THE EMPLOYMENT CONTRACT AND CONDITIONS OF EMPLOYMENT

LOCAL AUTHORITY NON-OFFICER GRADES

Local Government
Staff Negotiations Board

THE EMPLOYMENT CONTRACT AND CONDITIONS OF EMPLOYMENT

LOCAL AUTHORITY NON-OFFICER GRADES

THE EMPLOYMENT CONTRACT AND CONDITIONS OF EMPLOYMENT

Local Authority Non-Officer Grades

This manual attempts to set down in a single document relevant information concerning the employment contract and conditions of employment for non-officer grades in local authorities. It is intended as a useful reference for the local authority personnel manager and line managers who are involved in staff management. Nothing in this document is intended to prescribe policies, practices or procedures that local authorities should adopt as these are a matter for each individual local authority.

Reference throughout this document to the title Department Head is intended to cover the appropriate level of management in the particular circumstances.

Any queries related to the contents of this document should be referred to the Board's Information Unit.

Price: £6

CONTENTS

Section I

CONTRACT OF EMPLOYMENT

THE CONTRACT OF EMPLOYMENT

The terms and conditions of employment are set out in writing and form part of the contract of employment. The contract of employment regulates the relations between the employer and the employee and sets out the parameters within which each must act. The essential provisions of contracts and the rationale of these provisions are set out in the following pages.

1.1 Legal Framework

Having selected an employee for a job, the employer must inform the employee of the terms and conditions attached to the position. These terms and conditions may be given to the employee in writing, e.g. by way of qualifications and particulars of office or by formal letter of appointment; either way, they are legally binding and are referred to as the contract of employment.

The contract of employment regulates the relationship between the employer and employee. It consists of various terms and conditions which may have their origins in common law, legislation, custom and practice or assumption.

(a) common law, i.e. those terms which are based on the decision of judges in court cases, e.g. every employee is obliged to obey lawful orders.

(b) legislation, e.g. under the Holidays (Employees) Act, 1973-1991, every employee is entitled to annual leave.

(c) custom and practice, e.g. where it is necessary to make employees redundant, the means of selection is based on the norm for the industry, e.g. "Last In, First Out" in the construction industry.

(d) assumption, e.g. every contract is deemed to contain a clause on equal pay for like work as a result of the Anti-Discrimination (Pay) Act, 1974.

(e) various circulars issued by the Minister for the Environment, e.g. Circular Letter EL 20/87, eating-on-site allowance.

As well as the terms and conditions relating to the specific job, the contents of a contract of employment will also contain terms which result from collective agreements, such as the Rationalisation Pay Agreement for General Operatives.

In this section of the document, we are examining those terms and conditions which should be written in order to provide both the employer and employee with a clear picture of what is required of each in terms of duties and rights.

Contracts of employment have to be tailored to reflect the particular circumstances of individual jobs, e.g. where there is a shift system in operation, details of the rostering arrangements should be specified. However, there are some particulars which are common to the majority of contracts.

1.2 Contents of Employment Contract

i) **Job title**
E.g. Rural Road Overseer. If the position has a grade as well as a title, this too should be included, e.g. Waterworks and Sewerage Caretaker, Grade 1.

ii) **Date of Commencement**
Specify date.

iii) **Duties**
Where appropriate, specific duties should be set out under this heading to give the employee a clear indication of the type of work relevant to the job. In cases, where employees may be assigned to various jobs the contract should provide for such flexibility, e.g. "Your initial work location is Area 1/Section/Department, however, you may be required to work in any location throughout the local authority as the need arises." The contract should also provide an all embracing provision i.e. "and any other duties appropriate to your position."

iv) **Probationary Periods**
Where employees are required to serve a probationary period, the contract should specify its duration, terms of notice that apply during the period, the possibility of its extension at the discretion of management and a review of the employee's performance during the period of probation, e.g. "A probationary period of one year shall apply from commencement of employment, during which the contract may be terminated by either party in accordance with the Minimum Notice and Terms of Employment Act, 1973-1991. The probationary period may be extended at the discretion of management. During the probationary period, your performance will be assessed and if satisfactory, you will be confirmed in your position at the end of this period."

v) **Appraisal**
All new staff should be regularly appraised to ensure that they are achieving the required work standards and to provide them with feedback regarding their performance. Where such systems of appraisal exist, they should be referred to in the contract, e.g. "A system of regular appraisal will be operated during employment which will involve discussions between you and the Head of Department/Area Engineer, in relation to your performance and conduct."

vi) **Rates of pay; allowances; overtime rates; shift rates; premium rates**
The contract should specify the rate of pay applicable to the position. If there is a payscale, the minimum and maximum points on the scale should be listed along with the number of incremental points, e.g. "The rate of pay is £217.65 – £235.78 per week (12 points). You will be paid at £217.65 per week." The method of revision of the payscale should be stated, e.g. as per national pay agreements and/or as sanctioned by the Minister for the Environment.

If the rate of pay is fully inclusive, i.e. it includes compensation in respect of e.g. night duty, weekend duty this should be stated. If any additional remuneration is made in respect of weekend duty, night duty, public holidays, an eating-on-site allowance, overtime rates etc., the contract should state that these payments are paid at the approved rates.

If increments are subject to satisfactory performance, the contract should state increments will be payable where performance in the previous year has been certified as satisfactory.

vii) **Frequency and method of payment**
e.g. "You will be paid weekly/fortnightly in arrears by cheque."

viii) **Hours of Attendance**
The contract should specify if working hours are fixed, e.g. 9.00 a.m. to 5.00 p.m. Monday to Friday, lunch 1.00 p.m. to 1.30 p.m., or variable, e.g. where there is a shift system in operation, e.g. 8 a.m. to 4 p.m., 4 p.m. to 12 midnight; varying summer, winter working hours. Requirement to work weekends, nights, overtime, public holidays should also be specified. Where the daily hours of attendance and shift roster specified may be altered depending on the requirements of the service, this should be stated.

ix) **Holiday Entitlements**
The contract should specify the amount of paid leave to which an employee is entitled and that such leave and public holidays will be granted in accordance with the Holidays (Employees) Act, 1973-1991.

x) **Sick Pay Arrangements**
The contract should either refer the employee to where details of same may be obtained, or provide an outline of the scheme.

xi) **Retirement Age**
Retirement age for the specific category of employment should be stated.

xii) **Pension Scheme**
The contract should either refer the employee to where details of the local authority pension scheme may be obtained, or provide an outline of the scheme. The contract should state that non-officer grades are entered onto the Superannuation Register after 130 days service in the local financial year.

xiii) **Grievance Procedure**
(or reference thereto).

xiv **Disciplinary Procedure**
(or reference thereto).

xv) **Dismissal Procedure** (or reference thereto)
The employer is obliged under the Unfair Dismissals Act, 1977-1993 to provide new employees with details of the procedure which the employer will follow before and for the purpose of dismissing employees.

xvi) **Work Rules** (or reference thereto)
The contract should include a statement to the effect that staff are obliged to comply with the standards and codes of practice of the local authority. Details of the local authority's work rules and standards should be attached to the contract.

xvii) **Safety, Health and Welfare**
The contract should state that the employer is committed to ensuring the safety, health and welfare of its staff and that to this end, a safety statement has been prepared, setting out all the safety arrangements which are in force. All new staff should be familiarised with these arrangements and are obliged to adhere to them at all times. The contract should also state from where copies of the safety statement may be obtained.

xviii) **Rules re security**
An employer cannot force an employee to submit to a search unless there is a statement in the contract which allows for this. (See sample Specified Purpose Contract of Employment, page 15).

xix) **Minimum Notice**
The contract should specify the notice entitlement to which the employee and employer is entitled. Any notice period must have regard to the entitlements as set out in the Minimum Notice and Terms of Employment Act, 1973-1991.

xx) **Collective Agreements**
As already noted, collective agreements impinge upon the terms of a contract of employment. Thus, it is important that contracts of employment contain references to any nationally or locally negotiated agreements, so that any changes will be automatically incorporated into the contract of employment.

1.3 Changing the terms of the employee's contract of employment

There are four occasions where variation in the contract's terms are usually regarded as acceptable:-

(a) where the employee agrees to the proposed change

(b) where a change results from a collective agreement made on behalf of the employee

(c) where by conduct or implication an employee is deemed to have accepted the new terms

(d) legislation.

The terms and conditions which have been set out in the preceding pages apply to the generality of contracts of employment. However, there are terms and conditions of employment which are unique to individual grades of employees within the local authority service and these too must be set out in the contract of employment, e.g. the requirement for drivers to have clean driving licences. It is not possible to set out the range of terms which are unique to specific categories of staff in this document, but management must take care to include all such terms and conditions when drawing up a contract of employment.

1.4 Contracts of Employment — Temporary Employees

One category of staff which does warrant special attention is temporary staff. Many of the terms and conditions set out previously will apply to this category of staff, e.g. rates of pay, hours of attendance, others will not, e.g. retirement age, while other terms will be unique to the temporary contract itself, e.g. the duration of the work period.

There are many purposes for which local authority employers rely on the services of temporary employees. Examples of such purposes include seasonal work; filling of vacancies on a temporary basis, e.g. awaiting sanction to fill a post in a permanent capacity; carrying out of special assignments of limited duration, e.g. building works; provision of additional cover in times of increased work levels, etc.

Temporary employees should be issued with contracts appropriate to the specific circumstances for which they are employed. Apart from setting terms and conditions, such contracts serve a very important purpose in that they set out the scope of the employment, i.e. they clearly inform the employee that (s)he is temporary and indicate the likely duration, the actual duration or the purpose of his/her employment with the local authority. Thus, while it is commonplace for temporary employees to have considerable service with a local authority, the issuing of an appropriate contract of employment should make the employee fully aware of the temporary nature of the employment and the circumstances which will bring about its end.

It is essential to note that temporary employees cannot be "let go" at the will and pleasure of their employer merely because they do not enjoy permanent status. Once such employees have one year's continuous service with the authority, they are covered by the Unfair Dismissals Act, 1977-1993 and will have all of the rights under that Act. *It is also important to note that breaks in employment or the issuing of a series of temporary contracts merely for the purpose of denying the employee continuous service would be disregarded by the Employment Appeals Tribunal.* Thus, an employer must have substantial grounds for the dismissal of any employee with more than one year's continuous service. Under the Unfair Dismissals (Amendment) Act, 1993, if an employee is re-employed within 6 months of the dismissal, the employee's service may be regarded as continuous by the Employment Appeals Tribunal, Rights Commissioner or Circuit Court, as the case may be.

