a transformation programme and posts have been filled on a temporary basis where there was likelihood of a restructuring exercise. For this reason, employees who are on temporary or fixed term contracts with less than one year's continuous service will not normally be considered for redeployment opportunities if their posts are redundant. They are welcome, however, to compete for posts which are subject to open competition.
- 5.2 Where these employees have continuous service of one year or more, they will be considered for redeployment opportunities if their post is redundant.

6. ACTING UP AND SECONDMENTS

- 6.1 Employees who have a temporary contract for acting up or are on secondment, retain the right to return to their old job. If they have less than 4 years' service in the acting up / secondment post, their substantive post will be taken into account, not their temporary post. Where their acting up / secondment post is redundant, they will return to their old job.
- 6.2 Employees who have 4 years' service or more in an acting up or secondment post will normally be given the option either to return to their substantive post or to be confirmed in their acting up / secondment post on a permanent contract, as long as they are undertaking 100% of the acting up or secondment position and meet the essential criteria for the job. There are exceptions, however. Employees cannot transfer onto a permanent contract where:
- another employee has priority consideration for the post in order to avoid a redundancy
 - the post itself is temporary eg it has time-limited funding, or it will cease once it has completed a particular purpose or task or
 - the post is the substantive post of another employee eg maternity leave cover, ill health cover, acting up or secondment cover.

In these situations, employees will normally return to their substantive post.

7. PROCEDURE FOR TRANSFERRING TO A NEW STRUCTURE

- 7.1 A flow chart at Appendix 1 summarises the management procedure for transferring employees to a new structure.

Establishing the new structure

- 7.2 Where parts of the Council are being restructured, organisational charts will be produced to reflect both the current and the proposed structures.
- 7.3 Job descriptions will then be drawn up for new posts and these will be graded under the job sizing process. Once posts have been graded, a comparison will be made between the posts

on the new structure and those on the current structure to determine which posts and which employees may be affected by the new structure.

- 7.4 The new structure may consist of a combination of posts which are directly comparable with (or the same as) posts on the current structure, and posts which are new (i.e. different from posts on the old structure).
- 7.5 Consultation will take place with employees and Trade Unions before new posts are filled.
- 7.6 Where specific jobs are affected, the current line manager and a colleague (which may include a HR representative) will meet with individual employees to consult on the nature and impact of the structure changes. If appropriate, this will include discussion on the redeployment procedures (see the Retention and Redeployment Policy) and the options for suitable alternative posts. Employees will be invited to bring a colleague or Trade Union representative with them to any formal meetings involving consultation on the suitability of alternative posts.
- 7.7 Managers must ensure that the posts on the new structure are formally established and created on Resourcelink before any appointments can be made. Further information is available from the Human Resources Department.

Transferring to the same post in the new structure

- 7.8 Where there is little or no change to jobs or responsibilities (i.e. one job replaces another), managers will simply transfer employees into corresponding posts in the new structure (i.e. there will be no need for an interview process). The employee must meet the essential criteria for the job in the new structure. In addition, normally 75% or more of the job will reflect their current post and normally they will spend at least 75% of their time on that activity. This is known as a 'match'.
- 7.9 Where employees meet the essential criteria for the job in the new structure but only 50% - 75% of their time and responsibilities match those of the post, consideration will be given by managers on a case by case basis to whether the post is actually a match.
- 7.10 In the first instance, employees will be considered for matching to a post which is at the same grade and which most closely reflects their current post. If there is not a match at the same grade, they will be considered for matching into a post at a higher grade, followed by posts at a lower grade (see section 8, Conservation).
- 7.11 A post on the new structure might be graded at a higher level than a corresponding post on the old structure, due to higher level responsibilities in one or more areas of the job. In some cases, where the following criteria are met, the postholder can be considered for matching into this post on the new structure:
 - the post on the new structure matches the post on the old structure in all other respects (under the criteria above),
 - the post on the new structure is only one grade higher than the post on the old structure

- the post on the old structure is being replaced by the post on the new structure and the employee is at risk of redundancy as a result.
- 7.12 The difference between a Principal teacher (PT) and Classroom Teacher (CT) will be deemed to be one grade and CT may be considered as a suitable alternative for a PT . Similarly a PT post may be considered to be a suitable alternative for a DHT/HT
- 7.13 Employees who are transferred into corresponding posts in the new structure will be expected to accept them. Non-acceptance of such a position may result in dismissal without redundancy pay if, following discussion, the management believes they do not have reasonable grounds for refusing it. In some instances, personal circumstances may be a factor to be taken into account eg an employee's ability to change work location.
- 7.14 One post on the new structure will be a potential match for several posts on the old structure. The employees in these jobs will normally be required to compete for the available post. At this stage, management consideration can also be given to setting selection criteria for the post, inviting expressions of interest from the group, voluntary redundancy or redeployment.

