



# **REDUNDANCY/ REORGANISATION POLICY**

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REFERENCE

## **1.0 Introduction**

It is Broxtowe Borough Council's policy to plan as far ahead as possible to provide secure employment for its employees. However, it is recognised that there may be changes in the working of the Council, its finances or organisational requirements which make restructuring and redundancies unavoidable.

This policy sets out the formal procedure to be followed when a redundancy situation may arise.

## **2. Main Objectives of the Policy**

The Council will:

- Take all reasonable steps to avoid and/or minimise the need for redundancy and termination of employment;
- As a priority, seek to achieve reduction in employee levels through other methods such as natural wastage;
- Ensure that meaningful consultation and communication takes place with employees and the recognised trade unions;
- Ensure that where redundancy is decided the individuals concerned are given as much advance notification as is reasonably possible;
- Prior to any public announcement inform employees and their representatives of the decision;
- Ensure that employees who are declared to be 'at risk' of redundancy have the opportunity to be considered for suitable alternative employment;
- Only consider a voluntary redundancy scheme in circumstances where there is a genuine redundancy situation;
- Seek to minimise the disruption to service delivery that a redundancy situation may cause.

### **3. Agreement of the Policy**

This policy has been agreed between Broxtowe Borough Council and the recognised trade unions. This policy will help the Council avoid or minimise redundancies or confirm the process that will be followed if a redundancy situation becomes inevitable. It should also ensure fair treatment and demonstrates the Council's commitment for the welfare of its employees.

This policy should be read in conjunction with the Council's Redeployment Policy.

### **4. Scope of the Policy**

This policy will operate for all permanent employees of the Council including new employees still subject to their probationary period and employees on temporary/fixed term contracts who have completed two years' service with the Council at the date of implementation of any changes.

### **5. Decision Making Process**

Elected members have responsibility for making policy decisions which could as a result mean that posts may need to be declared redundant. Elected members will not however, be involved in the specific details of redundancy or in the approval of individual situations unless the post in question is a Head or Service post or above in which case the matter will be referred to full Council for approval. In all other cases the authority for approving redundancies rests with the Head of Paid Service (Chief Executive Officer).

### **6. Financial Provisions**

Details of the redundancy pay, pension benefits to which employees may be entitled are identified later in this policy. Financial benefits will however will be issued by the Council to individuals affected by redundancy as length of service, age and pension details etc, will be specific to each individual. The HR Division should be contacted for further guidance.

### **7. Minimising Redundancy Situations**

Where a need has been identified to reduce the Council's employee establishment, the measures for minimising or avoiding a compulsory redundancy situation may include:

- Natural wastage.
- Restrictions on the recruitment of permanent employees.
- Reducing or termination of the employment of temporary or relief employees.
- Filling vacancies from among existing employees.
- Training, retraining or redeploying employees for different work for which there is a requirement either at the same or at a different location.

- Reduction or elimination of overtime by as much as service delivery requirements will permit.
- Seeking opportunities for employees to reduce their hours or take extended periods of time off unpaid.
- Seeking applicants for voluntary redundancy or early retirement.
- Consideration of flexible retirement requests from employees.
- Retiring all employees at the normal or default retirement age.
- Freezing or ring-fencing of vacancies which may be suitable for redeployment and trial period opportunities for those employees affected by a redundancy situation.

## **8. Reasons for Redundancy**

Under Section 98 of the Employment Rights Act 1996 s.98, redundancy is a potentially fair reason for dismissal.

An employee shall be taken as dismissed for redundancy if it is attributable wholly or mainly to:

- The fact that the employer has ceased, or intends to cease, to carry on the business for the purposes for which the employee was employed; or
- The employer has ceased, or intends to cease, to carry on the business in the place where the employee was so employed; or
- The requirements of the business for employees to carry out work of a particular kind has ceased or diminished or are expected to diminish; or
- The requirements of the business for the employees to carry out work of a particular kind, in the place where they were so employed, has ceased or diminished or are expected to cease or diminish.

Therefore, a redundancy situation arises where there is a need for a reduction in the number of employees at the place where the employee was employed or a reduction in the number of employees doing a particular kind of work.