Substantial grounds are deemed to exist by virtue of Sections 6 (4) and 6 (6) of the Unfair Dismissals Act, 1977-1993. Section 6 states ". . . the dismissal of an employee shall be deemed, for the purposes of this Act, not to be an unfair dismissal if it results wholly or mainly from one or more of the following:

(a) the capability, competence or qualifications of the employee for performing work of the kind which he was employed by the employer to do;

(b) the conduct of the employee;

(c) the redundancy of the employee;

(d) the employee being unable to work or continue to work in the position which he held without contravention (by him or by his employer) of a duty or restriction imposed by or under any statute or instrument made under statute.

. . . or that there were other substantial grounds."

It cannot be argued that the temporary nature of the contract is itself a substantial ground for dismissal. This does not mean that temporary employees cannot be let go once they have one year's service or more. What must be stressed, however, is that employers may only let temporary employees go when the temporary contract comes to a genuine end, i.e. there is no further work for the employee.

1.5 Temporary Employees recruited for Fixed Terms/Specified Purposes

Temporary employees who are required on a once-off basis, e.g. to fill a vacancy as a result of a career break or to carry out a special project, such as road construction, should be given specified purpose/fixed term contracts of employment.

Employing staff under genuine specified purpose/fixed term contracts ensures that the employee knows that (s)he has no on-going right to employment. Any expectation which the employee may have lies solely in the particular purpose or for the period for which (s)he is employed, e.g. for the during of the career break.

The Unfair Dismissals Act, 1977-1993 states that such contracts do not fall within the scope of the Act so long as the dismissal consists only of the ending of the period or purpose for which the person was employed, *that the contract is in writing, that it is signed by both parties and states that the Act does not apply to a dismissal consisting only of the expiry of the period or cesser of the purpose.* However, attempting to use this exclusion inappropriately is a dangerous practice and may lull employers into believing that they have no obligations to employees issued with such contracts. If, despite the wording of the contract, the reality is that the work which the employee is performing is not specific in nature or will not come to an end on a particular date, then the exclusion under the Unfair Dismissals Act, 1977-1993 will not apply. Thus, any dismissal of the employee could result in the employer having to prove that the dismissal was indeed fair, i.e. that there were substantial grounds for dismissal.

1.6 Temporary Employees — Short-term

There are occasions when there is a requirement for employers to use the services of staff on a short-term once-off basis. One such occasion occurs during the summer period when a significant number of staff will be on leave. Temporary staff brought in to cover such periods should be given short-term contracts setting out details of the period/circumstance for which they are required. The contract should make it clear to the individual that (s)he will cease to be an employee of the local authority at the end of the period/circumstance set out in the contract. Such staff do not have an automatic entitlement to any further temporary work which may arise. (See sample Terms and Conditions of Employment for Short-term Temporary Staff, page 16).

Summary

In this section, we examined the role of the contract of employment within the employment relationship. We saw how the contract sets out the duties and rights of both the employer and employee and provides the parameters within which each must act. The contract of employment governs the relationship between employer and employee. Its terms may be written or oral and originate from sources such as common law, legislation, custom and practice or assumption. We have looked at those terms of employment which should be set out in writing in order to provide both parties with a clear picture of their rights and duties. In relation to temporary contracts of employment, we noted that the employer must make it quite clear to the employee that the employment is of a temporary nature and the circumstances which will bring it to an end.

1.7 Specified Purpose Contract — Temporary Employee

1. Your are employed as a Foreman.
2. Your employment commences on 1st May, 1993.
3. Your employment with the local authority shall be for the purpose of the construction of the Newtownmountkennedy by-pass.
4. The Unfair Dismissals Act, 1977-1993 shall not apply to your dismissal, consisting only of the cesser of the said purpose.
5. Rate of remuneration: £183.69 per week.
   Paid fortnightly in arrears by cheque.
6. A system of regular appraisal will be operated during your employment which will involve discussions between you and the Area Engineer in relation to your performance and conduct.
7. Your normal working hours are 8.30 a.m. to 5.00 p.m., Monday to Friday. Lunch break 1 p.m. to 1.30 p.m. daily.
   You may be required to work overtime, depending on work requirements. Where possible, you will be notified in advance.
8. The duties of Foreman shall be assigned to you by the Area Engineer.
9. You are entitled to 20 days paid leave per year of completed service. Annual leave and public holidays shall be given in accordance with the provisions of the Holidays (Employees) Act, 1973-1991.
10. The sick pay scheme for temporary employees is as follows: The scheme shall apply to all servants whose names are entered on the Register of Pensionable Servants. Sick leave will be allowed for up to 12 weeks in any period of 12 months, commencing on the first day of illness. Servants may be required to submit a certificate of fitness before resuming work. Payment will be made for the first three working days of illness where the certificate of illness covers seven or more consecutive days including Saturdays and Sundays. The rate of sick pay will be the servant's basic net rate of pay less social welfare benefits. If, through illness, an employee cannot report for duty, the Area Engineer/Personnel should be informed before noon on the first day of absence. All staff must submit a medical certificate on the third day of illness.
11. All staff are obliged to comply with the local authority's standards and codes of conduct as set out in the local authority's Handbook for Staff. A copy of the Handbook is available to all staff on request.
12. The local authority is committed to ensuring the safety, health and welfare of its staff and to this end, a safety statement has been prepared, setting out all the safety arrangements which are in force. All new staff will be familiarised with these arrangements and are obliged to adhere to them at all times. Copies of the safety statement and standard operating procedures are available from the Area Engineer/Personnel Department.
13. The period of notice to which you are entitled is granted in accordance with the Minimum Notice and Terms of Employment Act, 1973-1991.

Length of Service	*Minimum Notice*
13 weeks to 2 years	One week
2 years to 5 years	Two weeks
5 years to 7 years	Four weeks
10 years to 15 years	Six weeks
More than 15 years	Eight weeks

14. Grievance and Disciplinary Procedures
(For details, see Section III).

15. The local authority reserves the right to search your person and property while on or while departing from the local authority's premises.

16. On the cesser of the purpose of this contract, you shall cease to be an employee of the local authority. Any further employment offered to you shall be at the sole discretion of the local authority.

17. Notwithstanding the fact that this is a specified purpose contract, the local authority reserves the right to terminate this contract prior to the cesser of the purpose on the giving of the appropriate period of notice set down by the Minimum Notice and Terms of Employment Act, 1973-1991. (For details of dismissal procedure, see Section III).

Signed: _____ Date: _____
For and on behalf of the Local Authority

I, _____ (name) of _____

_____ (address), hereby

accept the above terms and conditions of employment with the local authority.

_____ (Date)

1.8 Terms and Conditions of Employment for Short-Term Temporary Staff

The local authority requires short-term temporary staff for the summer period, 1992.

This contract relates to the period 1st June – 30th September.

1. You will be employed primarily as a labourer.
2. Rate of remuneration: £161.81 per week.
   Paid fortnightly in arrears by cheque.
3. Your normal working hours are 8.00 a.m. to 4.00 p.m., 5 days per week. Lunch break 1.00 p.m. to 1.30 p.m. daily.
4. You may be required to work overtime, depending on work requirements. Where possible, you will be notified in advance.
5. Your duties will be assigned to you by the Ganger or Foreman.
6. You are obliged to adhere to all safety arrangements in force.*
7. You will be regularly appraised during the period of your employment.
8. You are entitled to 1¼ days annual leave per month of completed service. Annual leave and public holidays will be granted in accordance with the Holidays (Employees) Act 1973-1991.
9. Grievance/Disciplinary Procedure.
10. Your employment with the local authority shall cease on 30th September, 1992. The Unfair Dismissals Act 1977-1993 shall not apply to your dismissal expiring on this date.
11. The local authority reserves the right to terminate this contract prior to the specified date on the giving of the appropriate period of notice under the Minimum Notice and Terms of Employment Act, 1973-1991.

Date: _____

Signed: _____
for and on behalf of the Local Authority

I, ...(name) of .....

..... (address)

hereby accept the above terms and conditions of employment with the local authority.

*Staff should receive relevant section(s) of safety statement.

Section II

INDUCTION AND ASSESSMENT

INDUCTION

Employers have particular responsibility in relation to new employees to ensure that they receive induction, training and assessment to enable them to perform the job for which they have been recruited and to ensure that they are integrated into their work environment.

2.1 Objective/Purpose

Induction is formally introducing a new employee in a planned and systematic way to:

(i) the work location and its surroundings

(ii) the job

(iii) his/her colleagues

in order to help him/her to settle in as soon as possible.

The basic purpose of any induction programme is to maximise the efficiency and effectiveness of any new employee in the shortest possible time.

Why induction?

A good induction programme will assist in putting a new employee at ease at an early stage. It also offers the opportunity for the employer to explain the working environment to the new employee, together with the standards of conduct and performance expected.

It allows the employer the opportunity to:

1. (a) explain the function of the work and its role within the local authority
   (b) detail the physical lay-out of the work location
   (c) explain the safety rules and regulations.

2. detail the main duties and tasks of the job, together with the standards of conduct and quality of work required.

3. advise colleagues that a new employee is scheduled to start, in order to allow them time to plan for the new recruit.

2.2 Planning and Implementing Induction

1. Prior to a new employee's arrival for duty, a decision must be made by management as to:
   (a) the appropriate line manager to be designated with the responsibility to meet and welcome the new employee on day one.
   (b) who will have overall responsibility for the formal induction of the new employee.

2. The line manager designated with the responsibility for meeting the new employee and the person responsible for induction, e.g. the Supervisor, should ensure that they have the following information available to them:

(i) Name and address of the employee

(ii) Date and time of commencement

(iii) Details of the employee's previous employment (if any).

(iv) Any other personal information which is deemed to be of particular importance or relevance

(v) Grade or category of post to which they have been recruited

(vi) Scope of employment, i.e. permanent or temporary and if temporary, duration of temporary contract.

The line manager should meet with the new employee as soon as possible on day one, preferably at the new employee's starting time and welcome him/her to the job.

While such a meeting would be on an informal chat basis, it should touch on the following issues where appropriate:

(a) lay-out of the work location and its overall objective, together with some details as to where it fits into the overall organisation

(b) location of welfare facilities, e.g. canteen, locker room, smoking area, etc, clocking-in clock or book for signing in.

(c) the policy and statements on safety, security, etc.

(d) the staffing structure

(e) answer any questions which the new employee raises

(f) the name and job title of the employee's supervisor.

3. The person with overall responsibility (e.g. the Supervisor) for the induction programme should ensure that it is completed within the first 2 weeks of the employee's service.

The induction programme will consist of a number of elements (see checklist page 20).

Where appropriate, the responsible person may assign other personnel to carry out some of the elements of the induction programme.

At the end of the 2 week period, the responsible person must check with the employee that each of the elements of the programme has been carried out.