Reduction in the number of posts

- 7.15 If there is a significant reduction in posts which may lead to 20 or more redundancies, it will be classed as a collective redundancy and will be the subject of appropriate statutory consultation with Trade Union representatives (see the Redundancy Procedure). Managers must contact the Head of Human Resources where there is a possibility that they anticipate collective redundancies, in order that the Council can meet its statutory requirements.
- 7.16 Where it is necessary to select individual employees for potential dismissal from a pool of redundant posts, consideration will be given to establishing selection criteria.

Redeployment

- 7.17 The new structure will usually include posts which are different from a number of those in the old structure to a greater or lesser extent. Where this results in the previous posts becoming redundant, each affected employee will need to complete a Redeployment Registration form (R1) and join the Redeployment Register (subject to paras .
- 7.18 Redeployment opportunities will be sought throughout the Council for displaced employees. Employees share responsibility with managers for identifying suitable posts.
- 7.19 Anyone on the Redeployment Register will have the opportunity to compete for 'suitable alternative' posts (see definition at Appendix 2) through restricted competition (ie a 'closed listing' process). These posts are open to all Council employees who are on the Redeployment Register as long as they meet the essential criteria for the posts. Following shortlisting, redeployment interviews will be held.
- 7.20 Redeployment interviews are less formal than for posts that are subject to open competition but still follow a structured and fair approach. Consideration is given to whether training would enable the employee to meet the full requirements of the post. Such training is normally restricted to short courses.

- 7.21 Where there is a choice of candidates, the successful person will be the one who demonstrates that they best meet the criteria for the post and can satisfy the need for satisfactory references, medical assessment and Disclosure Check (if required).
- 7.22 If no one from the Redeployment Register is appointed, normal recruitment procedures apply (open listing). Posts can be advertised internally and externally at the same time.

Trial periods for successful candidates

- 7.23 Employees, whose interview for a suitable alternative post is successful, will be given a statutory four-week trial period to determine whether the post is actually suitable in practice. This will be confirmed in writing.
- 7.24 If the trial period is successful, the process of transfer will be confirmed as having been completed and a new contract issued which will outline any conservation, if applicable.
- 7.25 If the manager believes the trial period is unsuccessful, the employee will be placed back on the Redeployment Register for further redeployment. If the reason that the trial period is unsuccessful is unconnected to the new job, the employee will not normally be further redeployed and may lose the right to a redundancy payment.

Candidates who still need to be placed

- 7.26 Employees, whose interview for a suitable alternative post is unsuccessful, will normally remain on the Redeployment Register for their period of notice (up to 3 months), unless the dismissal date is earlier, depending on the needs of the business. They will be notified of potentially suitable alternative posts (see the Retention and Redeployment Policy) during this period as they arise. Any offer of redeployment will be made before the date of dismissal.
- 7.27 If a suitable alternative post has not been secured within this period, redundancy will normally follow (see the Redundancy Policy). If, however, a suitable alternative is unreasonably refused, the employee may not be eligible for a redundancy payment.

Advertising posts

- 7.28 Unless they are required for redeployment by employees on the Redeployment Register, posts can be advertised and filled through a formal recruitment and selection process. Permanent posts can be advertised internally and externally at the same.
- 7.29 Where a post was previously advertised on a fixed term or temporary basis and is now open for permanent appointments, managers will re-advertise the post internally (i.e. across the Council) as a minimum (after employees on the Redeployment Register have been considered). Note: if a post is advertised internally in the first instance, only directly-employed staff can apply, which excludes those covered by para 1.2.
- 7.30 Before a vacant post can be considered for open recruitment, it must be agreed that it is sufficiently unsuitable for any employee on the Redeployment Register. This may be reflected

in the difference in a single factor or combination of factors such as grade, responsibilities, skills, knowledge, location, experience and capabilities required for the job. The final decision on which posts can be advertised rests with the Head of HR or his/her representative.

Absence during restructuring

- 7.31 Employees who are absent during a restructuring exercise, for example through maternity leave, secondment or long term absence, must be included in the communication and consultation process by the responsible manager.
- 7.32 If employees are not able to attend for a redeployment interview, they will be considered in their absence and be kept informed of any progress and outcome. Consideration will also be given to a telephone interview.