In order for a redundancy to be justified it will be necessary for a post to be deleted from the establishment, which would demonstrate that there has been a cessation or diminution of the requirement for that type of work. This loss of a post should provide the financial saving within an identified period of time necessary to offset the costs of the redundancy.

## **9. Definition of 'Place of Work'**

A place of work in the context of redundancy does not necessarily mean the actual buildings or premises in which someone is employed, but usually means the employer for which they work. For example, if work moves from one location to another within the Council's Borough, this would not normally constitute a redundancy situation.

## **10. Consultation**

The Council has a duty to consult with the recognised trade unions in accordance with S.188 of the Trade Union and Labour Relations (Consolidation) Act 1992.

The Council will consult with the trade unions about employees likely to be affected by the proposed dismissals or by measures being taken in connection with any proposed dismissals. This will apply even where those vulnerable to redundancy are not union members.

Consultation will start as soon as practicable and as fully as possible when a proposal has been made regarding the consideration of any changes which may result in redundancy or reorganisation but before a final decision has been made. Statutory redundancy consultation will begin once a decision has been made which may result in redundancies.

The information provided to the unions will be in writing and will state:

- The reasons for the proposals;
- The numbers and descriptions of employees that the Council is proposing to dismiss as redundant;
- The total number of employees of that description employed at the Council;
- The proposed method of selecting employees for redundancy;
- The proposed method of carrying out the dismissals including the period over which the dismissals are to take effect; and
- The proposed method of calculating the amount of any redundancy payments.

The information provided will also include information regarding ways of how the Council may be able to avoid or reduce the number of employees to be dismissed and how mitigating the consequences of any dismissals will be undertaken.

The Council will seek to reach agreement with the trade unions on these issues, even where any employees to be made redundant are volunteers.

## **11. Statutory Consultation Requirements**

Consultation should commence in good time and must begin:

- At least 30 days before the first dismissal takes effect if 20 to 99 employees are to be made redundant at one establishment over a period of 30 days or less;
- At least 90 days before the first dismissal takes effect if 100 or more employees are to be made redundant at one establishment over a period of 90 days or less.
- There is no set period for collective consultation laid down where redundancies involve less than 20 employees, however as good practice, the Council will apply a 30-day consultation period as a minimum, before dismissal takes effect.

## **12. Consultation with Individuals**

Individual employees potentially affected by a redundancy situation will also be made aware of the contents of any agreed procedure and of the opportunities available for being involved in the consultation process and for making representations.

The consultation process will not only include those employees who are likely to be dismissed but also those who may be affected by the measures taken in connection with those dismissals, e.g. employees having to take on reallocated work.

The following three step procedure, as a minimum, will apply to those employees potentially affected:

1. Employees will receive a statement in writing stating the grounds on which the dismissal is being contemplated and an invitation to the employee to attend a meeting to discuss the matter;
2. A meeting, prior to which the Council will have informed the employee of the basis for the grounds of action proposed as given to the employee in the Step 1 letter.
3. An opportunity for the employee to appeal should the dismissal go ahead.



### **13. Notifying the Relevant Government Department**

In accordance with S. 193 (1) & (2) of the Trade Union and Labour Relations (Consolidation) Act 1992, in addition to consulting with the recognised trade unions, the Council must also notify the Secretary of State of proposed redundancies involving twenty or more employees in a 90-day period using form HR1.

A copy of the form HR1 will also be issued to the trade unions at the same time.

### **14. Alternatives to Compulsory Redundancy:**

#### **14.1 Voluntary Redundancy**

In certain circumstances, the Council may seek volunteers for redundancy as opposed to compulsory redundancy. The Council would then potentially select from the list of volunteers those to be dismissed. This may then have a less disruptive effect on the workforce however support may then need to be offered to those employees who may not be selected.

Where voluntary redundancy is offered, the Council will have to consider how to balance the remaining skills and experience within departments where it supports those employees seeking to volunteer. This may then restrict the continued efficient operation of the Council's services.

#### **14.2 Early Retirement**

Early retirement of employees who may wish to leave the Council, can be considered as an alternative to redundancy however, it can be expensive. Voluntary redundancy for employees not eligible for a LGPS pension, would normally involve a one off payment only. Early retirement may also lead to problems where jobs are specialised and to deficiencies in skills and experience.