2.3 Induction/Assessment of Probationary Employees

The majority of new employees who are offered permanent employment will have a clause in their contract stating that they will have to serve a probationary period. Such contracts will provide for:

(i) extension of a probationary period at the discretion of management

(ii) formal appointment (confirmation) of the person, subject to their successful completion of the probationary period.

The probationary period may be extended in cases where the new employee is absent for a long period, or where the person has failed to meet the required standards but, in the view of the Supervisor, may have the potential to improve with further training.

It is not sufficient for an employer to discharge the employee at the end of a probationary period merely on the grounds that his/her performance has not been satisfactory. Although a probationary employee is on trial and clearly must establish his/her suitability for the job, there is a corresponding obligation on the employer to draw any shortcomings to the employee's attention to help him/her improve. The probationary employee will therefore be subjected to the same induction, training and assessment as any other employee in the work location.

INDUCTION CHECKLIST

2.4 (a) introduction to new work colleagues _____

(b) details of main duties and tasks of the job _____

(c) proper methods of working and if appropriate the location of the works manual, the dangers, hazards associated with the job. Where protective clothing or equipment are essential, s/he must ensure the new employee is issued with same _____

(d) outline standards of work, the time schedules, if any, which must be adhered to _____

(e) outline the quality of work expected _____

(f) detail the method and type of training the person will receive and the assistance and backup available to his/her when coming to grips with the new job _____

(g) explain the location's rules and standards to be adhered to with regard to:

(i) housekeeping, tidiness, working environment, hygiene

(ii) confidentiality

(iii) dealing with the public

(iv) public property

(v) interaction and co-operation with colleagues

(vi) reporting relationships

(vii) communications

(viii) safety statement appropriate to their section, hazards and protection measurres — fire drills, entinguishers, accident reports, first aid, etc.

(ix) timekeeping, attendance and duration of meal breaks.

(x) code of dress, appearance and personal hygiene

(xi) telephone facilities and the use of the telephone

(xii) parking of vehicles _____

(h) disciplinary policy and give examples of serious misconduct and the consequences of same _____

(i) explain the grievance procedure _____

(j) union/s involved in the work location and whether a check-off system exists _____

(k) welfare benefits, e.g.
— sports and social
— savings scheme
— transport arrangements
— V.H.I. schemes _____

(l) provide an opportunity to raise questions with regard to:

(i) contract of employment

(ii) contents of job _____

(m) outline the assessment/appraisal system in operation _____

Signed: _____ Supervisor

Signed: _____ Employee

2.5 Why Assessment?

1. Assessment allows the employer the opportunity to:

   (i) determine the employee's suitability

   (ii) provide feedback to the employee on performance

   (iii) identify shortcomings which would require improvements or training

   (iv) re-affirm standards of work performance and behaviour expected.

2. The Assessment process can detect shortcomings in the employee's performance at an early stage, thus immediate counselling and training can be made available to the employee to ensure the necessary improvements.

Who should be assessed?
All new employees should be assessed. Temporary employees should have their performance assessed on the same basis as permanent employees. Even if the temporary employee is only serving a short term assignment, his/her performance should be formally assessed for the following reasons:

(i) To ensure that only those employees who have proven their suitability are re-called for further periods of temporary work

(ii) Employees initially employed for a short period frequently continue on in employment for further temporary assignments

(iii) When permanent positions become available, it is important to have documented evidence on the performance record of those applicants who have served in similar positions in a temporary capacity.

The following approach is designed for new employees, however all employees should have their work performance assessed from time to time.

Planning and Implementing Assessment

1. *Planning:*

   (i) Management should decide on who has responsibility for the assessment of the employee, e.g. Department Head and the line supervisor;

   (ii) Management should decide on the frequency of the formal assessment interviews for each category within the work location;

   (iii) Formal assessment interviews should take place at regular intervals during the employee's first year of employment. The policy with regard to assessment interviews during subsequent years will depend on the type of position held by the employee.

2. *Preparing for the Assessment Interview:*

(i) The department head must verify that the employee received the appropriate induction and training for the job;

(ii) The department head and line supervisor must agree and put in writing:

(a) the principal tasks and specific duties of the job,

(b) aspects of the employee's performance which will be monitored and assessed, e.g. attendance/time-keeping, adherence to work schedules, work performance, attitudes, relationship with supervisors and colleagues, adherence to safe work practices, etc.

3. (i) The department head and the line supervisor must inform the employee:

(a) that his/her employment is subject to assessment and the frequency of the assessment interviews;

(b) the principal tasks and specific duties of the job which will be assessed;

(c) that s/he will receive regular feedback on his/her performance. Specific aspects of conduct, job performance, attitude, attendance/time-keeping, which are below the required standards will be brought to his/her notice, together with the corrective action required.

4. *Monitoring the Employee*
In the day to day monitoring by the line supervisor, s/he should maintain a record of the employee's:

(a) shortcomings;

(b) the corrective action required;

(c) the date the corrective action was brought to the attention of the employee;

(d) the timescale for the achievement of satisfactory performance.

5. *Assessment Interview*

(i) The department head and line supervisor should review the employee's performance prior to arranging the assessment interview.

(ii) The assessment interview should take place between the department head, line supervisor and employee at a mutually agreed time.

(iii) An assessment form, along the lines attached should be completed during the interview and the form can dictate the format of the interview.

(iv) The form will be signed by:

(i) Department head

(ii) Line supervisor

and the employee should be made aware of its contents.

(v) The form will be forwarded to the Personnel Department for review and placed on the employee's file.

SAMPLE ASSESSMENT INTERVIEW FORM

Name: _____ Job title: _____

Period of Assessment: _____

if previously assessed — check follow up from previous form

Principal tasks and specific duties:

_____

_____

_____

_____

Aspects of performance which are being assessed — Please indicate very good, good, fair, unsatisfactory.

(i) *Work performance*

Quality and knowledge of work _____

Attitude to work _____

Meeting of deadlines _____

Adherence to work methods and practices _____

Capabilities _____

Adherence to safety standards _____

Ability to work without close supervision _____

(ii) Relationship with colleagues _____

Relationship with Supervisors _____

Flexibility _____

General suitability _____

Timekeeping

Has the employee a good timekeeping record?

Yes _____ No _____

If no, please give details: _____

Attendance
Number of days absent to date:

(i) Certified sick leave _____

(ii) Uncertified sick leave _____

(iii) Other absences, e.g. compassionate leave, etc. _____

Date of Assessment: _____

Please give details of follow-ups agreed (if any) — Timescale.

_____

_____

_____

Signed: _____
Dept. Head

_____
Line Supervisor

Section III

DISCIPLINARY AND GRIEVANCE PROCEDURES

DISCIPLINARY PROCEDURE

3.1 Introduction

Good standards of conduct and performance can be achieved by the employees knowing the standards that are expected of them and by the use of procedures to ensure that the standards are adhered to and by providing a fair method of dealing with failure to observe these standards. Even where an employee is serving a probationary period, proper procedures should be used in the event of disciplinary action being taken against that employee.

The Unfair Dismissals (Amendment) Act, 1993 lays new and very specific emphasis on procedural fairness.

It is vitally important that employees know what standards are expected of them, e.g.:

work standards: employers must clearly define job requirements and standards and provide training, guidance, regular appraisal and counselling.

conduct: employees must be made aware of the rules and regulations governing time-keeping, inability to attend due to illness or other reasons, use of safety equipment, smoking in the workplace, confidentiality, etc.

gross misconduct: employees should be aware of those breaches of conduct which would be sufficient to warrant suspension or dismissal without recourse to other stages of the dismissal procedure, e.g. theft of local authority's property, violence at the workplace, abusive behaviour towards the public, etc.

On occasion, allegations of unsuitability are made against employees who may have been working in a local authority for a considerable period of time. When asked to provide details of such allegations, the supervisor will often state that there is really nothing to substantiate but everyone is complaining about him/her and it has got to the stage where s/he cannot be kept in employment any more. The response to questions as to whether employee X was counselled or warned in relation to his/her deficiencies will include:

- s/he was only ''temporary'' so we did not feel that it was worth the effort.
- s/he was only ''temporary'', so we knew that we could get rid of him/her when the right opportunity presented itself.
- s/he is merely a seasonal employee so I decided that I would just use some pretext not to recall him/her for further work.
- supervisor/work colleagues reported various incidents but did not want to be named in connection with adverse reports.
- everyone knew s/he was not suitable for various reasons, but nobody felt that it was their responsibility to advise/warn employee X.

To arrive at a conclusion that an employee's employment should be terminated for poor work performance/conduct, whether the employee is permanent or temporary is inherently unfair unless that employee has been warned and advised in relation to his/her poor work performance. Such warning and advise will generally be given through the use of a disciplinary procedure.

3.2 The Disciplinary Procedure in Operation

The disciplinary procedure will not generally come into operation until after an employee has been informally advised by his/her immediate supervisor. Such informal advice should be recorded in the supervisor's diary, but should not be recorded in the employee's file. If, after such informal advice the employee continues to fail to achieve the required work/conduct standards, the supervisor should inform the local management so that the formal disciplinary procedure can be invoked. Supervisors should be instructed to take this course of action as opposed to merely complaining their dissatisfaction with an employee to other colleagues. The disciplinary procedure usually involves the following stages (note this procedure would apply in relation to breaches of rules which are not deemed gross misconduct):

(i) *Oral Warning*

The first step in a disciplinary procedure usually involves an oral warning. The supervisor and department head should meet the employee and his/her representative to issue this warning. An oral warning must clearly inform the employee of the standards/conduct s/he is failing to achieve and that repetition could result in further disciplinary action. At this stage, emphasis should be placed on determining why the employee is failing to meet the required standard of work or conduct and to help the employee to determine how s/he can prevent a recurrence. The required standard(s) should be clearly spelt out to the employee and also the consequences of failing to achieve the required standard(s). A record of the warning should be placed by either the supervisor or department head on the employee's file.

(ii) *Written Warning*

If insufficient improvement results from the verbal warning or there is a further breach of a local authority rule, the supervisor should notify the department head. The employee should be asked, together with his/her representative, to a meeting with the supervisor, department head and a member of management, at which his/her failure to improve as a result of the oral warning will be outlined. A letter of warning should then issue to the employee containing the following information:

- facts surrounding the misconduct or work standards not achieved;
- the local authority policy on the rule that was violated or the standards not achieved;
- previous discussions;
- reference to the fact that the written warning is disciplinary action and that failure to achieve required standards will result in further disciplinary action.

The written warning should draw the employee's attention to the fact that his/her job is at risk if s/he does not improve. A copy of the written warning should be sent to the employee's representative and a copy should be placed on the employee's file.

