

EAST RENFREWSHIRE LNCT AGREEMENT

**PROCEDURES FOR THE COMPULSORY TRANSFER OF SURPLUS UN-PROMOTED
EMPLOYEES COVERED BY SNCT CONDITIONS OF SERVICE**

August 2024



EAST RENFREWSHIRE COUNCIL

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SECTION 1 - Introduction

- 1.1. The procedures for the compulsory transfer of promoted staff is covered by LNCT 30b.
- 1.2. The use of the term “teacher” within this policy should be read to include all un-promoted employees covered by SNCT conditions of service and the term “establishment” refers to any corresponding department or educational establishment/setting.
- 1.3. All un-promoted teachers covered by SNCT conditions of service are appointed to the authority and not to a particular establishment. Although all employees have a contractual obligation to transfer from one educational establishment to another, at the exigencies of the business, every effort will be made to minimise both the requirement and the frequency of compulsory transfers for individuals.
- 1.4. Where arrangements have to be made for a compulsory transfer, a number of factors will be considered before any transfer is finalised. These factors include, the service plans of the Educational Leadership Team, the curricular and timetabling requirements of the educational establishment declaring a surplus, the personal circumstances and preferences of the employee(s) involved and the views of the Head Teacher/Line Manager and other senior education staff. After taking into consideration the aforementioned factors the decision of the Education Leadership Team to declare a particular surplus will be final.
- 1.5. The process to transfer surplus un-promoted teachers will require the support and co-operation of Head Teachers, Managers and Parent Council Chairs, who understandably, may have a preference for having an open and competitive process, however the needs of the service will take priority.
- 1.6. All employees will be treated fairly. East Renfrewshire Council is committed to ensuring that these procedures do not discriminate directly or indirectly in relation to current equality regulations and are considerate of the health and wellbeing of employees.

SECTION 2 - General Procedures

- 2.1. These procedures cover the identification of the individual employee requiring to be compulsorily transferred and accord certain benefits by way of a measure of protection from further transfer and the opportunity where possible to return to their original establishment should a suitable vacancy arise within the stipulated period of the transfer (as per paragraph 8.11).

2.2. Definition of surplus

The reasons for an unpromoted post to be considered surplus include:

- The closure, amalgamation or restructure of an educational establishment.
- Where the formula attributed by the budget unit for staffing purposes indicates an over spend in the number of teachers allocated to the establishment in relation to the commensurate pupil roll.
- Where a future budgetary review, either at service or establishment level, takes place.

- 2.3. In relation to bullet point two above the budget unit will identify, usually by the end of February, establishments in which reductions in unpromoted teachers may be required and inform establishments through the annual staffing returns.
- 2.4. Having regard to the anticipated pupil rolls for the forthcoming session, the Education Senior Manager (Developing People), in conjunction with the Senior HR Officer (Staffing) will determine, after consultation with the Head Teacher/Line Manager, the extent of the reduction in staffing required, the subject area(s) which will be affected and the validity of the identified surplus.
- 2.5. The Education Leadership Team will confirm the establishments in which reductions in teaching staff will be required and the Education Senior Manager (Developing People) will convey this information to local secretaries of teacher organisations represented on the Local Negotiating Committee for Teachers at the earliest opportunity.
- 2.6. The Head Teacher/Line Manager will in turn convey this information to the affected employee(s) within 5 working days of confirmation from the Education Senior Manager (Developing People) that a surplus situation exists within their establishment.
- 2.7. In the first instance, all un-promoted teaching staff of an affected establishment or subject department will be consulted to ascertain if there is a volunteer for transfer. Should no volunteer be forthcoming, the Senior HR Officer (Staffing) will determine the employee who will be declared surplus. In most instances, this will be the teacher with the least reckonable service with East Renfrewshire Council, in that category of post, who will be required to transfer: unless there are, in the view of the Education Leadership Team, strong reasons for deciding otherwise.
- 2.8. In the latter event, such decisions shall be communicated by the Education Senior Manager (Developing People), indicating the reasons, to the local secretaries of teacher organisations represented on the Local Negotiating Committee for Teachers, prior to the transfer being effected.
- 2.9. An un-promoted teacher who is subject to procedures under LNCT 22 (Disciplinary Procedures for all Employees covered by SNCT Conditions of Service) and LNCT 34 (Agreed procedures for Dealing with The Underperformance of Employees Covered by SNCT Conditions of Service) or has a live written warning on file as a result of formal procedures under either of these policies, will be excluded from the surplus exercise.

