

**SOLIHULL METROPOLITAN BOROUGH COUNCIL**

# **Fixed Term Contract Guidelines**

## **FIXED TERM CONTRACT GUIDELINES – APRIL 2016**

### **What do these guidelines cover?**

	<u>Page</u>
1. Introduction	3
2. Who is covered by the Fixed Term Regulations?	3
3. Who is not covered by the Fixed Term Regulations?	3
4. What do the Regulations provide for?	4
5. What is Objective Justification?	4
6. What is the process for putting a Fixed Term Contract in place?	4
7. When might a Fixed Term Contract be appropriate and how long should it run for?	6
8. What needs to be considered during the Fixed Term Contract	6
9. Fixed Term Contract and Maternity Entitlement	7
10. Process to be followed at the End of a Fixed Term Contract	8
11. Summary of Key Points for Managers	9

## 1. Introduction

The Fixed Term Employees (Prevention of Less Favourable Treatment) Regulations 2002 addresses the treatment of fixed-term employees. The Regulations put into place measures to prevent less equal treatment, due to the employee being on a fixed term employment contract.

The Regulations made changes to the way fixed term employees are treated in law and should be treated by their employers. They are based on the Equal Treatment Principle that:

***“A fixed-term employee has the right not to be treated by his employer less favourably than the employer treats a comparable permanent employee”.***

It is important that a fixed term contract is only used where the circumstances warrant this. The following guidance notes outline examples where these contracts should (and should not) be used and outline the procedures that should be followed in creating, managing and terminating a fixed term contract.

These guidelines highlight the main points of the Regulations but are not a full statement of them.

Where information or guidance is required on employing or managing someone on a fixed term contract, but is not covered in these guidelines, managers/ Head teachers should contact their HR Advisor.

## 2. Who is covered by the Regulations?

The regulations apply to any person with a contract of employment which is due to end when a specified date is reached, or a specified task has been completed. Examples of this are covered further in these guidelines.

## 3. Who is NOT covered by the Regulations?

- Agency employees
- Apprentices
- Employees on Government-sponsored or European-Community-institution-funded training, work experience or temporary work schemes; and students on work experience for up to one year as part of a higher education scheme, or those on funded training/ work experience.

#### 4. What do the Regulations provide for?

The following is a summary of the regulations. Some points are expanded upon further in this document.

- Those on a Fixed Term Contract (FTC) have the right not to be treated “less favourably” than a “comparable” permanent employee with regards to terms and conditions, or any other “detriment”. There are exceptions to this where the “less favourable treatment” or “detriment” can be “objectively justified” (see below for further information on this, noting that where this happens the reasons have to be provided in writing).
- Employers cannot ask a FTC employee to “waive” any rights (e.g. the right to claim unfair dismissal or redundancy) – these rights are explained further in this document.
- The termination of a FTC is classed as a dismissal in law. Therefore, the employer must be able to demonstrate a fair procedure and a fair reason for the dismissal.
- FTC employees have the right to equal access to job opportunities within the Local Authority. Solihull MBC goes beyond the requirements of the Regulations and those who are under notice to end a FTC will be placed on “First Consideration” to increase their awareness and opportunity to be re-deployed into another position, should they so wish. Further details are available in Section 10.

#### 5. What is Objective Justification?

- Objective justification could occur where there are legitimate business reasons for treating somebody on a FTC less favourably, compared to a permanent employee. Examples could include the provision of certain benefits (e.g. a laptop, post entry qualifications/training) where the cost out-weighs the benefit due to the short-term nature of the FTC.

#### 6. When might a Fixed Term Contract be appropriate and how long should it run for?

It is important that a FTC is set up for a genuine purpose and not, for example, to be used to assess whether someone can do a role. The probationary period is for this purpose. The following are examples of genuine purposes for a contract that has a fixed term. This is not an exhaustive list.

- Covering a position which is only being funded for a specific period of time (e.g. Child Specific Teaching Assistant for an academic year or where it is known that demand will reduce and as such funding will stop/reduce).

- To cover maternity, shared parental or adoption leave. Employees taking maternity, shared parental or adoption leave may have up to a year's entitlement but may choose to return earlier than this. The length of the FTC may in this instance vary and the termination is based upon the return date of the employee, where this is known.
- To cover planned or long term sickness absence (e.g. a pre-planned operation). A short FTC may be required with further extensions agreed when the length of the absence is clearer.
- To work on a specific task or project, e.g. develop a new system/process or co-ordinate an activity
- To cover an anticipated peak in workload, this happens on a seasonal or cyclical basis.
- To cover a secondment or "acting up" arrangement.
- To cover an absence which is either planned, or known about in advance (e.g. reservist duty or sabbatical )

The length of the contract needs to align to the purpose the Fixed Term Contract is being set up for.

