

# HR & OD POLICIES

human resources and organisational development



## Contract Information Fixed Term Guidance

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## 1. INTRODUCTION

The use of fixed term contracts can provide Services with the necessary flexibility to bring in individuals who have a specific set of skills or to employ additional staff as required. It is important that such contracts are effectively managed and that appropriate procedures are followed when they are to end or be extended.

The guidance below provides a general overview of the key issues to consider when using fixed term contracts. Services should contact HR&OD if they require advice on a specific contract issue.

With regard to the use of fixed term contracts for teaching staff and associated professionals, please refer to Part 2: Appendix 2.8 of the [SNCT Handbook of Conditions of Service](#).

### Definition of Fixed Term

Under employment legislation, a fixed term employee is defined as 'a person with a contract of employment which is due to end when a specified date is reached, a specified event does or does not happen or a specified task has been completed'.

Examples of fixed term employees are:

- Additional staff taken on for, say, six months during a peak period or
- A specialist employee taken on for the duration of a particular project or
- An individual employed to provide cover during another employee's absence on, for example, maternity leave.

Agency workers, apprentices, those on training schemes under arrangements made by the government or funded in whole or part by the European Social Fund and students on work placements are exempt from the fixed term employment regulations.

## 2. RIGHTS OF FIXED TERM EMPLOYEES

Fixed term employees have the right not to be treated less favourably than permanent employees doing the same, or largely the same, job. This means that fixed term employees have the right, except where there is an objectively justifiable reason, to:

- The same pay and conditions
- The same or equivalent benefits package
- Access to an occupational pension scheme where this is available and
- Be informed about permanent employment opportunities in the organisation.

Under the Fixed Term Employees (Prevention of Less Favourable Treatment) (Amendment) Regulations 2008, employees who have been on a fixed term contract for four years or longer will usually be automatically classed as permanent if their contract is renewed or if they are re-engaged on a new fixed term contract.

The only exception is when employment on a further fixed term contract is objectively justified to achieve a legitimate business aim or when the period of four years has been lengthened under a collective or workplace agreement.

Not renewing a fixed term contract is treated as a dismissal. When a contract ceases a fixed term employee, employed before 6th April 2012, has statutory protection against unfair dismissal once they have accrued one year's continuous service. An individual employed on or after 6th April 2012 gains statutory protection against unfair dismissal once they have accrued two year's continuous service.

The employee is also likely to have full redundancy rights if they have been continuously employed for two years or more.

### 3. USING FIXED TERM CONTRACTS

The circumstances under which a fixed term contract is generally issued include:

1. For short term cover or replacement for a permanent employee who is, for instance, on maternity leave or pending a selection process for a permanent appointment. The contract will end when a known event occurs i.e. When the permanent employee returns.
2. For a fixed term, where there is limited funding or some other reason why the work will last for a certain period. These contracts should have a known end date or event and be less than 23 months where possible.
3. For a specific task, for example a research project or to organise a specific event. These contracts should also have a known end date or event and be less than 23 months where possible.

If it is determined that a fixed term contract is to be used, this should be specified when the Recruiting Manager logs a new vacancy request, as well as the anticipated end date, and the reason for the fixed term contract e.g. Maternity Cover.

The fact that the contract is for a fixed term must be discussed with the candidates as part of the interview and appointment process and must be narrated in the contract.

If the initial contract is for a period in excess of 2 years, or any subsequent renewal has extended the contract to a period of more than 2 years, then contingencies must be made to cover any potential redundancy/redeployment costs. If an external provider has provided funding for the post, it may be possible to share these costs but this would normally need to be agreed at the outset of the contract.

## 4. MANAGING FIXED TERM CONTRACTS

In order to ensure that fixed term contracts are appropriately managed, they should be regularly reviewed to determine whether there is a continuing need for the post and to ensure that the appropriate actions are taken to either extend or end it. The review should consider, for example, whether funding has been secured, whether the post has been appointed to on a permanent basis or whether the return date for an employee off sick is now known.

There are a wide range of reports available to identify fixed term contract expiry dates and the appropriate Service administrator should be contacted to access these reports. To ensure that no employee is adversely affected the Service must ensure that these reports are reviewed on a regular basis, and contracts extended or ceased as appropriate.

## 5. RENEWAL OF CONTRACT (EXTENSION)

If a fixed term contract is to be renewed, arrangements should be made to do this as early as possible. The need for renewal on a fixed term basis must be objectively justified at each renewal and fresh contractual documentation must be issued at each renewal. A contract can be renewed by either submitting the extension through the AskHR Portal; Employee Contract Change or updating the employee's contractual information via People Manager.

If a fixed term contract is to be renewed so that it lasts beyond the fourth anniversary of the initial fixed term contract and there is objective justification for the contract not to automatically become permanent the relevant Head of Service/line manager must meet the employee and provide written reason(s) why the contract remains fixed term.

The following are examples of situations where there may be objective justification for a contract remaining fixed term:

- The post is wholly or partly financed by external funding and there is no reasonable prospect of this being available to continue on a permanent basis.
- It is providing cover for a staff absence (e.g. Secondment, sabbatical, parental leave, long term sickness).