#### **14.3 Reorganisation of a Department or Service**

In some cases, a reorganisation of a team, department or service, may be preferable as opposed to a more direct redundancy approach. In such circumstances, Heads of Service should finalise the proposals, job descriptions and person specifications in liaison with HR. HR may need to evaluate jobs prior to any proposals for reorganisation in accordance with the Council's Job Evaluation procedures. Consultation should then be held with the trade unions before a report is prepared for Cabinet.

Approval of any changes to establishment must then be given by Cabinet following which the process for staffing the new structure should then commence as follows:

Where a post in the new structure is fundamentally the same as the existing post and where there is just one employee for the job, then the Head of Service should slot in the employee automatically (assimilate them to the new post), without the need for an interview.

For slotting to take place, the post has to be fundamentally the same. There is no agreed specific criteria for this and it will be a matter of judgement by the Head of Service in consultation with the Head of HR whether the post is fundamentally the same taking account the range and scope of accountabilities and context in which the post operates. This will usually be outlined during the consultation phase of any proposed changes.

Where the Council creates a different structure with different jobs, or where there is a reduction in the number of jobs in the new structure, there will normally be a ring-fence and initially only those employees currently employed in the service affected can apply for identified posts.

## **17. Selection Procedure for Redundancy Following Reorganisation of a Department or Service**

Appointment to new posts within agreed structures will be made on the basis of an assessment of skills and competencies through a selection process together with details of attendance and disciplinary records. Employees not appointed through this process will be identified as being at risk of redundancy.

Where an employee is acting up or has been seconded to take on the full duties of an alternative post, the Head of Service can include that employee in a ring-fence on the basis that their acting up role or seconded role, provided they:

Have undertaken the duties of the post for a year or more;  
Their substantive post is within the service which is being restructured, i.e. employees cannot be 'slotted' into a post they are seconded into.

Employees taking up a post in a re-organised structure are entitled to a four-week trial period if they are offered suitable alternative employment to help them and the department determine whether they are suitable for the new role.

## **18. Compulsory Redundancy - Selection Criteria**

There are two types of redundancy situation. The first is where there is a specific decline in the need for the workforce in certain functions or areas. The second is where there is a general need to reduce the workforce as a whole.

As far as possible, the Council will use objective criteria, precisely defined and capable of being applied in an independent way, when determining which employees are to be selected for redundancy. This will ensure that employees are not unfairly selected.

The Council's responsibilities with regard to selection criteria will be as follows:

- It will be clear, objective and precisely defined. This will be communicated by Heads of Service and HR representatives to employees and the trade unions.
- Any selection criteria, e.g. a mix of attendance, skills and performance criteria, will be applied in a reasonable, fair and objective manner and will not discriminate against employees on the grounds of age, sex, race, religion, disability or part-time status.
- Disciplinary and attendance records can be used as a basis for redundancy selection, although absences relating directly to an employee's disability will be discounted when using attendance as a selection criterion.
- The Council will need to ensure that when applying its selection criteria, it retains a balanced workforce, appropriate for the future needs of the business after the redundancies have been carried out. Specific skills, flexibility, adaptability and an employee's approach to work may be the most relevant considerations to the future success of the Council.

## **19. Redundancy during Maternity Leave**

In the case of redundancy, redeployment opportunities will be prioritised for pregnant employees, from the point that they inform the council of their pregnancy, and for those on maternity leave, adoption leave or shared parental leave.

Where an employee is on maternity leave and their post could be affected by a redundancy situation, they will be consulted and kept informed about the new structure, proposed new posts and changes, etc.

It is automatically unfair to select a woman for redundancy on the grounds of her pregnancy or due to the taking of maternity or adoption leave.

Managers will need to make arrangements to include the employee in the selection process and allow them sufficient time to make child-care arrangements for example. Employees on maternity leave have the right, but not the obligation, to attend for selection interviews at the same time as others if they wish.

The Council cannot require an employee on maternity leave to attend a selection interview. Once the employee has returned to work, she will be required to participate in a selection process at that stage.

