

Item: 3

Human Resources Sub Committee: 4 November 2025

Employment Status.

Report by Director of Infrastructure and Organisational Development.

1. Overview

- 1.1. This report is seeking approval to implement changes to current policy on how the Council as an employer positively manages contractual employment status for both long term temporary and casual, relief or supply workers.
- 1.2. The proposed changes will ensure that the Council maintains compliance with future employment law changes and assist in providing fairness and equality in terms of pay and conditions of service for the Council workforce.
- 1.3. In addition, the proposed changes will enhance the stability of employment for individuals, where possible, and aid the Council in addressing the recruitment and retention challenges it faces so that Services can be effectively delivered to the communities of Orkney.

2. Recommendations

- 2.1. It is recommended that members of the Sub-committee:
 - i. Approve the policy statement on Transfer to Permanent Employment, attached as Appendix 1 to this report.
 - ii. Approve the policy statement on Flexible Contracts of Employment, attached as Appendix 2 to this report.

3. Background

Casual/Relief/Supply Working

- 3.1. Casual/relief/supply working (or zero hours contracts) are intended only to be a short-term, flexible means of supplementing a workforce i.e. for holiday cover, training course cover etc. They are not designed to support long-term working arrangements, as their terms and conditions of service are restricted i.e. fixed payment at lowest point on the grade for the post, statutory leave entitlement.

- 3.2. Normal practice in some areas of the Council, is that casual/relief/supply workers are being asked to work so frequently that they are building up continuous service over months and in some cases years but not getting the correct contract of employment or correct pay and conditions of service that go with a contract.
- 3.3. Some areas of the Council have a current significant and regular requirement for relief workers which would result in them working regularly and being entitled to the same pay and conditions of service as their colleagues on contracts. These areas would include Orkney Health and Care within Care at Home and Residential Care for Older People and Education, Communities and Housing within school support and early learning and childcare posts.
- 3.4. Legally a casual worker is entitled to the same rights as a permanent member of staff after they have worked continuously for 12 weeks with an employer (this is not in the same post).

Temporary to Permanent Employment

- 3.5. Currently the position for temporary employees to seek a permanent contract, is complex and covered by differing legislative and Council policy decisions, all with often different requirements and qualifying timescales.
- 3.6. Examples of this are:
- After 2 years of continuous local government service an employee has a legal right to redundancy protection which includes a right to a search for suitable alternative employment within the Council and if they are made redundant a redundancy payment.
 - In any redundancy situation a temporary employee with 2 years continuous service is legally entitled to be treated as though they were a permanent employee, and we could not just make the temporary employee redundant, there would have to be a selection process for redundancy including all relevant permanent post holders as well.
 - A temporary employee with continuous service in temporary contracts or a succession of temporary contracts is legally entitled to a permanent contract at the point in time the contract is renewed and takes the total period of service to or above 4 years. That is unless there is an objective justification to be able to support why continuation of the temporary contract is reasonable.

- After 4 years continuous service, in the same post on a temporary contract or succession of temporary contracts, the Chief Executive has delegated authority, via the Change in Establishment (CIE) process, to make that temporary post permanent, and the temporary employee is given a permanent contract in that post, where following criteria are satisfied:
 - The individual has a minimum of 4 years continuous service under the contract for that post, including any temporary amendments to that contract.
 - The funding for the post having an approved baseline budget.
 - It is not currently anticipated that the post will be at risk.
 - Where the required hours of the post may vary, any appointment should be to the minimum known full-time equivalent (FTE) requirement.
 - The post holder originally obtaining the post via a recruitment and selection exercise which complies with the Council policy.

Government Policy

- 3.7. There is significant pressure from both UK and Scottish Governments to either end the use of what are often described as zero hours contracts and ensure Fair Work. The clear direction from 2026 for the UK Government is that there will be significant legal restrictions and requirements to put contracts in place for casual/relief/supply workers, so no change is no longer an option. The Council needs to get ahead and get a practice in place that better suits the Council than a default statutory approach. The Scottish Government's Fair Work agenda also has a requirement to ensure that employment approaches are fair and appropriate.

4. Proposals

Casual/Relief/Supply Working

- 4.1. For genuine instances where ad-hoc short term periods of cover are required, the ability to recruit casual/relief/supply workers should be retained.
- 4.2. Ultimately, the Council should move to a position where Services that have significant and regular requirements for relief work, staff are recruited and appointed on flexible contracts of employment from the start, giving them all of the relevant contractual pay and conditions of service.
- 4.3. For existing casual/relief/supply workers in those high demand areas there will be a need to review patterns of working and where there is evidence of continuous working of 12 weeks or more look to establish temporary or permanent flexible contracts for them.