3.3 (iii) *Final Written Warning*

The last stage in the disciplinary procedure usually involves a final written warning which makes it clear that the employment will be suspended or terminated if the conduct or work performance does not improve (or if there is a further breach of the local authority's rules). If the conduct/work performance of the employee is such that there is no improvement or indeed further incidents occur, management must be so informed.

Management must arrange a meeting which should include a representative of the personnel department, the department head, the employee and his/her representative. At this meeting, the employee's continued failure to meet the required work/conduct standards must be outlined to him/her and s/he must be informed that s/he is being issued with a final written warning to the effect that any further failure to achieve the required standards, or any further breaches of the local authority's rules will result in suspension or dismissal.

If, after the final written warning has issued there is still no improvement or there are further breaches of rules, a comprehensive report on the facts of the case should be prepared by the relevant personnel, i.e. supervisor, department head, so that appropriate action can be taken.

3.4 Gross Misconduct

In serious cases, e.g. physical assault, abuse of local authority property, falsifications of records, etc., the stages outlined in the disciplinary procedure do not normally apply.

A comprehensive report of the alleged incident should be prepared immediatley by the supervisor on duty and the date, time and names of witnesses should be noted. Where possible, witnesses should also be asked to immediately write up their version of the incident. Where appropriate, arrangements should be made to have the employee put off duty. Management must be informed of the alleged incident. In all cases involving serious misconduct, a careful investigation of the alleged offence must be carried out and the employee must be provided with an opportunity to state his/her case.

On completion of the investigation, the employee and his/her representative should be requested to attend a meeting with management so that the facts of the alleged offence can be put to the employee, who must be given a right to explain. The employee should be told in advance of the purpose of the interview, the nature of the alleged offence and given sufficient notice of its time and place to prepare a response. A report of this meeting should be sent to the County/City Manager for consideration.

Before any decision is taken to dismiss an employee, the County/City Manager should afford the employee and/or his representative an opportunity to state his/her case.

3.5 Suspensions

Suspensions of employees can occur in the following situations:

(a) Where the alleged offence is of a serious nature and time is required to allow for proper investigation and the operation of agreed disciplinary procedures.

An employee on suspension pending the outcome of an investigation should be kept informed of progress and given the earliest opportunity possible to put forward his/her side of the case.

(b) Where, following the investigation, a suspension is applied as a penalty under the disciplinary code.

3.6 Termination of Employment

A substantial body of case law has built up from decisions of the Employment Appeals Tribunal from which it is possible to assess the considerations which the employer should bear in mind before contemplating the dismissal of an employee. Set out below are some of those considerations, but it must be emphasised that other factors will influence the decision of the Tribunal.

The onus of investigation lies with the employer

The employer cannot rely on a third party to carry out an investigation on his/her behalf, even if that third party is the Gardai. The charging of an employee with a criminal offence may be relevant if it has a corroborating effect on a belief justifiably held by the employer, but it must not be considered as a substitute for a full or fair enquiry.

The employer must attempt to obtain all the relevant information

The E.A.T. has stated that a full enquiry demands that all evidence such as documentation or the statements of relevant witnesses be pursued. Thus the employer must meet with all the individuals involved in the alleged incident(s), be they supervisors, fellow employees or outside individuals. Each must be called forward to give evidence, either orally or in writing, of his/her version of the incident(s).

Use of outside expertise to obtain information

Where it is not possible to establish the facts through an internal investigation, the employer may enlist the assistance of an outside agency, e.g. if it is alleged that a driver has caused an accident by driving too fast, it may be necessary to have an expert estimate the speed of the vehicle at the time of collision.

The employer must remain unbiased

The employer cannot draw any conclusions before the investigation is complete. No decision to dismiss the employee should be taken prior to the final meeting with the employee. Only when all the evidence has been put forward and the employee has been provided with an adequate opportunity of rebuttal, may the employer reach a decision on the future of the employee's relationship with the employer.

The employee should know the nature of the accusation against him/her

Every employee has the right to know the nature of the accusation and the evidence against him/her. The E.A.T. has stated that this right is not at the gift of the employer to be taken away when convenient, but is a fundamental right which an employer denies at his/her peril. The employee must know sufficiently what is being said against him/her. Otherwise, s/he cannot properly put forward his/her case and thus s/he will have been denied natural justice. If an employer is relying on the report of others to substantiate the allegation, s/he must confront the employee with full details of same.

The employee should be given the opportunity to state his/her case

Once the employee has been provided with all the evidence which the employer has collected, s/he must be given the opportunity to respond and to offer counter evidence, if any. The E.A.T. considers that the lack of opportunity afforded the employee to defend him/herself is contrary to the requirements of natural justice and such a failure renders a dismissal unfair. If an employee wishes to have the assistance of a trade union representative, s/he should be afforded this opportunity. If the evidence against an employee is such that it would require time to study it, then such time should be given to the employee and his/her representative in order that a proper reply may be made on the employee's behalf.

The same officer should only be involved in any one stage in the procedure
In the interests of natural justice, local authority management should ensure that in any one case under a disciplinary procedure, the same officer should not be responsible for more than one of the fundamental stages in the process, e.g. investigating the incident, deciding on the appropriate action.

The appropriate disciplinary procedure must be followed
It is well established that the procedural aspects of a dismissal have been regarded as important when deciding fairness. While procedural defects do not automatically make an otherwise fair dismissal unfair, findings of unfair dismissal have been made entirely on the grounds that the employer failed to live up to the rules of natural justice or their own disciplinary procedure.

WARNINGS
A typical disciplinary code provides examples of the types of offence which warrant disciplinary action with provisions for warning before appropriate action is taken by the employer. The warning procedure normally commences with a verbal warning and progresses by stages to the final written warning. In some agreements, stages have specific lifespans, e.g. a stage two warning having a lifespan of six months, which means that provided the employee maintains a clean record for that period, the warning will be removed from his/her file. The existence of a lifespan, however, does not interfere with the right of the employer to issue further warnings within that period.

In order to justify the decision to dismiss, the employer must demonstrate that proper warnings of dismissal were given to the employee; the one exception to this is in the case of serious/gross misconduct. To satisfy the E.A.T. that the employee was adequately warned, the employer will need to establish:

That the employee was *formally warned*. The employer will need to show that there is a proper procedure in place to warn the employees in relation to his/her work/conduct and that the warnings were actually given and comprehended. Warnings must set specific standards. Advising the employee in vague terms that his/her conduct is unacceptable and must improve is not sufficiently precise. The employer needs to set down standards to be achieved and must maintain control of and properly instruct the employee in order that s/he may achieve the required level of performance.

The employee must be given the opportunity to meet the standards. Where an employee has been given a warning that unless his/her conduct improves in a specific area, it follows that the employee must be given a reasonable time within which to effect such improvement and a reasonable work situation within which to concentrate on such matters.

The employee must be made aware that s/he will be dismissed if standards are not reached. Warnings must be specific in informing the employee of the repercussions from a failure to reach the set standards. The employee must be left in no doubt that his/her job will be in jeopardy.

Previous Final Warnings
If an employee has been issued with a final written warning, its effect may be diluted by the issue of a second final warning and may be deemed by the E.A.T. not to be absolute, as the employee was not dismissed as stated in the initial final warning. However, this does not mean that after the issue of a final warning, dismissal will automatically follow any further transgression. The employer is still obliged to investigate the incident(s) and allow the employee put forward a defence. Equally, where a final warning has a specific lifespan, e.g. 12 months and that period has expired before another warning is issued, the E.A.T. has stated that the employer should not take the expired final warning into account when reaching a decision on whether or not to dismiss the employee.

Temporary Employees

As stated earlier in this document, an employer may not termiante an employee's employment merely because s/he is classified as temporary. In respect of such appointments, the essential criteria to apply are, to ensure at the outset or when any temporary contract of employment is renewed, that it is accepted as temporary in writing by the employee concerned and that the employee is made fully aware before accepting the appointment of the reasons why it is temporary. When the local authority no longer requires the services of that employee, it must then be clearly able to demonstrate that the purpose for which the temporary employee was recruited has ceased and the employee was aware of the temporary nature of his/her employment.

Criminal offences outside employment

These should not be treated as automatic reasons for dismissal, regardless of whether the offence has any relevance to the duties of the individual as an employee. The main considerations should be whether the offence is one that makes the individual unsuitable for his/her type of work or unacceptable to other employees and, if so, whether alternative jobs are available which would be suitable.

Employees should not normally be dismissed simply because a charge against them is pending, or because they are absent through having been remanded in custody.

3.7 Procedures for Control of Absenteeism

The proper control and monitoring of absenteeism by employers requires the implementation of a clear and well-established procedure which is operated in a fair and reasonable manner. It is essential in operating an absenteeism procedure that local authorities apply consistent treatment to all employees. Local authorities should make clear the importance of good attendance and the disciplinary sanctions which may be applied for persistent absenteeism. The following elements are suggested for inclusion in basic personnel policies pertaining to good attendance:

— comprehensive recruitment criteria to ensure that unsuitable/unreliable applicants are not recruited;

— monitoring systems for attendance at work, records should identify attendance of individual employees. Absences should be broken down in terms of work area, frequency, duration, etc.

— strict control of absenteeism (via application of appropriate stages of the disciplinary procedure being invoked) by management at all levels, following on from the use of attendance monitoring systems:

— communication to workers of the fact of workplace attendance being monitored and the consequences of persistent absenteeism;

— consistency of treatment is applied to all employees;

— reference to absenteeism in any jointly agreed work rulebooks or procedural agreements.

There are generally two types of absenteeism problems:

(i) *Regular intermittent short-term absences*

Employees who are absent regularly on a short-term intermittent basis, after initial counselling, should have the local authority's disciplinary procedure applied to them. When dealing with such employees, the following pointers should be borne in mind:

— It is important to remember that it is the fact of their absences which is the issue, not why they are absent;

— It should not be alleged that the employee is faking reasons for absence — this approach is fraught with difficulties and nearly impossible to prove;

— Essentially, the employee is being disciplined for his/her inability to render regular and continuous service;

— The employee should be met with personally and details of his/her attendance record outlined to him/her. It should be described as very bad, appalling, etc. and causing operational problems;

— State that the local authority cannot allow the employee to remain in employment unless his/her attendance record improves;

— Suggest that the employee might wish to consult his/her doctor to establish whether it can improve;

— If meeting personally with the employee, the employee should be appraised of the facts in advance of the meeting;

— Do not use the word warn as warn has a connotation of blame. The local authority is not blaming the employee for being ill, it is merely requiring a certain level of attendance from them to enable it to run its operation efficiently;

— If the employee's absence levels remain unacceptably high, ultimately the local authority may have no option but to dismiss the employee. If this eventually does arise, clear records must have been kept of absences and meetings/letters to the employee.

