

## GUIDELINES ON CONTINUOUS SERVICE

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## GUIDELINES ON CONTINUOUS SERVICE

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## 1 Introduction

A number of employment rights and benefits are dependent on the employee having a defined level of continuous service.

The Employment Rights Act 1996 defines how continuous service is calculated.

The principal rule is that every week, running from Saturday to Sunday, in which there is a contract of employment between the employee and employer counts as continuous service.

Weeks can also count towards continuous service without a contract in place if:

- The employee cannot work because of illness or injury.
- There is a temporary cessation of work.
- There is an arrangement or custom that regards this period as counting towards continuous service.

One example is an employee who is employed in a school until the end of a school term and is then given another contract at the start of the next term. The entire period of employment under both contracts, and the school holiday period between contracts, count as continuous service.

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

The primary significance of this is in relation to redundancy. It also applies to entitlement to sick pay, annual leave and maternity pay.

Any new employee who wishes to have service with another organisation counted as continuous service should provide written confirmation of their previous service. This will normally come from the previous employer.

## 2 Assessing eligibility for a redundancy payment

An employee must have at least two years' continuous service with Scottish Borders Council (or with the Council and another organisation named in the Order) to qualify for a redundancy payment.

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

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



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

If an employee unreasonably refuses an offer of suitable alternative employment from a Modification Order body, then they will not be entitled to a redundancy payment.

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

It is important to note that if an employee at risk of redundancy does take up a job with a body/ organisation listed in the Order, their entitlement to a redundancy payment is removed, however:

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

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

When a new body is added to the Order all service with that body will count towards continuous service.. The important factor is whether the body was on the Order at the date of redundancy.

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

Many of the bodies are specifically named.

However, there are several generic categories which refer to statutes.

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

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

Guidance is given below on some of the areas which frequently raise questions. .

##### **7.1 Police officers and support staff**

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

Support staff in police authorities are covered.

##### **7.2 Universities**

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

### **7.3 Further education colleges**

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

### **7.4 The Civil Service**

Central government bodies are not included.

### **7.5 The NHS**

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

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

### **7.6 Housing**

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

### **7.7 Geographical locations**

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

### **7.9 Audit Commission**

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

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

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

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