- 4.4. The Council would have a clear position that in the future any casual/relief/supply worker that has worked for 12 weeks or more on a continuous basis can, without the need for recruitment be put onto a flexible contract, subject to available budget and relevant governance approval.
- 4.5. To facilitate this process to be as quick, smooth, and effective as possible, it is proposed this is managed via the Change in Establishment process with delegated authority as follows:
- i. Establishing new or extending existing temporary posts to a maximum duration of 1 year, be delegated to Service Managers.
 - ii. Establishing new or extending existing temporary posts to a maximum duration of 4 year, be delegated to Heads of Service.
 - iii. Establishing new or extending existing temporary posts in excess of 4 years in duration, to Directors.
 - iv. Authority to establish new permanent posts (excluding Chief Officers), be delegated to Directors.

Temporary to Permanent Employment

- 4.6. These policies will apply for SJC employees (those paid under Council pay structure Grade A to Grade M). It would be the aim that, subject to national conditions of service compatibility and local agreement with the relevant Trade Unions, these provisions may be able to be extended to other employee groups in the future.
- 4.7. The Council will establish a clear and simple position that the time scale for permanent contract and establishment of a permanent post after 4 years be reduced to after 2 years.
- 4.8. It is proposed that authority to approve this be changed from Chief Executive at present to Directors.
- 4.9. It is further proposed that the criteria to be satisfied for this be amended to:
- The individual has a minimum of 2 years continuous service under the contract (including implied contract for casual/relief/supply workers) for that post, or 2 years continuous local government service with no substantive permanent post to return to, including any temporary amendments to that contract.
 - The funding for the post having an approved baseline budget or where the funding for the post is recurring external funding, that the funding has been from the same source for at least the last 2 years and there is no indication or

expectation that the funding will cease or significantly reduce within the current or next budget year.

- It is not currently anticipated that the post will be at risk, within the current and next budget year.
- Where the required hours of the post may vary, any appointment should be to the minimum known full-time equivalent (FTE) requirement.
- The post holder originally obtaining the post via a recruitment and selection exercise which complies with the Council policy.

4.10. Legally a casual worker is entitled to the same rights as a permanent member of staff after they have worked continuously for 12 weeks with an employer (this is not in the same post).

5. Consultation

5.1. The Corporate Leadership Team agreed the policy position in principle in June and formally on 25 September 2025.

5.2. Between those dates consultation with the recognised Council Trade Unions, Unison, Unite and the GMB, took place, with their feedback having been built into the policy position and operational procedures which will support them.

6. Next Steps

6.1. Following agreement of the Policy Statements, Human Resources will develop relevant operational procedures and manager support and communication to take forward implementation.

For Further Information please contact:

Craig Walker, Service Manager (Human Resources Operations), extension 2263, E-mail: craig.walker@orkney.gov.uk

Implications of Report

1. Financial – The Change in Establishment process requires the identification of affordability prior to sign off. Likewise paragraphs 4.4 and 4.9, above, seek to encourage managers to consider their service finances, and their services future delivery model.

In addition, the Financial Regulations state that “The Chief Executive and Corporate Directors may not incur expenditure in any financial year that cannot be met from the approved revenue or capital budget, except in accordance with the scheme of virement.”

2. **Legal** – The legal implications are contained within the body of the report.
3. **Corporate Governance** – Should the policy statements be approved, the Head of Corporate Governance will arrange for the Scheme of Delegation to Officers to be updated to align with the proposed new levels of delegation to officers.
4. **Human Resources** – HR aspects are covered within the body of the report.
5. **Equalities** – An Equality Impact Assessment has been carried out and is attached at Appendix 3.
6. **Island Communities Impact** – Having reviewed the draft policy statements, it is not considered that there is any potential differential impact for Island Communities, therefore a full Island Communities Impact Assessment is not required.
7. **Links to Council Plan:** The proposals in this report support and contribute to improved outcomes for communities as outlined in the following Council Plan strategic priorities:
 - ☐ Growing our economy.
 - ☐ Strengthening our Communities.
 - ☐ Developing our Infrastructure.
 - ☐ Transforming our Council.
8. **Links to Local Outcomes Improvement Plan:** The proposals in this report support and contribute to improved outcomes for communities as outlined in the following Local Outcomes Improvement Plan priorities:
 - ☒ Cost of Living.
 - ☐ Sustainable Development.
 - ☐ Local Equality.
 - ☐ Improving Population Health.
9. **Environmental and Climate Risk** – None.
10. **Risk** – None.
11. **Procurement** – None.
12. **Health and Safety** – None.
13. **Property and Assets** – None.
14. **Information Technology** – None.
15. **Cost of Living:** The proposals seek to provide a more stable employment position for casual/relief/supply workers and aim to ensure that they benefit from the full range of pay and conditions applicable to their post, which will provide assistance in the current cost of living crisis.