(ii) *Long-term absenteeism*

Long-term absenteeism generally results from an illness which renders the employee unfit to work for a considerable period of time or an injury sustained either at work or outside of work. While each employee in such circumstances will require to be dealt with in accordance with their particular illnesses, injuries, etc., some of the issues that have arisen in relation to such cases include:

— Employee who recovers but is not fit for full range of duties — while there is an onus on the employer in such cases to establish whether or not alternative work is available compatible with the employee's limited capacities, there is no obligation on the employer to retain the employee if no suitable alternative work is available.

— Employees who are absent for a long period of time do not at a certain stage automatically terminate their own employment. In a case involving a local authority, which was brought to the Employment Appeals Tribunal, the Tribunal concluded "that the doctrine of frustration could only be used where the event relied on renders all further performance of an employment contract impossible. Questions to be considered include:

  — whether consideration was given to retaining the employee on the books if not in employment;

  — whether the employer had discussed with the employee and his trade union the employee's problems and prospects;

  — whether adequate medical investigations were carried out."

  The Tribunal went on to point out that proving frustration should be a difficult task and that employers were likely to succeed when there was clear evidence that there would be little prospect of recovery but where there was a prospect of recovery, a lengthy absence did not necessarily frustrate the contract.

— Employees who fail to communicate with the local authority when absent — all employees should be informed that when they are absent from work for whatever reason, regular communication should be sent to the local authority, explaining the reason for their absence. It should also be stated that failure to comply with this requirement could result in their employment being terminated by the local authority. Employees who fail to keep in regular communication with the local authority should be written to, to establish the reason for their absence. Those employees who do not respond to the local authority's letter should be written to a second time, with a statement to the effect that this is a final warning and if the local authority does not receive a satisfactory explanation immediately for their continued absence, their employment with the local authority will be formally terminated.

— Employees with nebulous complaints, e.g. backache, which are difficult to confirm or deny should be asked to attend an independent medical practitioner to be examined to establish if the problem is solvable and how long their treatment will take.

— If the local authority is writing to a doctor to establish whether or not an employee is likely to be able to resume work, the letter to the doctor should set out the full range of duties that the employee is likely to be required to carry out, e.g. if employee is employed as a fireman, this fact and clear statement of firefighters duties should be set out.

3.8 Grievance Procedures

Grievance procedures are generally established by collective agreements. Local authorities are advised to negotiate grievance procedures and any changes in them with representatives of employees.

The objective of a grievance procedure is to enable grievances to be dealt with promptly and fairly with no disruption if possible to the work operation. Local authority management should ensure that employees are fully aware of the steps available to them as individuals under the grievance procedure drawn up by the local authority. The grievance procedure is the formal mechanism for the identification and resolution of any complaint which employees or their union may have in respect of their employment or management action.

The aim of the procedure should be to settle the grievance fairly and as near as possible to the point of origin. It should be simple and rapid in operation.

The procedure should be in writing and provide that:

(i) the grievance should normally be discussed first between the employee and his/her immediate superior;

(ii) The employee should be accompanied at the next stage of the discussion with management by his/her employee representative if s/he so wishes. Each employee must know who would deal with any appeal at the first stage after the expression of a grievance and who would deal with his/her dissatisfaction about a disciplinary decision relating to him/her. It is not necessary to specify by name the supervisors and officers appointed to hear grievances, provided they can be clearly identified by reference to the posts they hold.

(iii) there should be a right of appeal.

The procedure may also contain the following provisions:

— Where the grievance concerns existing work practices and conditions and is being processed under the grievance procedure, the "status quo" will be maintained until the issue is determined;

— Where the issue concerns an instruction given by a supervisor, the employee should carry out the instruction under protest and so advise the supervisor and refer the matter for processing under the procedure;

— No strikes or other form of industrial action shall take place until all stages of the procedure are fully exhausted.

The Labour Relations Commission has published a Code of Practice on disputes and grievance procedures under a number of headings. The Code sets out a number of principles which should be incorporated into existing or new procedures.

— Procedures should include agreement on the appropriate level of management and trade union representation which will be involved at each stage of the procedure.

— The action required of the parties at each stage of the procedures should be clearly indicated.

— Agreements between employers and trade unions should be in writing.

— Employees and managers at all levels should be aware of the procedures.

— Arrangements should be made for these procedures to be communicated and explained to employees and management.

— Procedures should afford early access to disputes resolution machinery and to arrangements for the settlement of collective and individual issues within a reasonable time scale.

— The procedures for handling disputes on collective and individual issues should take account where appropriate of the functions of the relevant state agencies (i.e. the Labour Relations Commission, the Labour Court, the Rights Commissioner's service, the Equality service and the Employment Appeals Tribunal).

— The operation of disputes procedures should be reviewed from time to time with the object of improving the practical working of the procedures.

Section IV

REMUNERATIVE CONDITIONS OF EMPLOYMENT

Remunerative Conditions of Employment

4.1 Acting in a Higher Capacity

(a) *Craft Grades*
Craftsmen required to act up temporarily in the next higher grade may move to the corresponding point on the new scale.

If a craftsman acts up temporarily in a grade two or more grades higher than his existing grade, he will receive either:

(i) the minimum of the acting-up scale or

(ii) 50% of the full differential rounded up to the nearest scale point whichever is the more favourable.

cf. Letter from L.G.S.N.B. to all County Managers dated 31 March, 1981.

(b) *Other Non-Officer Grades*
An employee assigned on a temporary basis to the duties of a category with a higher rate of pay will be paid that rate of pay for the day in which he performs the higher category duties.

Employees promoted to, or required to act up in, a category (covered by the rationalisation agreement) which carries a higher pay scale will be paid on the corresponding point of the higher scale, with the exception of acting up in the grade of rural road overseer.

c.f. Agreement on Rationalisation of Pay Scales for General Operatives and Related Grades.
c.f. Department of the Environment Circular EL 13/82 (26-5-'82).

4.2 Dirty Money

Dirty money payments were specifically subsumed in the Central Agreement reached with craftsmen in 1977 (and reiterated in the 1979 Agreement with craftsmen) and in the agreement on rationalisation of pay rates and grading structure for general operatives and related grades in local authorities.

These agreements stated:

"Allowances

Abolition of all allowances including service pay but excluding travelling allowances, subsistence and dirty money where this is paid intermittently in exceptional circumstances, e.g. work in sewers."

As a general rule, most craft/general operative work has some dirty elements. This is a normal part of the job and it is recognised in the national craft/general operative scales. Where, however, a craftsman or general operative has to perform an exceptionally dirty job which is not part of his normal duties, or to operate in an exceptionally dirty environment, a case may exist for exceptional payment for the duration of such work.

To qualify as intermittent, the work involved should be done only at intervals.

To qualify as exceptional, the work involved should occur infrequently on an irregular basis.

4.3 Eating-on-Site

Agreement was reached in November 1986 on the national introduction of an eating-on-site allowance payable to all general operatives/non-nursing personnel and craftsmen employed in local authorities and health boards.

The daily eating-on-site allowance is payable to general operatives and craftsmen (permanent and temporary), including supervisors and related grades subject to the following conditions:

The allowance is payable:

(i) On all days, including weekend days when meals are eaten on site. In this regard, meal includes tea breaks, lunch breaks, etc.

(ii) Where facilities for the partaking of meals in depots or stores are inadequate or unsatisfactory.

(iii) Where the lunch break does not exceed 30 minutes.

(iv) Where the employee attends for work at least 1.5 hours on either side of the official lunch break.

The allowance is not payable:

(i) Where the lunch interval is more than 30 minutes.

(ii) Where the employee is absent from duty for any reason.

(iii) Where the employee, without sufficient reason, refuses to eat on site.

(iv) Where the employee attends for work for less than 6.5 hours in any day.

Site is defined as the workplace or nearest depot, sub-depot or vacant house designated as a sub-depot by agreement.

Where existing allowances in respect of subsistence are more favourable than the eating-on-site allowance, they will continue to apply on a personalised basis. Existing allowances should be frozen at their current value.

It is essential that no employee be in receipt of both allowances on any one day. Where, for example, an employee is away from base and is entitled to a personalised subsistence allowance, s/he will receive it for that day. On days when s/he remains at base and eats on site, s/he will receive the eating-on-site allowance.

New employees will only be entitled to the eating-on-site allowance.

4.4 Incremental Credit

(a) *Incremental Scales*

The 1977 Central Craftsmen's Agreement provides for national uniform incremental scales for craft grades. Incremental scales for other non-officer grades were introduced as part of

a £7.60 pay increase awarded on a phased basis in two instalments from 1st August, 1979 and 1st January, 1980. A conditiion of this offer was the abolition of service pay.

In respect of both craft and other non-officer grades, it has been agreed that there should be a common incremental date for all employees, i.e. progression to the next point of the scale on the first day after 1st January in the calendar year following the year in which recruited and similarly on the first pay day after 1st January in each subsequent year.

(b) *Incremental Credit*
The usual practice for all non-officer grades is to start at the minimum of their pay scales.

Where a non-officer is employed on a temporary basis and is subsequently made permanent, incremental credit may be granted for the period of temporary service on the following basis:

"(i) Service will be aggregated at the agreed incremental date which applies in the case of permanent wholetime employees.

(ii) One increment will be granted in respect of each aggregated year's service on any given incremental date subsequent to (a) date of first appointment or (b) the date on which a previous increment was paid, until such a time as the employee reaches the maximum of his appropriate scale."

(c) *Credit for Previous Service*
Where an employee had previous service in the same or similar grade in any local authority or health board, such service is to be recognised on transfer to a similar grade post. Where a person leaves employment voluntarily and there is a break in service this procedure would not apply as this would involve a new appointment at the minimum of the scale.

c.f. Agreement between L.G.S.N.B. and S.I.P.T.U. as part of Rationalisation Agreement.

4.5 On-Call/Call-Out Allowance

(a) *On-Call/Stand-By Allowance*
The terms "on-call" and "stand-by" tend to be interchangeable, both referring to what the Water Industry National Agreement describes as a "specific rostered arrangement whereby employees are under an obligation outside normal working hours to remain on-call and be available to be consulted and to be called out if necessary."[1]

The majority of local authorities do not have formal on-call/stand-by arrangements and therefore, no on-call/stand-by allowances are paid.

In the larger local authorities where such allowances are applicable, payment is made predominantly to craftsmen and supervisory general operatives.

(b) *Call-Out Allowance*
Call-out generally refers to the situation in which an employee, whether on stand-by or without prior notification, is called upon to return to work.[2]

[1]IDS Study 355/February 1986.
[2]IDS ibid.

In local authorities, the method of payment for call-out falls roughly into two categories:

(i) the appropriate overtime rate is paid for the duration of the call-out period, or

(ii) A minimum period, at the appropriate overtime rate is paid irrespective of the duration of the call-out period (if the duration of the call-out exceeds the minimum period, the appropriate rate is paid for the remaining call-out time).