Appeals

- 7.33 Should any employee believe that the procedures have been applied unfairly to them personally, they should raise the matter informally with their line manager in the first instance and, thereafter, through the formal grievance process. Once the Council's internal grievance process has been concluded, there is no further internal right of appeal.

Counselling and support

- 7.34 It is acknowledged that some employees may find their involvement in reorganisation stressful and managers should ensure that support is offered. Employees are reminded of the free confidential Stress Counselling service accessible through the Employee Assistance Programme. The contact number is 0870-1648176.

8. Conservation

8.1 Conservation for Promoted Post Holders in Post appointed on or after 1 April 2001

A promoted post holder appointed on or after 1 April 2001 and;

(a) whose post has been re-sized and the salary has been downgraded; or

(b) who is transferred, for reasons other than inefficiency or indiscipline, to another post which has a lower salary;

shall receive a three year period of cash conservation (as defined in paragraph 8.3 below).

8.2 Conservation for Promoted Post Holders with Temporary Appointments

Where a teacher has occupied a promoted post, on a temporary basis, for two or more consecutive school years and that temporary appointment ceases, then the teacher shall receive a three-year period of cash conservation (as defined in paragraph 8.3 below).

8.3 Application of Cash Conservation

The application of cash conservation will commence at the date at which the downgrading of the salary for the post, transfer or cessation of temporary appointment takes effect. During the three-

year period of cash conservation, the post holder will continue to receive his/her previous salary but will not receive any increase resulting from pay awards (other than in the circumstances outlined in 1.64 below). At the end of the three-year period the cash conservation will end and the post holder will then receive the normal salary for the post she/he now holds.

8.4 Conservation for Promoted Post Holders appointed before 1 April 2001

A promoted post holder appointed to a post before 1 April 2001 and;

- (a) whose post has been re-sized and the salary has been downgraded; or
- (b) who is transferred, for reasons other than inefficiency or indiscipline, to another post, which has a lower salary;

shall continue to receive her/his previous salary and will continue to receive any increase resulting from pay awards.

8.5 Conservation – General Provisions

8.5.1 During any period of conservation, when the normal salary for the post occupied exceeds the conserved salary being paid (for example, through the application of pay awards), the post holder will receive the normal salary for the post with effect from that date.