List of Background Papers

None.

Appendices

Appendix 1 – Policy Statement on Transfer to Permanent Employment.

Appendix 2 – Policy Statement on Flexible Contracts of Employment.

Appendix 3 – Equality Impact Assessment.

Policy Statement: Transfer to Permanent Employment

As the largest employer in Orkney, the Council is committed to fair and equitable treatment of its workforce. This includes promoting job security, fair pay, and consistent conditions of service—key elements in becoming an employer of choice and addressing long-term recruitment and retention challenges.

In line with UK Government legislation effective from 2026, the Council will be legally required to offer guaranteed hours contracts to zero-hours workers. Additionally, the Scottish Government's Fair Work agenda mandates the Council to avoid inappropriate use of zero-hours contracts.

Recognising the complexity of converting temporary contracts to permanent ones—due to varying statutory and policy provisions—the Council has developed a streamlined process for employees on Scottish Joint Council (SJC) Conditions of Service (Grades A to N) and Chief Officers.

Eligibility Criteria for Permanent Appointment

Directors (for SJC employees) and the Chief Executive (for Chief Officers) may approve permanent appointments where all the following criteria are met:

1. Length of Service

One of the following must apply:

- At least 2 years in the same role under one or more continuous temporary contract(s).
- At least 2 years of continuous service in the role as a casual/relief/supply worker.
- Over 2 years of continuous local government service with the Council and no other permanent post.

2. Funding

One of the following must apply:

- The post is funded from an agreed baseline budget.
- Temporary funding has been consistently provided from the same source for at least 2 years and is expected to continue through the current and next budget year.

3. Job Security

- The post is not considered at risk in the current or next budget year.

4. Recruitment

- The post holder was appointed through a process compliant with the Council's Recruitment and Selection or Redeployment Policy.

Approval Process

- Requests are not automatically granted but will not be unreasonably refused.
- If hours have varied, permanent contracts will reflect the minimum known full-time equivalent (FTE), typically based on the average contractual hours over the temporary period.
- If a request is declined, clear justification must be provided, based on one or more unmet criteria.
- Employees may reapply after one additional year of continuous service in the same temporary post.
- A written explanation will be provided for any refusal.

Appeals

- Employees may appeal a refusal by submitting their case to the relevant Director.
- If the original decision was made by that Director, another Director will review the appeal.
- Appeals will typically be reviewed based on submitted documentation, without a face-to-face meeting.
- A written outcome will be provided within four weeks of receipt.

Policy Statement: Flexible Contracts of Employment

As Orkney's largest employer, the Council is committed to fair treatment of its workforce—ensuring job security, fair pay, and consistent terms of employment.

These principles support our goal of becoming an employer of choice and addressing long-term recruitment and retention challenges.

From 2026, UK legislation will require guaranteed hours contracts for zero-hours workers. The Scottish Government's Fair Work agenda also prohibits inappropriate use of zero-hours contracts.

Casual, relief, and supply arrangements are suitable for short-term, ad-hoc needs only. They must not be used to cover regular or recurring work patterns, as these roles offer limited employment rights and are inconsistent with fair working practices.

Policy Guidelines

- This policy position applies to posts established under Scottish Joint Council (SJC) terms and conditions of service (Grades A – N).
- Casual/relief/supply workers must not be scheduled for recurring work lasting more than 12 consecutive weeks.
- Breaks inserted to disrupt continuity of service will be disregarded; such service will be treated as continuous.
- If work is expected to last 12 weeks or more, a flexible or contracted post must be advertised from the outset.
- Any casual/relief/supply worker who completes 12 continuous weeks in the same post and location (excluding peripatetic roles) should be offered a flexible contract—either permanent or temporary (minimum one year).
- Flexible contracts require formal approval but will not be unreasonably refused.
- If a flexible contract cannot be approved, the worker must revert to a genuinely casual pattern of work.
- Requests for flexible contracts may be initiated by managers or individual workers.

Appeals Process

- Employees may appeal a refusal by submitting their case to the relevant Director.
- If the original decision was made by that Director, another Director will review the appeal.
- Appeals are typically reviewed based on submitted documentation, without a face-to-face meeting.
- A written outcome will be provided within four weeks of receipt.



Equality Impact Assessment

The purpose of an Equality Impact Assessment (EqIA) is to improve the work of Orkney Islands Council by making sure it promotes equality and does not discriminate. This assessment records the likely impact of any changes to a proposal or changes by anticipating the consequences and making sure that any negative impacts are eliminated or minimised and positive impacts are maximised.