4.6 Overtime

The levels of overtime worked by non-officer grades in local authorities have been greatly reduced in latter years.

Where employees are required to work outside of normal working hours, the rates of overtime which generally apply are:

Finishing time — 12.00 midnight	Mon.-Fri. — T ½
Midnight — Normal starting time	Mon.-Fri. — T 2
First 4 hours/up to lunchtime	Saturday — T½
All remaining hours	Saturday — T 2
All hours	Sunday — T 2

4.7 Shift Work

Shift work generally arises in a situation where the establishment operates beyond normal daily or weekly hours by rotating the workload over different persons or groups of persons.

The most common type of shift operations are as follows:

(i) *Two Shift Systems*
These normally consist of two teams who are required to work in an arranged alternating pattern so that an employee works for example either:

Day Shift	—	8.00 am–4.00 pm
	or	
Evening Shift	—	4.00 pm–12.00 am

(ii) *Three Shift Systems*
These normally consist of three teams who are required to work on day, evening and night shifts in an arranged pattern five days of the week.

(iii) *Four Shift Systems*
These normally consist of four teams who are required to work over the full week (i.e. 168 hours) in a pattern of (i) morning, (ii) evening and (iii) night shifts.

A shift premium is normally paid to employees who work a pattern that falls within the definition of shift work. Labour Court Recommendation (No. 7001) recommended that workers who have a starting time variation of at least four hours and a difference of at least twelve hours between the earliest and the latest finish should be paid a shift allowance. It should be noted however that some local authorities pay an all embracing rate of pay which includes compensation for a shift dimension to the work of relevant employees.

4.8 Starting Pay on Promotion

(a) *Craft Grades*
Where an employee is promoted to any grade above his existing grade, he may move to the corresponding point on the new scale, provided he has completed at least five years service as a qualified craftsman in the local authority.

In any other case, he shall either be placed at the minimum of the new scale, or receive 50% of the differential between his point on the existing scale and the corresponding point on the new scale, adjusted up thereafter to the nearest scale point, whichever is the more favourable.

c.f. Letter from LGSNB to all County Managers dated 31 March, 1981.

(b) *Other Non-Officer Grades*
Employees promoted to a category which carries a higher pay scale are paid on the corresponding point of the higher scale with certain exceptions.

c.f. Agreement on Rationalisation of Pay Scales for General Operatives and related Grades.

Where a general operative is promoted to the category of Rural Road Overseer, he is paid at the minimum point of the scale.

c.f. Department of the Environment Circular EL 13/82 (26-5-'82).

4.9 Subsistence Allowance

Subsistence/meal allowances are paid as out-of-pocket expenses incurred by employees who are required to carry out their duties away from their normal work base for a prescribed period.

The conditions attaching to the payment of these allowances vary according to particular local situations and are a matter for local negotiations.

The most common categories of employees to whom subsistence/meal allowances are paid are craftsmen, drivers and plant operators.

In time, all subsistence/meal allowances presently paid to non-officers should be replaced by the eating-on-site allowance.

4.10 Travel Allowances

Travel allowances are paid as out-of-pocket expenses incurred by employees who are required to travel during the course of their working day to various work locations. These allowances are paid predominantly to craftsmen and supervisory general operative grades who, by the very nature of their work, are required to travel around the county. It is usually a condition of entitlement that employees use their own transport.

Section V

OTHER CONDITIONS OF EMPLOYMENT

5.1 Annual Leave and Public Holidays — Full-Time Employees

Entitlement to annual leave and public holidays for full-time employees is covered by the Holidays (Employees) Act 1973. The provisions of this Act include:

(a) *Qualifying Conditions and Annual Leave Entitlements*

In order to qualify for annual leave, an employee must have worked for the employer at least 120 hours (110 hours, if under 18 years) in a calendar month. S/he qualifies for his/her full entitlement if s/he works the required hours in each of the 12 months of the leave year. S/he is entitled to proportionately less leave for 11 or fewer such months. If, however, s/he works eight or more such months, s/he must be allowed an unbroken period of two weeks holidays.

Alternatively, an employee who, during a leave year (i.e. 1st April to 31st March) works for the same employer at least 1,400 hours qualifies for his/her full entitlement.

Time spent on annual leave may be counted as qualifying hours for holiday entitlement purposes.

Where an employee on annual leave furnishes appropriate medical evidence that s/he is ill, the period covered by that evidence shall not be counted as part of his/her annual leave.

(b) *Times of Annual Leave*

The time at which annual leave may be taken is determined by the employer provided that he consults the employee or his/her trade union one month beforehand and that the leave is taken either during the current leave year or within six months after it ends.

(c) *Pay for Annual Leave*

The pay for annual leave must be given in advance. It must be at the normal weekly rate, calculated as follows:

(i) In a case of payment calculated wholly by a time/fixed rate or salary and in any other case of payment which does not vary in relation to the work done — the sum (including any regular bonus but excluding pay for overtime), payable in respect of normal working hours in the working week next before annual leave;

(ii) In any other case — a sum equivalent to the average weekly earnings (excluding pay for overtime) for normal hours, calculated by reference to the earnings in respect of the time actually worked, during the 13 weeks immediately preceding the annual leave or otehrwise the 13 weeks ending on the day on which time was last worked.

(d) *Actual Leave Entitlement — Non-Officer Grades*

Following the implementation of the provisions of the 1979 and 1980 National Understandings and the 1981 Public Service Pay Agreement the majority of local authority general operative grade employees have a minimum entitlement to 20 days paid leave in an annual leave year.

Paid leave includes any leave entitlement under the following headings:

Annual Leave
Privilege Days
Church Holidays*
Service Leave

*The majority of local authorities continue to grant employees church holidays as part of their paid leave entitlement of 20 days.

The entitlement to 20 days paid leave is granted in accordance with provisions of the Holidays (Employees) Act 1973.

(e) *Public Holidays*
Entitlement to public holidays is also covered by the Holidays (Employees) Act 1973. Each of the following days is a public holiday for the purposes of this Act.

(i) The 1st January (New Year's Day), if falling on a weekday or, if not, the next day;

(ii) St. Patrick's Day, if falling on a weekday or, if not, the next day;

(iii) Easter Monday;

(iv) The first Monday in June;

(v) The first Monday in August;

(vi) The last Monday in October;

(vii) Christmas Day, if falling on a weekday, or if not, the next Tuesday;

(viii) St. Stephen's Day, if falling on a weekday or, if not, the next day.

(f) *Qualification*
All full-time employees employed on a continuous basis qualify for public holidays irrespective of their length of service.

(g) *Entitlement*
Under the Holiday (Employees) Act, 1973 employees are entitled to:

(i) a paid day off on a Public Holiday, or

(ii) a paid day off within a month, or

(iii) an extra day's annual leave, or

(iv) an extra day's pay;

as the employer may decide.

Public Holiday Entitlement — Employees Absent on Sick Leave
The Department of Enterprise and Employment sought legal advice on this question following a number of enquiries to the Department. The advice received was to the effect that an employee who is on sick leave, remains an employee and would continue to have entitlement to Public Holidays as provided for in Section 4 of the Act.

An employee who receives on the public holiday a day off at a full day's pay, whether the day's pay be paid solely by the employer or, partly by the Department of Social Welfare and partly by the employer, would be regarded as having received his/her public holiday entitlement in accordance with the Act.

5.2 (a) **Annual Leave and Public Holidays — Part-Time Employees**
The Worker Protection (Regular Part-Time Employees) Act, 1991 provides for annual leave and public holiday entitlements for regular part-time employees as defined. A regular part-time employee is defined as one who:

(i) has been in the continuous service of the employer for not less than 13 weeks, and

(ii) is normally expected to work not less than 8 hours a week for that employer.

(b) *Amount of Leave*
Regular part-time employees are entitled to paid leave in respect of a leave year at a rate of six hours for every 100 hours worked *and to proportionally less when there are fewer hours worked.* A day of annual leave shall equate with the number of hours an employee would have worked if not on leave.

Where there are eight or more months of service, annual leave shall, subject to any registered employment agreement, employment regulation order or agreement with the employee's trade union, include an unbroken period equivalent to:

(i) the leave entitlement earned over the first eight months of service, or

(ii) two-thirds of the total leave entitlement earned in the first year of service, or subsequently in the appropriate leave year. The length of the unbroken period of annual leave is the length of time it would normally take to work the accrued time off e.g. an employee who has an accrued entitlement of 30 hours would have an entitlement to an unbroken period of two weeks if s/he worked an average of 15 hours per week.

It must be remembered that no holiday or public holiday benefit accrues to regular part-time employees in respect of the 13 weeks continuous service required to come within the scope of the Act.

Where a regular part-time employee, as defined, does not work the same number of hours each week or month, and from time to time works 120 hours per calendar month, such an employee would be entitled to 1¼ days (i.e. as per Holiday Employees Act, 1973) in respect of each of such months and their entitlement under the 1991 Act in respect of all other hours worked.

When employment comes to an end the employer must pay compensation for annual leve which is due to the part-time worker and this compensation should be proportionate to the normal weekly rate of pay.

(c) *Public Holidays*
Regular part-time employees are entitled to public holidays on the same basis as full-time employees. Section 4 (1) (a) of the Holidays (Employees) Act, 1973 provides that an employee "shall in respect of a public holiday be entitled to:

(i) a paid day off on that day, or

(ii) a paid day off within a month, or

(iii) an extra day's annual leave

(iv) an extra day's pay

as the employer may decide."

(d) *Payment for Public Holidays*
The question that arises under this heading is the definition of a day's pay for persons who work less than five days per week. It is suggested that a day's pay should equal one fifth of the person's normal weekly rate of remuneration, e.g. an employee who works three five hour days per week and receives £90 remuneration each week, the entitlement in respect of a public holiday therefore would be £90/5 i.e. £18.00. This approach would ensure that all employees receive proportionate entitlements in respect of public holidays.

Where the employment of a regular part-time employee finishes during the five week period ending before a public holiday and the part-time employee has worked during at least four of the five weeks, s/he will be entitled to an extra day's pay in respect of the public holiday.

5.3 Career Breaks
A Circular Letter L.A. (P) 7/86 (28-4-1986) issued on career breaks in the local authority service. It states:

"To facilitate the administration of arrangements for career breaks for servants, the following guidelines have been prepared for the guidance of local authorities.

1. (a) A career break shall consist of special leave without pay for a period of not less than one year and not more than three years. A local authority servant may apply to have a career break extended, provided the period of special leave without pay does not exceed three years in all.