**Example - Extending Fixed Term Contract Beyond Fourth Anniversary**

An employee is appointed on a fixed term contract for a period of 2 years. Due to a continuing need for the post, the contract is extended on two subsequent occasions for 12 months and 6 months respectively. As a result the employee has worked continuously in the post for 3 years and 6 months, as illustrated below.

	Duration	Accrual of Service
Initial Contract	2 Years	2 years
First Extension	12 months	3 years
Second Extension	6 months	3 years 6 months

The Service now intends to extend the contract for a further 12 month period. This extension will mean that the employee will accrue more than four years continuous service. Consequently the contract will be regarded as permanent unless the Service can objectively justify the continuing use of a fixed term contract.

If the Service wishes to extend the fixed term contract for a further 12 month period and can justify on objective grounds why the contract is not to become permanent a meeting should be arranged between the employee and their line manager in order to explain the reasons for this decision. The employee should also be advised in writing of these reasons. Advice should be sought from HR&OD regarding contract extensions.

**6. NON-RENEWAL OF FIXED TERM CONTRACTS (TERMINATION)**

It is important that the termination of a fixed term contract is handled properly to avoid potential claims against the Council and to ensure the employee is treated fairly. The following points should be noted when a fixed term contract ceases:

- Termination or non-renewal of a fixed term contract is dismissal in law: there is an obligation to consult the employee and follow the dismissal procedure.
- Non-renewal of a contract because of pregnancy or other reasons connected with pregnancy is unlawful.
- Non-renewal of a contract for reasons of poor/unacceptable performance may amount to unfair dismissal. These issues must be dealt with as they arise under the appropriate Council policies.

The non-renewal of a fixed term contract is treated as dismissal in the same way as the termination of a permanent contract. The expiry of a fixed term contract is dismissal for the purposes of unfair dismissal law. The steps in the [Non Renewal Process](#), found in the Resource Pack, should therefore be taken:

In circumstances where a short term cover arrangement ceases e.g. Maternity or sickness absence cover, the fixed term employee providing this cover will be dismissed for Some Other Substantial Reason (SOSR).

Due to the time scales involved with the above steps, Services should ensure that the decision not to renew a fixed term contract is made as early as possible.

This process should not be used to dismiss fixed term employees for misconduct reasons. It should also not be used when ending a secondment unless the individual has been seconded from a temporary job and the end of the secondment coincides with the end of the temporary contract.

## 7. ENDING THE CONTRACT EARLY (TERMINATION)

Managers should err on the side of caution and set the duration of any fixed term contract for the shortest period possible. It is easier to renew a contract where a person is needed for a longer period than initially anticipated than to end it early.

It may be necessary to terminate a fixed term contract prior to its expiry, for example, if an individual has been brought in to cover maternity leave and the employee returns to work earlier than anticipated.

Where there is a requirement to end the contract early, the employee must be given the correct notice and formally dismissed using the process for non-renewal of a fixed term contract (see relevant section above).

It is good practice to advise the fixed term employee as soon as it becomes known that his or her contract will end early.

## 8. APPEALS PROCESS

A fixed term employee whose contract is (a) not be renewed or (b) ended early may submit an appeal against this decision to the relevant Head of Service. The appeal should be in writing and submitted within seven calendar days of receiving written confirmation of the decision (Please see [Sample Wording](#)).

The judgement reached by the Head of Service is final and there is no further right of appeal.

## 9. ANNUAL LEAVE AND PUBLIC HOLIDAYS

Leave entitlement for employees working under a fixed term contract should be administered in the same way as for permanent employees i.e. Based on contracted hours.

Where a Service needs to grant annual leave at the end of a fixed term contract or at any other specific time, this should be made clear to job applicants during the recruitment process as well as being specified in the contract of employment. For example: a fixed term contract where holidays must be taken at the end of the contract because the contract is specifically to cover sickness absence during a busy period. Any such provision must not breach the Working Time Regulations, which require that paid leave is taken and not made as a payment in lieu of holidays. In such circumstances, the termination date should reflect the fact that the individual remains an employee during the period of paid leave.

There will be a pro-rata entitlement to public holidays. Where employees working under a fixed term contract are required to work on a public holiday they will be entitled to appropriate enhancement provisions. In order to calculate a fixed term employee's annual leave and public holiday entitlement, Services should refer to the [Calculating Holiday Entitlement Guidance](#).

## 10. SICKNESS

Employees working under a fixed term contract have the same entitlement to occupational sick pay as equivalent permanent employees. In circumstances where a fixed term employee is off for an extended period of sick leave, the Service should refer to the Council's [Attendance Management Policy](#) for guidance.

There may be occasions where, due to the needs of the Service and the likely duration of the fixed term employee's illness, a fixed term contract can be terminated early. The length of the contract and the employee's service should be considered in

making such a decision. Advice should be sought from HR & OD prior to making any decision about the early termination of a fixed term contract.

# Contract Information

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### Fixed Term Guidance

<b>Revision Date</b>	<b>Previous Revision Date</b>	<b>Summary of Changes</b>
16-05-2013	25-01-2012	Amendment to dismissal rights paragraphs
23-06-2015	16-05-2013	Format update
31-05-19	23-06-2015	Amended to include AskHR Portal