Where it is not practicable either to continue to employ a woman who is on maternity leave or to permit her to return to work because she is redundant and under notice of dismissal, the Council must offer her any suitable vacancy that exists in preference to other employees.

A Head of Service should not select a woman on maternity for redundancy except in a situation where the Council has decided that a whole group of employees are no longer needed. In that case, Heads of Service would not apply selection criteria because the whole service has closed. However, in this circumstance there would be a need to try to identify suitable alternative employment (redeployment) to avoid the redundancy situation.

Redundancy during maternity leave will end the contractual obligations to both maternity pay and the right to return. SMP payments are not affected and continue until the end of the Maternity Pay Period or until the employee starts work for a new employer.

Any payments made to the employee in respect of occupational maternity pay would go towards meeting the Council's obligation in respect of notice pay.

## **20. Redundancy and Long Term Sickness Absence**

Where an employee is on long term sickness absence and is not fit to participate in the redundancy selection process, the Council will consider each case upon its own merits depending on the circumstances of the case. Managers in these situations should seek advice from HR.

## **21. Disabled Employees and Redundancy**

Disabled employees have the right not to be treated less favourably because of their disability or impairment. It is not discriminatory to include disabled people in the redundancy selection process. However, the effect on the individual must be born in mind. Where the arrangements, for example the selection process, made by the Council as part of the redundancy process put the disabled person at a substantial disadvantage, it will be necessary for the manager to make reasonable adjustments. It may be necessary to allow for the employee to apply for jobs in other areas or it may mean that a transfer to

another job may not need a competitive interview. Managers should contact HR in such cases.

## **22. Automatically Unfair Selection for Redundancy**

Under Section 98 of the Employment Rights Act 1996, an employee dismissed for reasons of redundancy will be found to have been unfairly dismissed if he or she was selected for any of the following reasons which include:

- Participation in trade union activities;
- Requesting flexible working arrangements;
- Taking lawfully organised industrial action;
- Maternity-related grounds (including adoption and paternity leave);
- The employee's sex, marital status, race or disability, sexual orientation, age, religion or belief;

## **23. Notice Periods**

The Council will provide the employees affected by redundancy as much notice as possible and normally the notice period contained within their contract of employment however, the following table identifies the minimum amount required under Section 86 of the Employment Relations Act 1996:

Length of Continuous Service Required	Notice
One month but less than two years	One week
Two years but less than three years	Two weeks
Each additional year	One additional week
Twelve years plus	Twelve weeks

## **24. Employees Who Leave Early**

Any employee who is under notice of dismissal may ask the Council to allow them to leave their job early before the expiry of their notice period. Alternatively, they may issue the Council with a written counter notice as stated at Section 136(3) of the Employment Relations Act 1996.

Any such request will not normally invalidate the right to a redundancy payment and they will be deemed to have been dismissed by the Council, but on the date of expiry of the employee's normal contractual notice period and not of the original notice from the Council. See however, Section 42 regarding work with another Modification Order body.

## **25. Time Off to Look for New Work or for Training**

Employees will be allowed reasonable paid time off during working hours to look for work or to undertake training but this must be agreed beforehand by

the relevant Head of Service. (An employee's statutory entitlement to paid time off is subject to a maximum of 40% of a week's pay, i.e. two days in total for an employee who works a 5-day week). Any agreed time off must be allowed before the expiry of the period of notice.

The Council will maintain contact with the local Jobcentre in order to assist employees facing redundancy. This may include providing facilities at Council offices for the interviewing of redundant employees.

## **26. Additional Assistance**

Redundancy can be a traumatic experience for employees, especially for those who may have worked for many years within a stable environment. The Council recognises that some employees may have special difficulties to contend with even though they may have received payments in excess of the statutory minimum. Wherever practicable, the Council will look for additional ways of helping employees and this can include:

- Confidential counselling – career and personal support.
- Financial advice from an appropriate provider.
- The provision of information on the financial effects of redundancy (redundancy pay, pension payments and state benefits).
- Support in how to complete application forms and present themselves at job interviews.
- The importance of discussing the implications of redundancy with their family as early as possible.
- How to search for appropriate vacancies in the press and follow up opportunities; and
- The importance of being prepared to consider a wide range of alternative jobs.