8.5.2 Conservation of salary will cease following voluntary application for, and appointment to, a new post.

8.5.3 There shall be no entitlement to conservation of salary where;

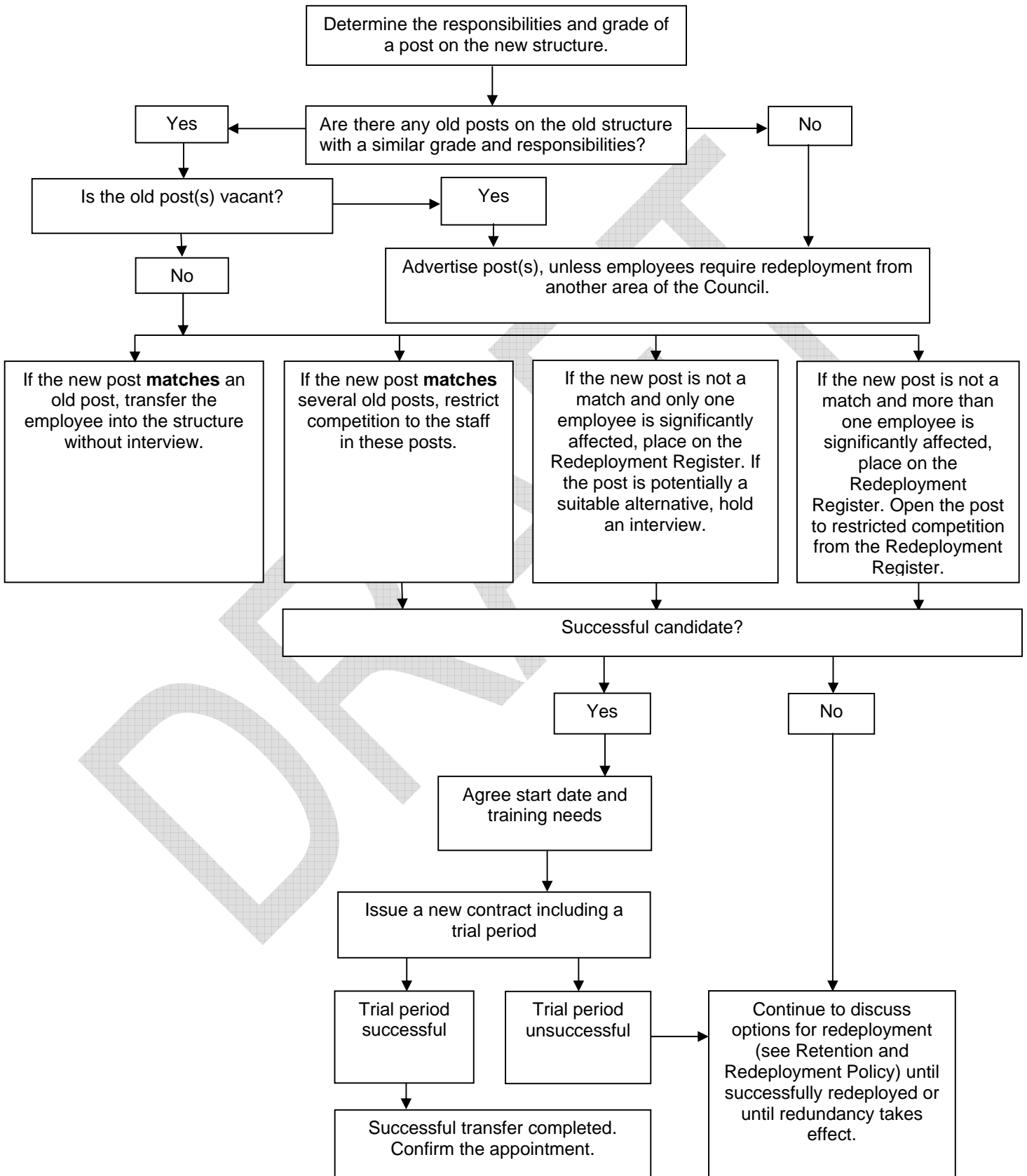
- (a) a teacher is transferred and ceases to be entitled to receive a remote school/distant island allowance payable or suffers a reduction in the amount of such an allowance; or
- (b) a teacher refuses unreasonably, on two occasions, to accept an alternative equivalent, or better, post.

9 ASSOCIATED POLICIES AND PROCEDURES

Policies and procedures which are linked to this procedure, and which should be read in conjunction with it, are:

- Retention and Redeployment Policy
- Redundancy Policy & Procedure
- Appointment of Head Teachers and Deputies Procedure

SUMMARY FLOWCHART FOR TRANSFERRING EMPLOYEES INTO A NEW STRUCTURE



DEFINITION OF A SUITABLE ALTERNATIVE POST

Taken from the Redundancy Procedure, March 2007

6.1 Suitable alternative work

Suitable alternative employment is regarded as posts arising of the same or similar grade to that already held by the employee and shall include posts in alternative employee categories, of a commensurate salary and status including posts occurring in alternative Council locations where these locations are considered to be reasonable in respect of the employee.

Some suggestions for defining 'suitable alternative':

A 'suitable alternative' post is one which is similar to the employee's current post, taking into account:

- the similarity of responsibilities between the current post and the alternative post
- the employee's training, qualifications, skills, experience and capabilities and their suitability for the alternative post
- the grade of the current post
- the hours of work
- travel requirements of the job
- travel between home and base
- personal circumstances.

Although the aim is for a 'suitable alternative' post to be similar to the current post, there is no guarantee that an exact match will be available.

A suitable alternative will sometimes include a post at a slightly higher grade but does include lower graded posts. In considering options, the preferences and aspirations of employees will also be taken into consideration. After consultation, the individual will be expected to accept an offer of a post that is considered to be a suitable alternative.

In redundancy situations employees must be aware that if they unreasonably refuse an offer which the employer believes to be suitable, they may lose any entitlement to redundancy pay.

Unreasonable refusal may arise where the differences between the new and old jobs are negligible or where the employee assumes rather than investigates the changes that a new job might involve in, for example, travelling time or working conditions. Refusal may be reasonable if the new job would cause domestic upheaval, for example if there was a considerable change in working hours or a need to move house.

In deciding whether to accept an offer of alternative employment, whatever the circumstances, it will be sensible for employees to bear in mind the availability of other employment should they refuse the offer. It may mean that the alternative to accepting a new position on different terms and conditions is dismissal if no better suited alternatives are available within the redeployment period.