



SCHOOL CLOSURES



The decision to close any school must be taken in principle by the operating authority. In the case of local authority schools, the decision is taken by the Education Committee. The consultation procedure relating to any proposed closure must be adhered to.

The SEED has issued advice on the legislative position and in particular how the consultation must be carried out. It is likely that any significant flaw in the consultative arrangements may be sufficient to nullify the procedure, resulting in the whole consultation exercise requiring to be carried out afresh.

It must be noted that a school closure is not the same as an amalgamation. In effect, where an amalgamation is to take place, there will be a degree of competition for the posts in the new establishment.

General Principles

1. Where a school is closed, all of the teaching staff who have been employed for one year or more and who have permanent contracts have the protection of the Employment Rights Act 1996. This essentially means that if the authority no longer wishes to employ any such teacher, then the teacher must be dismissed and, for the dismissal to be fair, a reason for the dismissal must be given. There can be no doubt that the reason for the dismissal in such cases is redundancy.
2. Staff who do not have permanent contracts are much less secure. If they have less than one year's continuous service then they have little protection. If they have more than this there may be a degree of protection but if the contract is a true "Fixed Term Contract" then the teacher will probably be entitled only to have the contract run its full course or to receive salary in lieu of any notice period as stated in the contract. (Members in this category will be advised individually.)

Transfer of Staff

1. All teachers (with the possible exception of the headteacher) are subject to a requirement to accept transfer to another school. Where this happens the teacher will normally be transferred with conservation of salary. The form of the conservation will be dependent on when the teacher was appointed to the promoted post. If this date was prior to 1 April 2001, the conservation is conservation of the salary grade attached to the original post, e.g. a PT at PT point 4 who is transferred to another school keeps the salary associated with that salary grade. As the salary associated with the point 4 grade is increased, so is the salary of the transferred PT.

Where the teacher was appointed after 31 March 2001, the form of conservation is likely to be only of the “three years cash conservation” variety.

2. It is likely that a particular transfer can be contested via the authority’s Grievance Procedure (but not the basic decision to close the school).

Promoted Staff

1. Most authorities attempt to require that promoted staff are transferred with their grade of post to a promoted post at another school. The only exceptions are those staff who are offered redundancy or early retirement terms and those for whom no promoted post can be found. Promoted staff can, however, be transferred to unpromoted posts (with relevant conservation of salary). These unpromoted posts may be no more than “holding posts” pending appointment to another promoted post.
2. Where the promoted staff are transferred to a “supernumerary” posts, then there is no requirement to follow any laid down appointment procedure. If, however, there is a vacancy for a post at PT level or above, then the relevant legislation (national advertisement, interview and appointment) is likely to require to be followed. This matter is currently under review. It is likely that there will no longer remain any requirement that the authority advertises and interview prior to appointment at PT level. The authority may, however, determine as policy that all such appointments are made only after interview.
3. Regardless of the grade of post, however, the authority can hold interviews for any post.
4. The number of posts at any grade is a matter for the discretion of the authority. There is no requirement for any number of promoted posts. (There must, however, be a headteacher appointed.)

Unpromoted Staff

1. The authority may adopt any reasonable procedure to identify new posts for surplus unpromoted staff. This may involve competition and interview. It is also possible that a “matching” exercise is carried out whereby the skills of each teacher are compared with the requirements of any post.
2. There is provision for the payment of excess travelling expenses for all staff who are compulsorily transferred. The expenses are paid for only 4 years.
3. It should be noted that where a teacher received early retirement under the above (the Teachers’ Compensation for Premature Retirement [Scotland] Regulations 1996), then the pension is index linked only from the teacher’s 55th birthday (but at that date the pension is upgraded to reflect inflation for the whole of the period from the date of retirement to the 55th birthday).

Redundancy and early retirement

1. The authority is at liberty to offer early retirement terms (Premature Retirement) to teachers over the age of 55 at the time of the closure. These are described in paragraphs 1 to 5 of this section. This would involve the following:
 - (a) The right of the teachers to receive pension and lump sum based on the number of years for which contributions have been made.
 - (b) An enhancement to this pension and lump sum at the discretion of the employer of up to the smallest of the following:
 - 10 additional years or
 - the period to the teacher’s 65th birthday or
 - an amount giving a total of 40 years service (including any added years purchased) or
 - an amount equal to actual service.
 - (c) A redundancy payment. This, however, cannot increase the enhancement under (b) to more than 10 years.
2. It should perhaps be noted that an authority may be unable or unwilling to meet all of the terms of a negotiated Compulsory Transfer Procedure in the case of school closures.
3. The authority may use whatever criteria it chooses in selecting the staff to whom it makes any of the above offers.

4. The authority is also entitled to make a Voluntary Severance Offer to any teacher. This payment is simply as compensation for the teacher voluntarily giving up his/her post (and all other rights related to the employment). A voluntary severance payment may be offered in addition to an offer of premature retirement.
5. The minimum amount for any redundancy payment (and the likely offer of Voluntary Severance) is currently as follows:

One week's salary for each year of service up to the age of 41 and one and one half week's salary for each year beyond the age of 41. There is a limit of 66 weeks to the payment which can be made. The payment is non-taxable.

The authority may also make a severance payment in addition to a statutory redundancy payment.

While most authorities have a "no compulsory redundancy" agreement with the teacher unions, this would not preclude a payment in the case of a voluntary redundancy.

6. Where a teacher has not reached the age of 55 and hence retiring benefits cannot be paid (pension and lump sum), then the authority can at its discretion pay compensation which effectively increases the amount of the redundancy payment to the maximum of
 - 66 weeks salary or
 - 2 weeks' salary for each year of service before the 41st birthday plus 3 weeks' salary for each year of service after service after the 41st birthday.

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