The Council will provide additional access and training if required to IT facilities in order for those facing redundancy to seek alternative employment options. Appropriate time off must be agreed with employee's manager in the first instance.

## **27. Alternative Work - Redeployment**

When any potential redundancy situation arises, every possible action will be taken to avoid termination of employment and redeployment is an option that will always be considered.

Employees at risk of redundancy or those who have been served notice of redundancy will automatically have all suitable vacancies 'ring-fenced' to them. Redeployment opportunities will be prioritised for pregnant employees, from the point that they inform the council of their pregnancy, and for those on maternity leave, adoption leave or shared parental leave.

In looking for possible redeployment opportunities, every action will be made to match the employee's existing duties and terms and conditions. All employees facing a potential redundancy situation will be placed on the Council's Redeployment Register and where alternative work is available, the employee will be given sufficient details to enable him or her to decide whether to accept or not.

It is up to the employee to decide whether the alternative work is suitable however it will be necessary for both the individual employee and management to be as flexible as possible in making redeployments suitable. The Council will however, take into consideration the following factors:

### **27.1 Pay**

Wherever possible, earnings will be protected against a fall in the current rate of pay, however, this cannot be guaranteed beyond the normal six months' protection period identified within the Council's Redeployment Policy.

### **27.2 Location**

The Council will consider the degree of disruption that may be caused by a change of location for the employee and any additional expense incurred by the employee and the Council's Disturbance Allowance may be considered. Consideration will be given to substantial increases in travelling in relation to the age, health and personal circumstances of the employee.

### **27.3 Working Environment**

This will be particularly important for employees who suffer from a health complaint and/or physical disability.

### **27.4 Hours of Work**

Any change in an employee's hours of work, for example in shift patterns, may be considered unsuitable if it fails to take account of the individual's personal circumstances.

## **27.5 Temporary Work**

The Council will also consider the possibility of retaining an employee in a temporary capacity until permanent vacancies arise.

## **28. Employee Responsibilities**

When faced with a potential redundancy situation, all Council employees will be expected to:

- Be flexible in their approach to considering redeployment opportunities.
- Attend an interview with a HR adviser in order to complete the Council's Redeployment Profile fully and as comprehensively as possible in order to identify the employee's existing skills, development needs and circumstances.
- Undertake training and development in order to undertake the duties of redeployments.
- Make every effort to mitigate the requirement for redeployment by actively seeking alternative employment.
- Undertake trial periods with a positive approach to ensuring the redeployment will be successful.
- Employees should also be aware that in any organisation they would be expected to adapt to new methods of working and techniques in their current and any revised roles.

## **29. Offering Alternative Work**

Any offer of alternative work will be put in writing to the employee. The offer will be made before the employment under the previous contract ends. The offer for the new job must start either immediately after the end of the old job or after an interval of not more than four weeks to preserve continuity for statutory rights.

## **30. Refusing Alternative Employment**

Employees who unreasonably refuse an offer of suitable alternative employment 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.

### **31. Trial Period**

Any employee who is under notice of redundancy has a statutory right to a trial period of four weeks in an alternative job where any term in the new contract differs from the original contract, e.g. place of employment or terms and conditions.

The trial period will begin when the previous contract has ended and ends four weeks after the date on which the employee starts work under the new contract.

The effect of the trial period is to give the employee a chance to decide whether the new job is suitable without necessarily losing the right to a redundancy payment.

The four-week trial can be extended for the purposes of retraining only by an agreement which is in writing, specifies the date on which the trial period ends and sets out the employee's terms and conditions after it ends. If the employee works beyond the end of the four-week period or the jointly agreed extended period, any redundancy entitlement will be lost because the employee will be deemed to have accepted the new employment. This will be communicated to the employee when the alternative job offer is made.

The Council will also use the trial period to assess the employee's suitability. Should the Council wish to end the new contract within the four weeks for a reason connected with the new job, the employee will preserve the right to a redundancy payment under the old contract. If the dismissal was due to a reason unconnected with redundancy, the employee may lose that entitlement.

