

Explanation of Modification Order arrangements

(Taken from the Local Government Employers website:
<http://www.lge.gov.uk/lge/core/page.do?pageld=119733>)

The effect of the Modification Order

Essentially, the primary significance of the Order is in relation to redundancy.

Under the Employment Rights Act 1996 (ERA), an employee can count service with an 'associated employer' towards the service requirement for a redundancy payment (i.e. two years) and, if appropriate, for calculating that payment.

Local authorities are not associated employers under the definition in the Act.

However, the effect of the Order is to make local authorities associated employers for the purposes of the redundancy provisions of the ERA.

Assessing eligibility for a redundancy payment and calculating its amount

Under s.155 ERA, an employee must have at least two years' continuous service with the employer in order to qualify for a redundancy payment. The effect of the Order is that continuous service with bodies on the Order will also count.

Section 162 ERA provides that a redundancy payment will be calculated on the basis of the period of continuous employment. The effect of the Order is that this will include continuous employment with bodies on the Order.

In both cases the usual rules of continuity apply so that if there is a break of more than a week (running from Sunday to Saturday) between two contracts continuity will be broken (except where there is a redundancy and a new job is taken up within 4 weeks - see below).

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 Modification Order body before the termination of his or her employment and takes it up within 4 weeks of the end of the old employment, there will be no dismissal for redundancy payment purposes.

This may lead to difficulties for an employer if they are unaware of a job offer that has been made to an employee under notice of redundancy. It is advisable, therefore, before

making the redundancy payment to ask the employee if he or she has been offered another job with a Modification Order body and, if so, whether he or she intends to take it up within 4 weeks of finishing his or her current job.

If an employee does take on a new job with a Modification Order body in these circumstances, the provisions relating to a trial period in the ERA will apply. Therefore, if the employee decides not to continue with the job during the first 4 weeks he or she will be able to terminate the contract (whether with or without notice) and receive a redundancy payment from the old employer.

Where an employee unreasonably refuses a suitable alternative offer of employment

The provisions of s.141 ERA also apply. If an employee unreasonably refuses an offer of suitable alternative employment from a Modification Order body, then he or she will not be entitled to a redundancy payment.

In practice this is unlikely to happen as it is likely that the employee would have actually applied for the job with another body and already made an assessment before interview as to whether the job was suitable for him or her. In any case, the employer may not be aware that the employee is applying for other jobs and that one which was potentially suitable was turned down.

Effect on unfair dismissal rights

It is important to note that, if an employee does take up a job with a Modification Order body, the dismissal 'disappears' only for the purposes of determining whether there is an entitlement to a redundancy payment.

Therefore, there is no effect for unfair dismissal rights, and:

- an employee can still claim unfair dismissal in relation to the redundancy
- an employee will need two years' continuous service in the new job before he or she has the right to claim unfair dismissal (or one year's service if employment commenced before 6 April 2012)

Continuity under the Modification Order and TUPE

One question we are frequently asked is whether somebody who transfers to an outside contractor under TUPE (which is not on the Order) and then voluntarily resigns and returns to a local authority (or other Modification Order body) within the statutory week will have continuity of service.

Unless the contractor is a body on the Order there will be no continuity of service for redundancy purposes (see below for the position regarding contractual rights).

Continuous service for contractual purposes

Under paragraph 14 of Part 2 of the Green Book, continuous service with any body on the Modification Order counts for the purposes of annual leave, the occupational sickness scheme and the occupational maternity scheme. Other schemes of conditions of service contain similar provisions.

Where an employee is transferred under TUPE and returns voluntarily to local government within five years, continuity of service for contractual purposes is preserved. For further information on this provision see [NJC Circular 1/03 for Local Government Services Staff](#).

Bodies on the Modification Order

Links to the relevant statutory instruments and to a consolidated list of bodies are set out at the bottom of this page.

The bodies on the Order are split into two lists as set out below:

- Part I (Schedule 1 of the Modification Order)
When a person employed by one of these bodies is made redundant from that body the provisions of the Modification Order apply as outlined above. The employer must count service with any body on the Order (i.e. from Part I or Part II).
- Part II (Schedule 2, Part II of the Modification Order)
These bodies are not bound by the provisions of the Modification Order i.e. continuous service with any other body on the Order does not count if an employee is made redundant from one of these bodies. In practice this has little relevance as these are almost exclusively bodies which no longer exist, for example, the Greater London Council.

For local authorities the split between the lists has no practical significance as they are on Part I and therefore must apply the provisions of the Modification Order to any body, whichever part of the list it is on. However, we have explained the difference as the split is something that can cause confusion.

Past service with a newly added body

A common question is whether, when a new body is added to the Order, only service accrued with that body from the date it was added counts towards continuous service. The answer is no. Once a body is added all service with it will count.

The important factor is whether the body was on the Order at the date of redundancy. If it is on there at that point, all service will count.

Which bodies are on the Order?

Many of the bodies are specifically named.

However, there are several generic categories which refer to statutes which can cause confusion. It is impossible to create a list of every body on the Order by individual name as this would cover several thousand organisations.