SECTION 3 – Calculating Length of Reckonable Service

- 3.1. For un-promoted teachers, length of service as referred to in paragraph 2.7, will be calculated by applying the following criteria listed below. The un-promoted teacher with the least length of reckonable service will be liable for transfer in order of priority shown below:
 - Total length of continuous reckonable service with the authority
 - Total length of continuous reckonable service based in their present establishment.
 - Total length of all reckonable teaching service
- 3.2. Reckonable service refers to full and part-time service and will include temporary service where there has been no break in service. For the purpose of determining liability to transfer in a situation of surplus, the undernoted will not count towards an individual's reckonable service:
 - lapses in employment between fixed term contracts;
 - career breaks and sabbaticals;
 - periods of unpaid leave of absence;
 - lapses of employment of no more than 10 working days;
- 3.3. The teacher declared surplus will be informed verbally by their Head Teacher/Line Manager of the proposed transfer and will receive a formal letter from the Education Senior Manager (Developing People) intimating the decision made in relation to their transfer and the reasons for it.
- 3.4. Any unpromoted teacher being compulsorily transferred will have a surplus staffing meeting with their Head Teacher/Line Manager and the HR Senior Officer (Staffing). At this meeting each surplus unpromoted teacher will be provided with a copy of LNCT 30a and details of all suitable vacancies known at the time of the meeting. Appropriate trade union representation will be afforded to the employee at this meeting.
- 3.5. Where there are a number of surplus teachers within any one category, i.e. Primary or Secondary subject, teachers will be offered available vacancies according to their length of continuous reckonable service as detailed above, i.e. the rank order of the unpromoted teacher(s) with the longest continuous reckonable service will be offered first choice of the available vacancies and so on until the vacancies are filled (subject to paragraph 3.9).
- 3.6. Surplus teachers will be given 5 working days between the date of the surplus staffing meeting and the submission of their options for transfer. During this time and subject to the exigencies of the service, surplus teachers will be encouraged to visit establishments with appropriate vacancies and engage in dialogue with the Head Teacher and senior staff to ascertain the suitability of such vacancy. This activity should only take place during the school day in exceptional circumstances and with the permission of both Head Teachers. Head Teachers who have had vacancies identified within their establishments as part of the staffing exercise must ensure adequate time is allocated to welcome and brief any surplus teacher who may wish to visit their establishment as would be befitting for any future prospective teacher.
- 3.7. Teachers nominated for compulsory transfer must submit their option choices for available vacancies within 5 working days of the surplus staffing meeting. Where a teacher is unable to meet the prescribed time allotted for submitting their options for placement, this should be communicated immediately to the HR Senior Officer

(Staffing). Only in exceptional circumstances will a teacher be allowed additional time to select their transfer options.

- 3.8. Redeployments that have already been made will not be altered for staff whose option form is received after the 5 working days prescribed. Any teacher submitting the late option criteria will be placed within the remaining cohort of surplus teachers depending on their continuous service at the time their option form was received by the HR Senior Officer (Staffing).
- 3.9. When filling vacancies for the coming session teaching staff will be transferred in the following order of priority:
 - Unpromoted teachers deemed surplus in the previous staffing exercise that have been unable to secure a substantive post and have not been offered at least two appropriate vacancies.
 - Unpromoted teachers who have been on retraining courses as a result of a previous surplus situation should be offered a choice of all appropriate known establishment vacancies either in their new subject or in a combination of their old and new subjects (where appropriate) in accordance with the wishes of the teacher and exigencies of the service.
 - Unpromoted teachers who have become surplus to an establishment as a result of departmental or establishment closure, amalgamation or restructure.
 - Unpromoted teachers who are either surplus due to being volunteers or unpromoted teachers who have been deemed surplus and now require to be transferred compulsorily.
 - Promoted teachers who have voluntarily demitted their post out with the annual staffing exercise.
- 3.10. Where these processes produce equal reckonable service for two or more employees, the teacher to be compulsorily transferred will be chosen by the drawing of lots by the Senior HR Officer (Staffing) in the presence of the teachers concerned.
- 3.11. Where no suitable vacancies exist, surplus unpromoted teaching staff will be deployed to schools as determined by the Education Leadership Team and in accordance with the exigencies of the business. Unpromoted teachers may be split across a number of sites or perform peripatetic services until such time as a suitable permanent vacancy can be identified. If no suitable permanent vacancy is identified by 31st December, the teacher will be invited to the surplus staffing meeting for the forthcoming session.
- 3.12. The Senior HR Officer (Staffing) will maintain a record of surplus unpromoted teachers to assist in identifying transfer opportunities. All surplus unpromoted teachers will have the right to information about available vacancies prior to any appropriate vacancies being advertised.
- 3.13. Unpromoted surplus teachers will be given four weeks written notice of the date of transfer. This notice period may be adjusted subject to consultation with the Head Teachers concerned and with the agreement of the Education Senior Manager (Developing People).
- 3.14. Arrangements should be made at school/establishment level to ensure continuity of teaching and learning should an unpromoted teacher become subject to potential or