### **32. Renewal and Re-engagement**

If the contract is renewed or the employee is re-engaged, then the effect of continuity for statutory rights will be as follows:

- Any 'break' of up to 4 weeks between the ending of the original employment and the re-engagement by the same authority will count for redundancy purposes and may count for other statutory purposes.
- Employees re-engaged within 4 weeks by another authority covered by the Modification Order 1999 (see Appendix B) will have continuity for redundancy but not for any other statutory rights.
- The 'trial period' will count towards continuity for all statutory employment rights.

- Under Section 214, Employment Rights Act 1996, receipt of a redundancy payment will break continuity for future redundancy payment purposes.

### **33. Continuous Service**

The Employment Rights Act 1996 (Sections 108 and 155) provides that an employee must have two years' continuous service with the same employer in order to qualify for a redundancy payment (at the relevant date of redundancy) and one year for the right to claim unfair dismissal (at the date of dismissal).

Under Section 216 of the ERA 1996, the period during which an employee takes strike action will not count towards continuous service. However, continuity of service will not be broken.

In calculating entitlement to, and the amount of, a redundancy payment, the Council will count all continuous local government service and other relevant service (see section 34 below).

### **34. Qualifying Local Government Service**

To qualify for a statutory redundancy payment, employees will need to have the required continuous local government service. The Redundancy Payments (Continuity of Employment in Local Government) (Modification) Order 1999, (as amended) makes it mandatory for authorities to count continuous service in local government (and with other specified bodies) in calculating redundancy payments up to a maximum of 20 years. It is only where bodies are named on the Modification Order that service will be counted.

Note: A Modification Order Body is usually another local authority, regional development agency or other related employer. Employees should view the full list if they are uncertain of whether a prospective employer is included.

### **35. Age Profile**

Age is taken into account when determining the amount of a statutory redundancy payment.

For each year of service that counts, an employee will receive a proportion of weekly pay which is determined in the following way:

Age	Statutory Pay Entitlement
21 years or below	Half a week's pay
22-40 years	One week's pay
41 +	One and a half week's pay

The maximum entitlement will be 20 years at one and a half weeks' pay = 30 weeks.

### **36. A Week's Pay**

A week's pay is calculated in accordance with Section 220 of the ERA 1996. The statutory maximum redundancy pay is up dated on a yearly basis.

Overtime does not count unless an employer is contractually bound to provide it and the employee is bound to work it.

If an employee has no normal working hours i.e. the hours vary from week to week, a week's pay is the average weekly remuneration for the 12 weeks prior to the calculation date.

### **37. Date of Termination**

The precise date of termination can have an important impact on the amount of redundancy payment. It affects the date for assessing continuous service ('the relevant date') and the payment week used for establishing a week's pay ('the calculation date').

### **38. Relevant Date for Calculation of Redundancy**

Special provisions operate to protect the rights of employees in particular situations so that the relevant date is the last day of service:

- If the employee's contract is terminated with notice, the relevant date is the date on which the notice expires (i.e. when the termination takes effect).
- If no notice is given, the relevant date is the date statutory notice would have expired if it had been given on the date notice was actually given.
- If insufficient notice is given, the relevant date is the date statutory notice would have expired if it had been given on the date notice was actually given.

- If the employee leaves early, under Section 136 ERA 1996, the relevant date is the date when the employee's counter notice expires.
- If the employee is dismissed upon the expiry of a fixed term contract, the relevant date is the expiry date of the contract, and;
- If the employee resigns during a trial period, i.e. the four-week period laid down in s.138 of the ERA the relevant date is the date on which the original contract terminated.

### **39. Calculation Date for Redundancy Payments**

Where an enhanced redundancy payment is made under the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006 the date for assessing a week's pay is the termination date.

### **40. Pay in Lieu of Notice**

Pay in lieu of notice (PILON) is compensation for not providing employees with the notice period to which they are contractually entitled. Pay in lieu of notice will only be paid where there is good reason for the employee not working the notice period and it would normally take the form of the gross pay the individual would have been entitled to, had he or she continued in post.

Where pay in lieu of notice occurs, the Council will advise the employee in writing of the payment and the reasons for it.

Normal practice in local government is for employees to work out their notice. Entitlement to payment of this type may not be implied into the contract.

