

EAST RENFREWSHIRE LNCT AGREEMENT

**PROCEDURES FOR THE COMPULSORY TRANSFER OF SURPLUS 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 un-promoted employees is covered by LNCT 30a.
- 1.2. The use of the term “teacher” within this policy should be read to include all promoted employees covered by SNCT conditions of service and the term “establishment” refers to any corresponding department or educational establishment/setting.
- 1.3. The introduction of The Scottish Schools (Parental Involvement) Act 2006 and the Parental Involvement in Head Teacher and Depute Head Teacher Appointments (Scotland) Regulations 2007 gives education authorities the powers to transfer surplus Head Teachers and Depute Head Teachers.
- 1.4. As the Act refers only to Head Teachers and Depute Head Teachers, no other promoted post will require communication with the Parent Council.
- 1.5. **Consultation With The Parent Council**
Where a Parent Council exists, the appropriate Pastoral Head of Service of the receiving establishment or Education Senior Manager, will consult the Parent Council when it is proposed that a surplus promoted teacher should fill a vacant promoted post. Discussion will take place with the Parent Council about the specific skills, strengths and experience required for the post and the suitability of the surplus promoted teacher being redeployed into the vacancy. The Authority will make the final decision on whether to transfer and in this event the Parent Council will have no further involvement in the appointment process. This will only apply to Head Teacher and Depute Head Teacher posts.
- 1.6. The process to transfer surplus 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.
- 1.7. All promoted teachers covered by SNCT conditions of service are appointed to the authority and not to a particular school. 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.
- 1.8. 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.

- 1.9. This document outlines the Authority's procedures for the transfer of surplus promoted teachers and takes account of the requirement for parental involvement.
- 1.10. 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 8.4).

2.2. Definition of surplus

The reasons for a promoted 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 overspend in the number of promoted posts allocated to the establishment for Depute Head Teacher, Faculty Head Teacher and Principal Teacher posts in relation to the commensurate pupil roll.
- Where a future budgetary review, either at service or establishment level, of promoted post structures 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 promoted teaching staff 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 promoted teacher(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 appropriate promoted teaching staff of an affected establishment or subject department will be consulted to ascertain if there is a volunteer for transfer e.g. all Depute Heads in an establishment where a reduction is

required. 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 individual 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. A 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 promoted teachers, length of service as referred to at 2.7, will be calculated by applying the following criteria: (the promoted teacher with the least number of points will be liable for transfer)
 - The continuous length of reckonable service (with East Renfrewshire Council and its antecedents) in promoted posts will be given a weighting of 2 points per year and 1 point will be given for any other year. For example, if an employee had 10 years reckonable service in teaching the last 2 of which having been in a promoted post now declared surplus, for compulsory transfer purposes, the individual would have 12 points.
- 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. 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.
- 3.4. 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.
- 3.5. Any promoted teacher being compulsorily transferred will have a surplus staffing meeting with their Line Manager and the Senior HR Officer (Staffing). At this meeting, each surplus promoted employee will be provided with a copy of LNCT 30b 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.

- 3.6. Where there are a number of surplus promoted teachers within any one category, e.g. Principal Teacher Primary, all promoted surplus teachers will be offered available vacancies according to their length of continuous reckonable service as detailed above, i.e. the rank order of the employee(s) with the greatest amount of points accrued through continuous reckonable service, will be offered first choice of the available vacancies and so on until the vacancies are filled (subject to item 3.10).
- 3.7. Surplus promoted 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 promoted 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 promoted teacher who may wish to visit their establishment as would be befitting for any future prospective teacher.
- 3.8. Promoted teachers nominated for compulsory transfer must submit their option choices for available vacancies in a timeous manner within 5 working days of the surplus staffing meeting. Where a promoted 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 promoted teacher be allowed additional time to select their transfer options.
- 3.9. Placements that have already been made will not be altered for employees whose option form is received after the 5 working days prescribed. Any promoted teacher submitting their option criteria late 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).
- 3.10. When filling vacancies for the coming session promoted teachers will be transferred in the following order of priority:
 - Promoted 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.
 - Promoted 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.
 - Promoted teachers who have become surplus to an establishment as a result of the first phase of an establishment closure, amalgamation or restructure.
 - Promoted teachers who are either surplus to the establishment of a particular school or volunteers from establishments with promoted teachers surplus and requiring to be transferred compulsorily, should be offered the choice of all appropriate vacancies.
 - Promoted teachers who relinquish their substantive promoted post and request a return to another promoted teaching role e.g. Head Teacher requesting Depute Head Teacher role or Depute Head Teacher requesting a Principal Teaching role.

- 3.11. Where these processes produce equal reckonable service for two or more employees, the promoted teacher to be compulsorily transferred will be chosen by the drawing of lots by the Senior HR Officer (Staffing) in the presence of the promoted teachers concerned.
- 3.12. Where no suitable vacancies exist, surplus promoted teaching staff will be deployed to schools as determined by the Education Senior Leadership Team and in accordance with the exigencies of the business. Promoted 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 promoted teacher will be invited to the surplus staffing meeting for the forthcoming session.
- 3.13. The Senior HR Officer (Staffing) will maintain a record of surplus promoted teachers to assist in identifying transfer opportunities. All surplus promoted teachers will have the right to information about available vacancies prior to any appropriate vacancies being advertised.
- 3.14. Promoted 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).
- 3.15. Arrangements should be made at school/establishment level to ensure continuity of teaching and learning, should a promoted 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 promoted 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 – 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 Circular 30b).
- 4.2. Promoted teachers who are in an acting promoted position are covered by this policy in relation to their substantive role only. If the promoted teacher is identified as the individual with the least continuous reckonable service, then they will be required to participate in the surplus staffing exercise.
- 4.3. The surplus promoted 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.