actual transfer. Head Teachers should, where appropriate, allow the early release of surplus individuals to new posts and where required, surplus unpromoted teachers should be allowed a short period of up to a maximum of 2 weeks for shadowing and CPD opportunities within their new school before the official uptake of their post.

SECTION 4 – Un-Promoted Teachers in an Acting Promoted Position

- 4.1. Un-promoted teachers who are in an acting promoted position are covered by the surplus policy for un-promoted employees (LNCT 30a) and not the surplus policy for promoted employees (LNCT 30b).
- 4.2. If the teacher is identified as the individual with the least continuous reckonable service, then they will be required to participate in the compulsory transfer process.
- 4.3. The surplus teacher will be required to select a substantive post, however, it may be the case that the acting promoted position will continue until the end of the current academic session, or into the next session, depending on the reason for acting up. In such instances, the vacancy chosen by the surplus teacher will be filled on a temporary basis until such time as the acting promoted position has come to an end, but no longer than 23 months in total from the start of the temporary promoted position.

SECTION 5 – Un-Promoted Teachers in an Reprieve Situation

- 5.1. In some instances, Head Teachers may not wish to declare a particular unpromoted post surplus. The decision not to declare a specific post surplus must be made in conjunction with the Education Leadership Team. A business case must be submitted outlining the reasons for the decision, how any overspend in staffing budget can be mitigated, the expected impact and outcome for learners in retaining the role and the expected timescale. In such instances, the post must be funded in full from the establishment's budget for the agreed period of the temporary reprieve.
- 5.2. Any agreed reprieve for unpromoted surplus staff must be temporary and for a period no greater than 1 academic year.
- 5.3. The date of the compulsory transfer for the purposes of this policy will be the date that the revised staffing level is effective from, irrespective of any agreed period of reprieve. This will normally be the start of the new academic session i.e. the unpromoted teacher will be deemed surplus from August.
- 5.4. If a suitable vacancy is available for the surplus unpromoted teacher this must be offered at the time the vacancy exists regardless of whether the teacher has accepted a position of reprieve by their Head Teacher.
- 5.5. Only one further, appropriate vacancy will be offered to the surplus unpromoted teacher following an initial declination of a suitable permanent vacant post. All unpromoted teachers will be given a maximum of 2 vacancy choices.

- 5.6. Should an unpromoted surplus teacher refuse two suitable vacant posts they will have no automatic right to any further permanent vacancies that may arise subject to paragraph 7.8.
- 5.7. In such instances, the unpromoted surplus teacher will be placed into an available post by the Education Senior Manager (Developing People) at the end of the period of reprieve.
- 5.8. In such instances, the decision as to whether an alternative new post is deemed suitable for a surplus unpromoted teacher will be made by the Education Senior Manager (Developing People). This decision will be final.