### **41. Early Retirement on Grounds of Redundancy and Pension Release**

Employees qualify for an immediate pension if they are retired early on the grounds of redundancy (or in the interest of the efficiency of the service) and are aged 55 or over with 3 months' membership or have transferred pension rights into the Local Government Pension Scheme (LGPS) from another scheme.

### **42. Offer of a New Job with a Modification Order Body**

Where the Council gives an employee notice of redundancy and before the dismissal takes effect the employee receives an offer of employment from another body specified in Schedule 2 of the Modification Order 1999, the

individual will lose entitlement to a redundancy payment. This however, only applies where the relevant body makes the offer of a new job before the end of the old contract and the employment starts within four weeks of the date of redundancy.

The Council will seek written confirmation from the employee that they will not be taking up any other employment covered by the Modification Order, within four weeks after the date of redundancy.

Note: If the contract ends on a Friday, Saturday or Sunday, the 4 weeks is counted from the Monday of the next week.

### **43. Taxation of Payments**

In general terms the following principles apply:

Compensation i.e. lump sum statutory redundancy payments, non-statutory payments and pay in lieu of notice, are, in aggregate, tax free for the first £30,000.

Where sufficient notice is given, and for example for organisational reasons, the Council does not require the employee to work during some or all of the notice period, this will be regarded as a form of 'garden leave' and tax and national insurance is deductible on the pay received by the employee.

If the Council is unable to give the required notice and makes a payment in lieu of notice instead, then no tax or national insurance will be deducted (unless the aggregate amount is more than £30,000).

Lump sum pension benefits are not taxable but annual pensions are taxable. Those who receive a return of contributions will have 20% deducted for tax.

Note: Employees seeking specific assistance with regard to personal tax liability are advised to contact the Inland Revenue offices ([www.hmrc.gov.uk](http://www.hmrc.gov.uk)).

### **44. Lost Entitlement to a Redundancy Payment**

An employee who would normally be entitled to a redundancy payment may lose this entitlement where:

- They commit an act of gross misconduct and they are dismissed in accordance with the Council's Disciplinary Procedure.
- The employee leaves early before the notice has expired without the Council's agreement.

## **45. Jobseeker's Allowance/Benefit Support**

All employees affected by a redundancy dismissal are advised to seek detailed advice from their local Jobcentre Plus office.

Employees who have been dismissed by reason of redundancy will normally be eligible for immediate receipt of Jobseekers Allowance. This will be the case even if the employee volunteered for redundancy and received a statutory redundancy payment.

Jobseekers allowance\* will not normally be paid during periods covered by:

- A payment in lieu of notice.
- Compensation in respect of the un-expired portion of a fixed term contract.
- Unfair dismissal compensation.
- A protective award (where there has been a finding that an employer has failed to consult).
- Occupational pension or personal pension.

\*Note: Jobseekers Allowance is subject to change and the above information is provided as a guide only.

## **46. Transfer of Undertakings**

Under the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE), where an undertaking or part of undertaking is transferred to another employer or in the event of a service provision change (i.e. where a client engages a contractor to carry out work on its behalf, or where it reassigns such a contract) then no dismissals automatically occur in law. The main consequences of TUPE are summarised as follows:

- The new employer has to take over the contracts of employment of the employees on the existing terms and conditions.
- All rights, powers, duties and liabilities are transferred. Anything done by the old employer prior to the transfer is deemed to have been done by the new employer.
- Employees have continuity of employment for all rights.
- Any dismissal connected with the transfer is automatically unfair, unless the employer can show an economic, technical or organisational reason (ETO) entailing changes in the workforce.

- Employers must consult trade unions on the transfer. Failure to do so could incur a protective award of up to 13 weeks for each employee affected.
- Collective agreements with recognised trade unions, including agreed redundancy policies are transferred to the new employer.
- Unless employees are actually dismissed, no redundancy payments will be made.

## **47. Appeals Against Redundancy**

Employees will be given the right of appeal once a decision has been made following selection for redundancy and they have been notified in writing of the reason(s).