(b) Applications from local authority servants who have been in continual employment for not less than two years, may, as a general rule, be granted. The needs of the work may require that some applications will have to be refused; but applications will be facilitated as far as possible.

(c) A career break may be allowed for most purposes, including further education, domestic responsibilities, starting a business or a stay abroad. A career break may not, however, be allowed for the purpose of taking up alternative employment within the state.

(d) Special leave without pay for a career break will not count as service for the purposes of superannuation, annual leave or increments.

(e) Servants returning to the local authority should be required to give notice at least one month in advance of their intention to return. Assignments will be made to fillable vacancies in the appropriate grade as and when they arise.

2. Vacancies and consequential vacancies arising when local authority employees take career breaks may be filled.

3. Local authorities should keep details on the employee's personal record of the duration and purpose of any career break granted.

4. The Department of Social Welfare should be notified of the RSI number of each person going on a career break so that the Department may consider the continued eligibility of those persons for limited social welfare benefits.''

5.4 Compassionate Leave

There are no regulations governing the grant of special leave to a non-officer on the death of a relative. However, the leave arrangements for officers are frequently used as a guideline.

Circular Letter L.A. 18/80 (30-9-1980) governs the granting of compassionate leave to officer grades.

1. *Special Leave with Pay*

1.1 Special leave with pay not exceeding three days may be granted (i) on the death of an immediate relative, or (ii) in exceptional circumstances on the death of a more distant relative where e.g. the officer has to take charge of funeral arrangements or has lived in the same house as the deceased. On the death of a spouse, the maximum number of days allowable may be increased to five. Extra days may be allowed where an immediate relative dies abroad and the officer has to go abroad to take care of the funeral arrangements.

In the context of paragraph 1.1., ''immediate relative'' means a father, mother, brother, sister, father-in-law, month-in-law or child; it also means a husband or wife where specific provision is not made in relation to spouses.''

Circular L.A. (P) 12/88 amended Circular L.A. (P) 18/80 to provide for a maximum allowance of five days special leave with pay on the death of an officer's child.

5.5 Facilities for Non Full-Time Representatives of Staff Associations/Unions

There is no consistent approach adopted by the local authorities concerning the granting of such facilities. Some local authorities have a formal policy, while in other authorities, each application is assessed on its merits and the requirements of the local authority.

As a general principle, local authorities grant time off with pay to all accredited union representatives to carry out their duties.

In relation to the granting of leave to attend conferences, committee meetings, training courses, etc., local authorities frequently grant time off with pay on condition that:

(i) no replacement/additional costs are incurred;

(ii) adequate advance notice is given;

(iii) the number of meetings attended would be reasonable in all the circumstances.

5.6 Jury Service Leave

The Juries Act, 1976 replaced under a single Act all statute law relating to jury service.

Every citizen, aged 18 years or upwards and under the age of 70 years, who is entered in the register of Dáil electors in a jury district shall be qualified and liable to serve as a juror unless disqualified, ineligible or excused.

Persons are disqualified if they have, within certain periods, been sentenced to, or served, specified kinds of imprisonment.

Certain categories are excluded from sitting on juries, including persons concerned with the administration of the law; members of the defence forces; persons incapable due to mental or physical infirmity.

Other categories of persons are excusable from jury service as of right, including members of the Dáil; certain civil servants; practicing doctors, dentists, nurses, veterinary surgeons, pharmaceutical chemsits; ministers of religion, members of religious communities; principal teachers, chief officers of local authorities and health boards, wholetime students; persons age 65 and under age 70.

A person may be excused from jury service if s/he has served on a jury or attended to serve on a jury during the previous three years or who has been excused for a period, which has not yet terminated.

A person who shows to the county registrar that there is good reason why s/he should be excused or, who claims to be excused due to illness, may be excused from jury service.

Any local authority employee seeking to be excused from jury service should obtain a certificate from the County/City Manager stating that it would be contrary to the public interest for him/her to serve as a juror because s/he performs essential and urgent services of public importance that cannot reasonably be performed by another or postponed.

A person shall be treated as employed or apprenticed during any period s/he is complying with a jury summons and must accordingly be paid by his/her employer for that period.

5.7 Leave to Attend Meetings of Public Bodies

There is no consistent approach adopted by the local authorities concerning the granting of leave to employees to attend meetings of public bodies of which they are elected or nominated members. In general, the overall position is one of facilitating public representatives in the performance of their main statutory function, but of tight control over additional leave for associated secondary business. An informal practice of allowing time off with full pay to facilitate attendance at all monthly meetings is the norm. However, this arrangement is with the agreement of the staff concerned that no additional costs will be incurred by the local authority, i.e. no additional overtime or replacement costs.

5.8 Maternity Leave and Related Issues

All female non-officer grades employed by local authorities are covered by both the Maternity Protection of Employees Act, 1981-1991 and the Department of Environment Circular L.A. (P) 15/81 (6-8-1981).

The provisions of the Department of the Environment Circular are as follows:

2. (a) Maternity Leave will consist of 14 consecutive weeks.

   (b) During maternity leave, a woman will be entitled to full pay, less any social welfare allowance payable on foot of her social insurance.

(c) A woman who is (or was) fully insured under the Social Welfare Acts and who fulfills certain contribution conditions is entitled to the maternity allowance from the Department of Social Welfare. As indicated at (b), any such allowance paid to her should be deducted from her pay. Information about this allowance is available from the Department of Social Welfare, Arus Mhic Dhiarmada, Dublin 1.

(d) Maternity leave should be made available to all female officer and non-officer grades, except those employed:

— on a permanent basis for less than 18 hours in each week, or

— under a contract of employment, or otherwise, for a fixed term of either less than 26 weeks, of which there are less than 26 weeks to run.

(e) A women who intends to avail of maternity leave should produce a medical certificate confirming pregnancy and stating the expected week of confinement. The certificate must be submitted at least 4 weeks before the date on which she intends to go on maternity leave. If a woman who intends to claim maternity allowance under the Social Welfare Acts fails to submit a medical certificate in time, she may lose entitlement to maternity allowance from the Department of Social Welfare.

(f) Paid maternity leave should count as service in all respects.

(g) Maternity leave should be granted, irrespective of an officer's sick leave record and should not reckon as sick leave.

(h) A minimum of maternity leave must be taken, beginning not later than 4 weeks before the end of expected week of confinement and ending not earlier than 4 weeks after the end of the expected week of confinement.

(i) Subject to the normal regulations, sick leave may be allowed during pregnancy.

(j) At the end of maternity leave, a woman may, on application, be allowed up to 4 weeks special leave without pay and/or any annual leave to which she is entitled at the time. Sick leave following maternity leave may be allowed within her normal entitlement where she is certified as unfit for work due to illness, whether or not the illness is connected with the confinement. Such sick leave should be allowed only where the County/City Manager is fully satisfied that the officer intends to return to her local authority position when fit to do so.

(k) Time off from duty may be allowed for attendance at ante-natal and post-natal clinics. Evidence of appointment or attendance at the clinic will be required.

(l) This Circular will apply to women who commenced maternity leave on or after 6th April, 1981.

The Maternity Protection of Employees Act 1981-1991

The Maternity Protection of Employees Act contains most of the above provisions. The Act also contains provisions relating to Disputes and Appeals about entitlement under the Act. Disputes concerning entitlement under the Act may be referred by either party in the dispute to a Rights Commissioner. However, regulations which have been made under the Act set out the procedure to be followed as regards the submission and hearing of disputes and appeals of Rights Commissioner's recommendations before the E.A.T.

The Maternity Protection of Employment Act applies to those employees who satisfy the criteria as set out in the Worker Protection (Regular Part-Time Employees) Act 1991.

During maternity leave, an employee is deemed to be in the employment of her employer. Her employment rights, e.g. annual leave, public holidays, increments, seniority — whether they are conferred on her by statute, under the terms of her contract or otherwise — are preserved and continue to build up as if she were not absent from work. In other words, maternity leave is counted as reckonable service. It must not be counted against any other leave to which an employee is entitled, such as annual leave or sick leave.

During additional maternity leave, while her employer is not obliged to pay her, an employee's employment relationship with her employer continues to exist. Additional maternity leave is not counted as reckonable service and this will affect those of her employment rights which are calculated on the basis of reckonable service. (The right to public holidays under the Holidays (Employees) Act, 1973 will not be affected, since entitlement does not depend on reckonable service, but on the existence of an employment relationship). As in the case of maternity leave, additional maternity leave must not be counted against any other leave, such as annual leave or sick leave, to which an employee is entitled. Any employment rights which an employee has built up before she takes up additional maternity leave are not lost; they are merely "frozen" until she returns to work.

The Act does not oblige an employee who has taken maternity leave (and additional maternity leave) to return to work afterwards. But if she does wish to return, the Act entitles her to do so. To exercise this right, the necessary prior written notification and confirmation procedures must have been carried out at every stage. Prior notice of an employee's intention to return to work must be given, in writing, not later than 4 weeks before the date on which she expects to return, to her employer (or to his successor where the employee is aware of a new owner having taken over during her absence). This notification can be done by the employee herself, or by someone else on her behalf. The employee herself must subsequently confirm this notification in writing between 4 and 2 weeks before she expects to return, to her employer (or his successor, where the employee is aware of a new owner having taken over during her absence).

An employee's return to work with her employer, or his successor, after maternity leave or additional maternity leave will be to the job she held immediately before her absence on maternity leave, or to its equivalent. (If she returns to an equivalent job, this must not entail a change in the nature of her work, in her grade or in the place in which she was employed). Her contract will be the same one, or an identical one where a new owner has taken over during her absence. Should an employee not have been doing her normal job just before her maternity leave, she will be entitled to resume her normal job, either immediately or as soon as it permitted by any protective legislation relevant to her particular case. It is only where it is not reasonably practicable for her employer to allow it that an employee will not return to work to her old job or its equivalent (assuming that she does not challenge his contention before a Rights Commissioner or the Employment Appeals Tribunal). In such circumstances, her employer, his successor or an associated employer must offer her a suitable alternative job, under a new contract, whose terms and conditions (including grade and job location) cannot be substantially less favourable to her than those of her previous contract.

Public Holidays and Maternity Leave

The Department of Enterprise and Employment confirms that, regardless of the provisions of domestic maternity schemes, the statutory entitlement to public holidays remains i.e. the employer should offer the employee, as he may decide and as circumstances permit, a paid day off within a month, or an extra day's annual leave or an extra day's pay.

Circular L.A. (P) 11/88 (14-7-1988) states "regarding the granting of maternity leave to female officers . . . periods of paid maternity leave may be extended by the number of public or bank holidays occurring during the period of maternity leave."

E.C. Directive on Safety and Health of Pregnant Women
The main provisions of this Directive which must be implemented at national level by mid-October 1994 are as follows:

The directive provides for a minimum of 14 consecutive weeks maternity leave distributed before and/or after confinement in accordance with national law or practice.