SECTION 6 – Maternity Leave/Adoption Leave

- 6.1. As part of its Equal Opportunities policy, East Renfrewshire Council wishes to recognise the position of its teaching staff who undertake Family Leave as defined in Part 2 Section 7 of the SNCT Handbook. For the purpose of determining eligibility for compulsory transfer, all permanent teaching staff who are granted Family Leave as defined in Part 2 Section 7 of the SNCT Handbook will not be regarded as having had a break in their period of continuous service and such leave will count towards reckonable service.
- 6.2. For teaching staff returning to work from maternity leave where a surplus situation has arisen in their establishment, normal transfer arrangements will pertain.
- 6.3. **Pregnant Teachers/Maternity Leave**
 - 6.3.1. A pregnant teacher will not be liable to compulsory transfer during their pregnancy.
 - 6.3.2. In cases where the identified teacher for compulsory transfer is pregnant, the liability for compulsory transfer will not be “passed on” to any other employee.
 - 6.3.3. After the period of maternity leave is finished and the teacher is returning to work, the teacher may if they so wish, return to their former post provided that the return to work takes place within four weeks of the end of the school term (i.e. four weeks before the October, Christmas, Easter or summer breaks). Thereafter, the normal compulsory transfer arrangements will pertain for the start of the following academic term.
 - 6.3.4. If, however, the teacher elects to return to work on a date which is more than four weeks prior to the end of an academic term, the normal compulsory transfer arrangements will pertain from that point.

SECTION 7 - JOB-SHARERS

- 7.1. Job-sharing is defined as the voluntary sharing of all of the duties and responsibilities of an established full-time permanent post by two people. Therefore since job-sharers have agreed to carry out the contractual obligations associated with the post, they will be transferred together as a partnership.
- 7.2. In a compulsory transfer situation the service of the teacher with the longest reckonable service within the partnership will be used. Where an original job-share

arrangement, as defined in 7.1, no longer applies i.e. there is no longer an identified job-sharer, the continuous reckonable service of the individual teacher will apply.

- 7.3. Where one job-sharer volunteers for transfer, and in agreement with the Head Teacher/Line Manager, this will constitute the termination of the job-share contract. Each teacher will move forward on a part-time contract dependent upon the number of hours upon which they were originally employed (see LNCT 31 paragraph 12.1). An example of the implementation of the aforementioned items is as follows;

An establishment/department has to declare a 0.6fte surplus and there exists in the establishment/department a job share partnership split 0.6fte and 0.4fte respectively. The Head Teacher/Line Manager will request volunteers. If the 0.6fte teacher of the job share partnership requests a transfer and volunteers to be made surplus the job share partnership will be dissolved. The 0.6fte teacher will enter the surplus staffing pool as a 0.6fte part-time teacher and the 0.4fte teacher will remain as a 0.4fte part-time teacher in the establishment/department.

- 7.4. In the above example it is important to note that if there is no volunteer the Head Teacher/Line Manager cannot declare the individual 0.6fte teacher surplus (whether part of a job-share arrangement or if the teacher is on a part-time contract). The identification of the surplus teacher will be made by the HR Senior Officer (Staffing) based on length of continuous reckonable service. This may result in a 1fte teacher being declared surplus which will give a 0.4fte vacancy in the school.
- 7.5. The aforementioned principles will also apply to part-time contracts. Part-time service will be credited on a full-time equivalent basis for the calculation of total continuous service with the authority and its antecedent authorities.

SECTION 8 – GENERAL CONDITIONS

- 8.1. A number of factors have to be taken into account in considering the timing of any programme which might encompass the majority of the transfers from one session to the next. These include the following:
- The need to break down projected authority rolls on a school by school basis;
 - The effect of placing requests on the distribution of children/young people;
 - The need to take account of changes in staff entitlements brought about by differences between estimated and actual child/young person numbers at the start of a new academic session.
 - The fact that teachers need not give notice of resignation until late in the session e.g. in the month of May for a main-grade teacher wishing to leave at the end of the summer holiday period.
 - The timing of the placement of Probationer Teachers for their induction year.

There is therefore no point at which the total number and location of vacancies for a coming session can be fixed with certainty. Coupled with the authority's desire to be in a position to offer teachers being compulsorily transferred the choice a minimum of two suitable posts, this precludes the department of a rigid timetable for transfer.