## **48. Redundancy in Practice – Summary of Costs**

Where any redundancy situation occurs, the most significant cost will be the redundancy payment. A summary of the main points are:

- The payment will relate to continuous local government service.
- A minimum of two years' continuous local government service is required.
- Service from age 41 counts for more than earlier service.

Other costs include those arising from any failure to agree with the trade unions and/or individuals:

- Handling disputes and grievances.
- Preparing for and appearing before employment tribunals.
- Increased risk of protective awards.
- Increased risk of unfair dismissal compensation in addition to redundancy payments.

## **49. Management Responsibilities**

The management task and general employer responsibility in the handling of a redundancy exercise are summarised as follows:

- Completing the consultation exercise with the trade unions before notices of dismissal are given.
- Consulting/counselling individuals and warning of impending redundancy.
- Canvassing volunteers and looking for alternative employment.
- Notifying the Secretary of State before notice of dismissal (if applicable) is given.
- Selecting fairly and giving the required notice.
- Giving the employee a written statement of the calculation of the redundancy payment.
- Re-organising the allocation of work.
- Training/re-training employees.
- Assessing the cost of redundancy payments.
- Administering the redundancies.
- Undertaking an Equality Impact Assessment on all posts.

## **50. Monitoring of the Policy**

There should be a review of this policy after twelve months of its approval together with a review of any related policies.



**APPENDIX A**

Manager's Checklist – Redundancy

Issue	Yes/No
Is there a redundancy situation?	
Has there been adequate consultation?	
Does the Secretary of State need to be notified?	
Have all potentially affected employees been considered (including those on maternity leave/absent through sickness)?	
Is the selection criteria objective, non-discriminatory and justifiable?	
Has there been adequate consultation on the selection criteria?	
Have suitable alternative offers of employment, including the possibility of trial periods been considered and/or explored?	
Has adequate written notice of redundancy been given?	
Are employees eligible for a redundancy payment?	
Has an equality impact assessment been undertaken?	
Are employees eligible for a severance payment/early retirement benefit?	
Have the employees taken up an offer of alternative employment with another body covered by the Modification Order within four weeks of the day of redundancy?	

## **APPENDIX B**

### Relevant Legislation – Redundancy

The main legislation on redundancy compensation and consultation are found in:

Trade Union and Labour Relations (Consolidation) Act 1992 (TULR(C)A) as amended.

- Part 1V Chapter II: Procedure for handling redundancies
- Duty of employer to consult employees' representatives s. 188
- Failure to consult: Complaints and remedies ss. 189-192
- Meaning of 'redundancy' and 'trade union representative' ss. 195-196

Parts X and XI Employment Rights Act 1996

The Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246)

Legislation affecting redundancy Payments

Legislation which applies specifically to employees in local government are:

The Redundancy Payments (Continuity of Employment in Local Government) (Modification) Order 1999 SI 1999/2277 (as amended), details all bodies covered for the purposes of continuous local government service.

Local Government Pension Scheme Regulations 1997 (as amended) empowers the employer to pay immediate early retirement benefits to those eligible.

The Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006 (SI 2006/2914).

## APPENDIX C

### Sources of Advice and Further Information

#### Small Business Service

Impartial advice about starting and running a business

Tel 0845 600 9006

[www.businesslink.org](http://www.businesslink.org)

#### Department for Business, Enterprise and Regulatory Reform

Wide range of information on workplace issues

[www.berr.gov.uk](http://www.berr.gov.uk)

#### Equality Direct

A confidential helpline service on all aspects of equality in the workplace

Tel 08456 00 34 44

[www.equalitydirect.org.uk](http://www.equalitydirect.org.uk)

#### Acas Advisory Service

A network of advisers on diversity in employment. Visit the 'contact us' section of the Acas website for the address of the nearest local Acas office.

Tel 08457 47 47 47

[www.acas.org.uk](http://www.acas.org.uk)

#### Equality and Human Rights Commission

In October 2007, the Commission for Racial Equality (CRE), the Disability Rights Commission (DRC) and the Equal Opportunities Commission (EOC) combined to form the Equality and Human Rights Commission (EHRC). The EHRC now also takes on responsibility for the other aspects of equality: age, sexual orientation and religion or belief, as well as human rights.

[www.equalityhumanrights.com](http://www.equalityhumanrights.com)