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 an authority.

Below we provide guidance on some of the areas which appear to cause most problems.

Police officers and support staff

Police officers are not covered by the Order because they are independent office holders and therefore not employees. Support staff are covered as they are employees.

It used to be the case that support staff in the Metropolitan police were not covered by the Order, as they were employed by the Secretary of State. However, the Metropolitan Police Authority was placed on the Order after it was established in July 2000.

Housing

Housing Associations are not on the Order but Housing Action Trusts are. Where authorities have transferred their housing stock to an Arms Length Management Organisation (ALMO) it is the DTI's advice that such an organisation is covered by the Modification Order (under paragraph 6 of Schedule 1).

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.

Further education colleges

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

The Civil Service

Central government bodies are not included.

Audit Commission

The Audit Commission is not on the Order.

The NHS

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

Care Trusts are different from Primary Care Trusts which are not included.

Water authorities

One of the generic categories of body included in the Modification Order covers bodies 'established by or under any enactment for the purpose of exercising the functions of' a local government authority.

In *West Midlands Residuary Body v Deebank* 1990 ICR 349 it was argued that this covered a regional water authority which had taken over functions previously exercised by Birmingham City Council. The Court of Appeal held that 'functions' meant 'current functions' and therefore it did not apply to a body established to completely take over the functions of a local authority. Therefore, service with a water authority does not count towards continuous service.

Town councils

The category of parish councils also covers town councils. This is because a town council is simply a parish council that has resolved to have the status of a town.

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.

Training and Enterprise Councils (TECS)

TECS are not on the Order.

How are bodies added to the Order?

Sometimes a decision will be made at government level to add a body, or a category of bodies, to the Order, e.g. as a result of restructuring or reallocation of responsibilities for functions. However, additionally, a body can make a request to be included in the Order to Gary.Meyler@communities.gsi.gov.uk who will consider the request and make a decision

after having consulted LGE. In order for such a request to be successful there must be a strong connection with local government. Amendments are made frequently. Links to the various amendments are set out below along with a consolidated list of bodies on the Order.

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 ring 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.

Gary.Meyler@communities.gsi.gov.uk at Communities and Local Government, can tell you whether the body is specifically listed on the order. If you are still unsure, local authority employers' queries can be addressed to their Regional Employers' office.

The Statutory Instruments

- [The Redundancy Payments \(Continuity of Employment in Local Government, etc.\) \(Modification\) Order 1999](#)

Amendments:

- [The London Government \(Continuity of Employment\) Order 2000 SI number 1042](#)
- [The Redundancy Payments \(Continuity of Employment in Local Government, etc.\) \(Modification\) \(Amendment\) Order 2001 SI number 866](#)
- [The Redundancy Payments \(Continuity of Employment in Local Government, etc.\) \(Modification\) \(Amendment\) Order 2002 SI 532](#)
- [The Secretaries of State for Education and Skills and for Work and Pensions Order 2002 SI 1397](#)
- [The Health and Social Care \(Community Health and Standards\) Act 2003 \(Commission for Healthcare Audit and Inspection and Commission for Social Care Inspection\) \(Transitional and Consequential Provisions\) Order 2004 SI 664](#)
- [The Redundancy Payments \(Continuity of Employment in Local Government, etc.\) \(Modification\) \(Amendment\) Order 2004 SI 1682](#)
- [The Fire and Rescue Services Act 2004 \(Consequential Amendments\) \(England\) Order 2004 SI 3168](#)
- [The Fire and Rescue Services Act 2004 \(Consequential Amendments\) \(Wales\) Order 2005 SI 2929](#)
- [The Welsh Development Agency \(Transfer of Functions to the National Assembly for Wales and Abolition\) Order 2005 SI 3226](#)

- [The Secretaries of State for Children, Schools and Families, for Innovation, Universities and Skills and for Business, Enterprise and Regulatory Reform Order 2007 SI 3224](#)
- [The Offender Management Act 2007 \(Consequential Amendments\) Order 2008 SI 912](#)
- [The Health and Social Care Act 2008 \(Consequential Amendments and Transitory Provisions\) Order 2008 SI 2250](#)
- [The Housing and Regeneration Act 2008 \(Consequential Provisions\) \(No.2\) Order 2008 SI 2831](#)
- [The Health and Social Care Act 2008 \(Commencement No.9, Consequential Amendments and Transitory, Transitional and Savings Provisions\) Order 2009 SI 462](#)
- [The Abolition of the Commission of the New Towns and the urban Regeneration Agency \(Appointed Day and Consequential Amendments\) Order 2009 SI 801](#)
- [The Redundancy Payments \(Continuity of Employment in Local Government, etc.\) \(Modification\) Order \(Amendment\) Order 2010 SI 903](#)

Consolidated list of bodies:

- [Consolidated list of bodies on the Modification Order \(PDF, 15 pages, 123KB\)](#)
- [Consolidated list of bodies on the Modification Order \(Word doc, 112KB\)](#)