- 8.2. In respect of unpromoted Secondary subject teachers, this will only apply to the subject or subject area the teacher was originally surplus from.
- 8.3. In June, following discussion with their Head Teacher/Line Manager, confirmation will be sent by the Education Senior Manager (Developing People) to any remaining surplus unpromoted teachers for whom no other post is available that they may require to remain in their existing school or be temporarily placed in another position at the start of the session until a suitable vacancy is identified. Alternatively, where appropriate, they may consider a course of retraining.
- 8.4. If there is more than one unpromoted teacher who has been unable to secure a permanent alternative position since being declared surplus in the preceding 12 months, then the continuous reckonable service of this separate pool of surplus unpromoted teachers will be calculated and vacancies offered in order of length of service for that pool.
- 8.5. Where curricular needs dictate, a Head Teacher may request dual qualification in certain specialist subject areas. Where this subsequently necessitates the compulsory transfer of a single qualified teacher, the Head Teacher must provide curricular evidence of the requirement for dual qualification to the Education Senior Manager (Developing People). In such circumstances, the individual being made surplus must be given the opportunity to become dual qualified if they so wish.
- 8.6. The vacant position must be subsequently filled by a dual qualified teacher with full registration in both stipulated subjects. Provisional registration in one subject will only be accepted where the Head Teacher can demonstrate the requirements of the timetable for the school can be met and full registration in the provisional subject will be attained by the following academic session i.e. 135 days standard probationary period in the additional subject can be accommodated in one academic session.
- 8.7. Where a teacher is dual qualified the teacher will be offered all appropriate vacancies pertaining to their GTCS registration. Vacancies in both subjects will be deemed suitable regardless of the personal preference of the surplus teacher.
- 8.8. Should the teacher refuse at least two suitable vacant posts, the Education Senior Manager (Developing People) will place the teacher in a vacancy with regard to the exigencies of the service and appropriate to the skills, qualifications and experience of the teacher.
- 8.9. Where a teacher has been unable to find a suitable permanent vacancy and has attended two consecutive compulsory transfer meetings with Human Resources, the option for retraining may be required. Support will be provided regarding retraining and this will be discussed with the relevant individual at the time.
- 8.10. A teacher transferred compulsorily will not be transferred again within a period of two years. In addition, no teacher will be subject to more than two compulsory transfers in six years however the exigencies of the business may dictate that there is a requirement for such a further transfer within such a six year period. In these circumstances, the reasons for the additional move will be discussed with the affected teacher by the Head Teacher/Line Manager of the establishment in question and the information conveyed to local secretaries of teacher organisations represented on the Local Negotiating Committee for Teachers at the earliest opportunity.
- 8.11. A teacher who is compulsorily transferred will have the opportunity of returning to the school from which they were transferred should a suitable vacancy arise within a period of two years from the date of the compulsory transfer. The date of the

compulsory transfer for the purposes of this policy will be the date that the revised staffing level is effective from which is normally the start of the school session (see paragraph 5.3)

- 8.12. If the teacher decides to return to their former school the “two year protection” from further compulsory transfer will cease.
- 8.13. These principles will not however apply to unpromoted teachers on a winding down contract or phased retirement. An unpromoted teacher who is undertaking a phased retirement or winding down and is in the final year of a declared retirement will not be subject to compulsory transfer and, in consideration of continuity of teaching and learning, will not have the opportunity to volunteer to transfer. In such instances, the cost of retaining the surplus teacher will be met by the establishment/department until the date of the declared retirement.
- 8.14. Where it has not been possible to fill vacancies through the above procedures the Education Leadership Team will decide whether any vacant posts can be filled on a temporary or permanent basis, according to the Authority’s normal recruitment procedures.

SECTION 9 – DENOMINATIONAL SCHOOLS

- 9.1. Whilst the authority reserves the right to compulsory transfer staff, it is recognised that some teaching staff may request not to be transferred from a non-denominational establishment to a denominational establishment, or vice versa. Every effort will be made to accommodate such requests, subject to the needs of the service. In line with Section 21(2A) of the Education (Scotland) Act 1980, applicants for teaching posts in all Roman Catholic Schools will require to have Roman Catholic Church approval.
- 9.2. As detailed in 9.1, it is necessary for any teacher working in a Roman Catholic school under the management of East Renfrewshire Council to have the approval of the Roman Catholic Church. This is a requirement of the Education (Scotland) Act 1980. Information on how to acquire Church approval can be found on the website of the Scottish Catholic Education Service (www.sces.uk.com) under the heading Teaching. It is a straightforward process and any qualified and registered teacher can apply.
- 9.3. Where a surplus teacher opts for a denominational vacancy subject to approval and this approval is refused, the teacher will be removed from the denominational vacancy and will be required to choose an appropriate non-denominational vacancy from those remaining at the time of the refusal. Should no appropriate vacancies be available the teacher will be placed into a temporary position as per paragraph 3.11 of this policy. Regardless of the vacancy being approved their choice will count as one of the two suitable vacancies for the promoted surplus teacher.