Should you have any questions or wish for your draft EqIA to be reviewed by our Equality, Diversity and Inclusion Adviser, please contact OD@orkney.gov.uk.

1. Identification of the Proposal or Change

Name of proposal or change being assessed.	Policy Statement on Transfer to Permanent Employment Policy Statement on Flexible Contracts of Employment
Responsible Service and Directorate.	Infrastructure and Organisational Development - HR and OD
Date of assessment.	13 October 2025
Is the proposal or change existing? (Please indicate if the service is to be deleted, reduced or changed significantly).	Change to existing Council policies and procedures.

2. Primary Information

What are the intended outcomes of the proposal or change?	<p>Change to current policy on how the Council as an employer positively manages contractual employment status for both long term temporary and casual, relief or supply workers, to ensure that the Council maintains compliance with future employment law changes and assist in providing fairness and equality in terms of pay and conditions of service for the Council workforce.</p> <p>In addition, the proposed changes will enhance the stability of employment for individuals, where possible, and aid the Council in addressing the recruitment and retention challenges it faces so that Services can be effectively delivered to the communities of Orkney.</p>
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Is the proposal or change strategically important?	Strategic plans include major investment plans, new strategic frameworks or plans such as annual budgets, locality plans or corporate plans. Where a proposal is identified as strategic, evidence relating to socio-economic impacts and inequalities will be required in the relevant section Yes.
State who is or may be affected by this proposal or change, and how?	Temporary employees and casual/relief/supply workers of the Council.
How have stakeholders been involved in the development of this proposal or change?	Trade Unions have been consulted and feedback built into the prevised policy statements and operational procedures.
Is there any existing data and / or research relating to equalities issues in this policy area? Please summarise. E.g. consultations, national surveys, performance data, complaints, service user feedback, academic / consultants' reports, benchmarking.	N/A
Is there any existing evidence relating to socio-economic disadvantage and inequalities of outcome in this policy area? Please summarise. E.g. For people living in poverty or for people of low income. See <u>The Fairer Scotland Duty Guidance for Public Bodies</u> for further information.	This section is required for all proposals relating to strategic decisions. The 2022 <u>report</u> from Diversity UK highlights that despite women's increased participation in the UK labour market, women continue to face structural disadvantages in the types of jobs they do. The Work Foundation's UK Insecure Work Index 2022 found that women are more likely to be in insecure work than men.
Could the proposal or change have a differential impact on any of the following equality areas?	Please provide any evidence – positive impacts / benefits, negative impacts and reasons:
1. Race: this includes ethnic or national groups, colour and nationality.	No.
2. Sex: a man or a woman.	Yes – it is expected that these proposals will have a positive impact for temporary contracted and casual/relief workers, a large proportion of which are female.

3. Sexual Orientation: whether a person's sexual attraction is towards their own sex, the opposite sex or to both sexes.	No.
4. Gender Reassignment: the process of transitioning from one gender to another.	No.
5. Pregnancy and maternity.	No.
6. Age: people of different ages.	No.
7. Religion or beliefs or none (atheists).	No.
8. Disability: people with disabilities (whether registered or not).	Labour market inequalities can be compounded when they intersect with disability and therefore it is expected that these proposals will have a positive impact for disabled temporary contracted and casual/relief workers.
9. Marriage and Civil Partnerships.	No.
10. Caring responsibilities.	Evidence shows that job quality and future career progression can be impacted by caring responsibilities, and it is therefore anticipated that these proposals will have a positive impact for temporary contracted and casual/relief workers who have caring responsibilities.
11. Socio-economic disadvantage.	Yes – the purpose of the proposals is to be able to provide more people with greater security of employment with contracts with guaranteed hours and the full range of pay and conditions of service including incremental progression up the pay scale for their post and increasing entitlement to annual leave and occupational sick pay. It is therefore anticipated that this will have a positive impact on a social-economic basis.
12. Care Experienced.	No

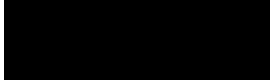
3. Impact Assessment

Does the analysis above identify any differential impacts which need to be addressed?	No.
Does the analysis above identify any potential negative impacts?	No.
Do you have enough information to make a judgement? If no, what information do you require?	Yes.

4. Equality Impact Assessment Action Plan

Please complete the following action plan where you have identified any differential impacts or potential negative impacts in Section 3 of the Equality Impact Assessment.				
Impact Identified	Action to be taken	Owner	How will it be monitored	Date Action to be completed

5. Sign and Date

Signature:	
Name:	CRAIG A WALKER
Date:	13 OCTOBER 2025