5. SECTION 5 – Promoted Teachers in an Reprieve Situation

- 5.1. In some instances, Head Teachers may not wish to declare a particular promoted 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 promoted surplus staff must be temporary and for a period no greater than 23 months.
- 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 promoted teacher will be deemed surplus from August.
- 5.4. If a suitable vacancy is available for the surplus promoted teacher this must be offered at the time the vacancy exists regardless of whether the teacher is undertaking an acting temporary promoted position or 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 promoted teacher following an initial declinature of a suitable permanent vacant post. All promoted teachers will be given a maximum of 2 vacancy choices.
- 5.6. Should a promoted surplus teacher refuse two suitable vacant posts they will have no right to any further vacancies that may arise subject to paragraph 8.5.
- 5.7. In such instances, the promoted teacher will be placed into an available post at the next level down i.e. Depute Head will revert to a Principal Teacher; Principal Teacher will revert to an unpromoted teacher.
- 5.8. If a promoted teacher chooses not to accept two reasonable vacancies offered to them, they will be placed on a conserved salary for a period of 3 years from the effective date of the initial surplus as defined within the revised school staffing letter sent by the Education Senior Manager (Developing People) i.e. August of the initial budget review.
- 5.9. The surplus promoted teacher will lose their conservation of salary after the 3 year period as defined in 5.8 and will be placed on the commensurate salary scale for their new post.
- 5.10. The decision as to whether an alternative new post is deemed suitable for a surplus promoted 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 promoted 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 promoted teacher will not be liable to compulsory transfer during their pregnancy.

6.3.2. In cases where the identified promoted 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 promoted teacher is returning to work, the promoted teacher may if they so wish return to their former post and establishment 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 promoted 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 promoted teacher with the longest continuous 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 promoted 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 promoted 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 promoted teacher will enter the surplus staffing pool as a 0.6fte part-time promoted teacher and the 0.4fte promoted teacher will remain as a 0.4fte part-time promoted 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 promoted teacher surplus (whether part of a job-share arrangement or if the promoted teacher is on a part-time contract). The identification of the surplus promoted teacher will be made by the HR

Senior Officer (Staffing) based on length of continuous reckonable service. This may result in a 1fte promoted teacher being declared surplus which will give a 0.4fte vacancy in the respective establishment.

- 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. When placing surplus promoted teachers into available vacancies, any promoted teacher deemed surplus in the previous staffing exercise that has been unable to secure a substantive post and has not been offered at least two appropriate vacancies will take priority as per paragraph 3.10.
- 8.1.1. In respect of promoted Secondary subject teachers, this will only apply to the subject or subject area the teacher was originally surplus from e.g. Principal Teacher Art.
- 8.1.2. If there is more than one promoted 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 promoted teachers will be calculated and vacancies offered in order of length of service for that pool.
- 8.2. Factors which may be taken into account in considering the nomination of a promoted teacher for compulsory transfer include the curricular requirements of the school, the length of continuous reckonable service with the authority, teacher qualifications, including dual qualification, and the suitability of individual teachers for known, available vacancies.
- 8.3. Where a promoted 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.
- 8.4. A promoted teacher transferred compulsorily will not be transferred again within a period of two years. In addition, no promoted 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. In these circumstances, the reasons for the additional move will be discussed with the affected employee 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.
- 8.5. Promoted teachers who have been compulsorily transferred within two years will be given the opportunity to return to their original school should a substantive vacancy become available. If the promoted teacher decides to return to their former school, the two year protection from further compulsory transfer will cease.
- 8.6. These principles will not however apply to promoted teachers on a winding down contract or phased retirement. A promoted 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.

SECTION 9 -TIMING OF THE MAIN TRANSFER PROGRAMME

- 9.1. The Budget Unit will give as much notice as possible of the need to make a reduction in the number of promoted teachers employed in an establishment/department.
- 9.2. Individual promoted teachers nominated for transfer will be notified in writing at the earliest possible date.
- 9.3. The normal notice for transfer will be 4 weeks, but where, for good educational reasons, it is not possible to provide this notice the Education Senior Manager (Developing People) will discuss the timing of the transfer with the local secretary of the appropriate professional association. This notice period may be adjusted subject to consultation with the Head Teachers concerned and the Education Senior Leadership Team.
- 9.4. 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.

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 promoted teachers being compulsorily transferred the choice of a minimum of two suitable posts should such become available, this precludes the department of a rigid timetable for transfer.

- 9.5. 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 promoted 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.
- 9.6. If there is no permanent vacant post available to transfer a surplus promoted teacher to, then the authority reserves the right to redeploy the surplus promoted teacher into a temporary vacant post in another educational establishment. The temporary transfer of a surplus promoted teacher should only take place where the vacancy is available for no less than a full academic year.
- 9.7. Surplus promoted teachers will be offered all appropriate vacant posts from which to choose as and when they arise.

- 9.8. 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 10 – DENOMINATIONAL SCHOOLS

- 10.1. Whilst the authority reserves the right to compulsory transfer employees, 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.
- 10.2. As detailed in 10.1, 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.
- 10.3. Where a surplus promoted teacher opts for a denominational vacancy subject to approval and this approval is refused, the promoted 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 Item 3.12 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.