The level of pay during maternity leave will be no less than the level of the national disability allowance.

Pregnant women will be entitled to time off without loss of pay to attend pre-natal examinations which take place during working hours.

Employers must carry out a risk assessment, identifying potential hazards for pregnant women.

Where the assessment indicates that there is a risk to the safety and health of pregnant women, employers must take measures to ensure that the risk is avoided through its removal or to offer alternative work; if neither of these options is possible, the worker must be given time off from work with pay.

Dismissal of pregnant women from the commencement of pregnancy to the end of maternity leave is to be prohibited except for reasons not linked to their condition.

Adoptive Leave
There are no regulations governing the granting of adoptive leave to female non-officer grades. However, the adoptive leave arrangements for female officers are frequently used as a guideline.

Circular L.A. (P) 7/84 (15-2-1984) governs the granting of adoptive leave to female officer grades.

(a) Adoptive leave will be available to all women local authority officers, except those employed

— on a permanent basis for less than 18 hours each week, or

— under a contract of employment or otherwise, for a fixed term of either less than 26 weeks, or of which there are less than 26 weeks to run.

(b) Adoptive leave will consist of 10 consecutive weeks leave with pay. At the officer's request, the leave will be extended by up to 4 weeks leave without pay.

(c) Adoptive leave will commence as soon as the child is placed with the officer for adoption.

(d) A woman who intends to take adoptive leave should give adequate notice of her intention to take such leave.

(e) Paid adoptive leave will count as service in all respects.

5.9 Minimum Notice

The Minimum Notice and Terms of Employment Acts, 1973-1991 apply to employees who work at least eight hours per week for an employer.

The Act obliges employers:

(i) to give a minimum period of notice to employees when terminating their employment. The amount of notice is determined by the length of service which the employee has with the employer.

(ii) to provide employees with written details of the terms of their employment including the date of commencement, rate and frequency of payment, working hours and overtime arrangements, holiday arrangements, sick leave, pension schemes and notice entitlements.

The first schedule of the Act sets out the meaning of the phrase continuous service. It states that the service of an employee is deemed to be continuous unless that service is terminated by (i) the dismissal of the employee by the employer or, (ii) the employee voluntarily leaves his/her employment. Lock-outs, lay-offs or strikes are not regarded as breaking continuity of service. The computation of continuous service as set out in the first schedule is used by other pieces of employment legislation.

5.10 Payment of Wages Act, 1991

The Payment of Wages Act, 1991 came into force on 1st January, 1992 with the repeal of the Payment of Wages Act, 1979 and the Truck Acts. The Act covers all employees, both permanent and temporary, officers and non-officers. Under the Act, wages are defined as sums payable to the employee by the employer and include:

— any fee, bonus or commission, any holiday, sick or maternity pay; or any other emolument referable to the employment.

— any sum payable to the employee in lieu of notice.

The Act specifies seven legal means by which employers may pay their employees.

Employers must provide employees with a written statement, specifying the gross amount of wages payable and the nature of any deductions. In general, employers may only make a deduction where it is authorised by statute or under the contract of employment, or where the employee has given written consent. Where a check-off system is in operation, this must be referred to.

The Act also provides that where employees are paid by a non-cash method and due to industrial action in financial institutions, cash is not readily available to the employee, the employer must pay the employee by another non-cash means if the employee agrees and where the employee does not consent, the payment must be made in cash.

5.11 Pay Related Social Insurance

With very few exceptions, non-officer grades employed by local authorities aged 16 years and over must be covered by pay related social insurance (PRSI), regardless of the level of earnings. A PRSI contribution is a percentage of the employee's pay and is made up of an employer's share and an employee's share. PRSI contributions are worked out on the basis of the employee's gross pay, less superannuation contributions.

For most employees, PRSI contributions are collected by the Revenue Commissioners through the PAYE tax system.

The PRSI contribution is made up of several parts:

— Social Insurance, which helps pay for social insurance benefits. This is paid by both employer and employee.

— Occupational Injuries, which pays for benefits in the event of an accident at work. This is paid only by the employer.

— Redundancy and Employers' Insolvency, which is paid into a special fund in the Department of Enterprise and Employment. This is paid only by employers.

— Health Contribution, which goes to the Department of Health to help pay for the Health Services. It is normally included in the employee's share of PRSI. The employer pays it instead if the employee has a medical card.

— Youth Employment Levy, which is paid to the Department of Enterprise and Employment. It is also normally included in the employee's share of PRSI. If the employee has a medical card, the employer pays it instead.

PRSI is payable on gross earnings, less superannuation contributions up to a fixed limit in an income tax year. However, the Youth Employment Levy continues to be payable on all earnings above the limit.

Details of the current limit and rates of PRSI contributions are contained in the "Rates" booklet, available from the Department of Social Welfare.

5.12 Safety Health and Welfare

The primary purpose of the Safety, Health and Welfare at Work Act, 1989 is to ensure that employers provide a safe place of work for their employees. The Act sets out a wide range of obligations for employers regarding the safety and health of their employees. High on this list of duties is the requirement to ensure that standard operating procedures (SOPs) are in practice and that employees are provided with the appropriate personal protective equipment and clothing (PPE). However, assuming that SOPs and PPE are provided, the employer cannot be content at that. Training in the operation of the procedures and the use of protective equipment is essential. Once-off training will not suffice; a regular programme of instruction and training must be put in place, the frequency of the refresher courses being commensurate with the level of hazard and complexity of the task. Employees will also require regular supervision to ensure that they are working safely and operating the equipment in the intended manner.

Consultation and Safety Representatives

The Safety, Health and Welfare at Work Act, 1989, provides for consultation between employers and employees to help ensure co-operation in the prevention of accidents and ill health. To this end, joint safety committees have been established in many local authorities. The committee consists of members of management and staff and its main function is to consider the implementation of the safety statement and make recommendations to management concerning safety, health and welfare. Under the Act, employees are also entitled to select a safety representative, whose function it is to make representations to management on behalf of staff, concerning issues of safety, health and welfare. It is usual for the safety representative to be a member of the joint safety committee.

EC Directives and Irish Regulations

The European Commission's action programme for implementing the Social Charter includes a range of directives on occupational safety and health, six of these directives have already been enshrined in Irish legislation and many more can be expected over the next few years. The six directives are implemented into Irish law by Statutory Instrument No. 44 of 1993. The regulations include the new Framework directive which sets out the general safety requirements which must be implemented in the workplace and requires employers to assess the workplace and introduce appropriate safety measures. The five sister directives are concerned with the provision of a safe workplace, safe work equipment, appropriate personal protective equipment, safe manual handling of loads and safe operation of VDUs.

The regulations introduce more specific standards into the workplace and require employers to carry out an in-depth analysis of the workplace and its operations.

5.13 Sick Leave — Sick Pay

There is no single national sick pay scheme for non-officer grade employees in local authorities. However, a standard formula for all schemes was proposed by the County and City Manager's Association (circulated on 22nd October, 1970) and this provides the basis of the generality of schemes operated by local authorities.

The provisions of this formula are as follows:

(i) The scheme shall apply to all servants whose names are entered in the Register of Pensionable Servants under Part III of the Local Government (Superannuation) Act, 1956.

(ii) (a) Sick pay will not be allowed to servants for a greater period than 12 weeks in any period of 12 months, commencing on first day of illness.

(b) Servants may be required to submit certificates of fitness before resuming work.

(iii) The rate of pay will be:

(a) The servant's normal weekly rate of wages, less full amount of Social Welfare Benefit, including occupational injuries benefit.

(b) Payment will be made for the first three working days illness where the certificate of illness covers seven or more consecutive days, including Saturdays and Sundays and where there is a reasonable prospect of recovery. Payment cannot be made for the first three days of illness in the case of occupational injuries in accordance with the Social Welfare Acts.

(iv) When the employer is satisfied, notwithstanding the foregoing provisions, that very special circumstances exist in any particular application before him, then it shall be at the discretion of the employer to extend the application of the above Scheme and his discretion in such circumstances shall remain unrestricted as heretofore.

As a result of Statutory Instrument No. 66 of 1993 (10-3-1993), Disability Benefit (and Occupational Injury Benefit) is taxable, with effect from 6th April, 1993.

5.14 Superannuation

The Local Government (Superannuation) Act, 1956 applies to all established non-officer grades with 130 days service in a local financial year. The Superannuation Revision Scheme, 1977 provides for certain revisions to some of the provisions of the 1956 Act. The new scheme applies automatically to all persons becoming pensionable on or after 1st June, 1978, but persons who were pensionable between 27th May, 1977 and 31st May, 1978 (both dates inclusive) have been allowed to decide for themselves which scheme should apply to them.

Some of the main provisions of the Superannuation Scheme, 1977 are summarised below.

(i) *Amount of Pension*
The maximum pension a non-officer grade within the 1977 scheme will receive is one half of pensionable pay (inclusive of the single person's social welfare pension). Full pension is paid after 40 years service. Persons with less than 40 years service will receive 1/80 of pensionable pay multiplied by their number of years of service and any odd fraction of a year's service. The total amount due is also inclusive of the state social welfare pension.

(ii) *Amount of Lump Sum*
A maximum of one and half year's pensionable pay is paid after 40 years service. Three eightieths of full pensionable pay is paid for each year of service up to a maximum of 40 years.

(iii) *Preserved Benefits*
A servant with not less than five years service, who ceases to hold employment (otherwise than by being discharged for misconduct or unfitness) and is not employed in another position in which his service can be reckoned under the 1956 Act, may have his benefits preserved until he reaches age 60.

(iv) *Death Gratuity*
A minimum of one years pay is payable. No qualifying period of service is required.

(v) *Co-ordination of pension with Social Welfare Pensions where servant is fully insured under the Social Welfare Acts*
The pension of an employee will be based on his pensionable pay on his last service day reduced by twice the maximum personal rate of contributory old age pension (at the single person's rate).

(vi) *Contribution Rate*
For a non-officer who is fully insured under the Social Welfare Acts, the contribution rate is as follows:

(a) 1½% of full wages and emoluments (e.g. shift allowances, on-call allowances) plus

(b) 3½% of wages and emoluments reduced by twice the rate of single persons old age (contributory) pension.

Local Government Employees Contributory Widow and Orphan's Scheme
This scheme applies to all pensionable employees, male and female, in local authorities.

The rate of contribution is 1½% of full wages and emolments.

The above summary merely identifies some of the basic provisions of the Superannuation Revision Scheme, 1977 and the Contributory Widows and Orphans Scheme. Full details of the scheme are outlined in a booklet which is available from the Superannuation Section of the Department of the Environment.