- Managers and Head teachers should be aware that employees on a FTC, which takes their continuous service beyond 2 years, will accrue unfair dismissal employment rights.
- Where continuous service goes beyond 2 years and the reason for termination of employment is redundancy (regardless of whether the contract is a FTC or permanent), there is a right to a redundancy payment. There is no entitlement to a redundancy payment however if suitable alternative employment is offered or the employee accepts alternative employment BEFORE the original FTC expires, and the new employment commences within 4 weeks. **When budgeting for a FTC, the potential redundancy cost and how it will be funded should therefore be included.**

An employee is entitled to have their FTC reclassified as permanent if the contract is renewed, and this takes the continuous service on or beyond 4 years in total. This is unless the continued use of a FTC can be objectively justified (for example if the task or project on which the fixed-term employee is working is due to come to an end shortly after the four-year point).

- Continuity of service is preserved where there is a gap of less than a calendar week between contracts.

## 7. What is the process for putting a Fixed Term Contract in place?

- The recruiting manager/Head teacher must consider whether the nature of the post is truly fixed term and be clear on the purpose and reason for the contract being for a fixed term period before starting the approval and recruitment process. If unsure whether a FTC is appropriate, please contact HR.
- To set up and recruit to the post the relevant vacancy approval and establishment control processes apply (see [manager's guide to Payroll and HR Processes](#))
- The relevant recruitment policy should be applied and throughout the recruitment process, candidates must be informed of the purpose of the FTC, the reason for it being for a fixed term and upon what basis it would be terminated. Any terms, conditions or benefits not being offered as part of the FTC, but which are available to permanent employees, must be clearly explained.
- The recruiting manager/Head teacher must ensure that they take account of any previous Local Government (or related) service applicants might have. This may have an impact on how the FTC is managed or the employee's entitlements e.g. whether a probationary period is applicable or at what point a redundancy payment might be payable.
- Following the recruitment process, the recruiting manager/Head teacher will submit the relevant documentation to the Shared Services Team to request that an offer and contract are issued.  
*It must be made clear on the C288/ appointment form **the specific reason for the FTC (as opposed to a permanent contract etc.). This will be stated in the contract of employment/ appointment documentation and will form the justification for termination of the FTC at the appropriate time.***
- Where the FTC is to cover maternity leave, or to support a specific (named) child (e.g. a child with additional learning needs), that name should appear on the documentation (e.g. the person taking maternity leave, or the child who is to be supported by the FTC).

## 8. What needs to be considered during the Fixed Term Contract

- Managers and Head teachers should follow the Probation Policy for those employees who are employed on a FTC. Where the FTC is for less than six months, advice should be sought from HR concerning how to manage the probation period.
- Those employed on a FTC should be managed, appraised and motivated in the same way as their permanent colleagues.
- HR policies that exist for permanent staff will apply to those on a FTC.

In situations where an employee on a FTC is underperforming, the non renewal of the contract cannot be for this reason. Therefore even if an employee's fixed term contract is due to expire, it is important that the relevant policies are applied e.g. capability or disciplinary policy.

- Should there be a business related need to terminate the FTC earlier than the expiry date, HR Advisor advice should be sought and where applicable the management of change process followed.

**NB:** FTCs that have reached their agreed termination point do not count for the purpose of calculating whether or not employee-number thresholds have been reached for the collective redundancy consultation provisions to apply, however FTC that are terminated earlier than the expiry date do count for this purpose.

- During the FTC the anticipated termination date should be borne in mind and the employee reminded of this as the end of the work/contract approaches.  
(See below for more guidance on timescales to ensure contractual notice is issued in a timely way and pay in lieu of notice costs avoided).

## 9. Fixed Term Contract and Maternity Entitlement

- Where an employee on a FTC advises that they are pregnant, it is important that you contact your HR Advisor immediately so that they can provide you with the appropriate advice and support
- Employees on a FTC will qualify for the Solihull MBC Maternity Scheme in the same way as permanent employees. There will generally be no obligation to extend the employee's FTC beyond the point when the fixed term contract would normally come to an end e.g. funding has ceased, completion of the project or the substantive post holder returns from maternity leave

The non-renewal or termination of a FTC will be unlawful if the reason for the non-renewal or termination is related to the post holder's pregnancy, childbirth or maternity leave.

- Although statutory maternity leave will come to an end on the expiry of a FTC, the right to statutory maternity pay continues if the employee qualifies for it. Any remaining entitlement to SMP can be paid in a lump sum or by instalments via the payroll. (Please note there maybe National Insurance implications should the employee wish to be paid in a lump sum).

## 10. Process to be followed at the end of a Fixed Term Contract:

Where the underlying purpose of the FTC continues, the relevant vacancy approval and establishment control processes apply to extend the period of the contract (see Manager's guide to Payroll and HR Processes). As above the recruiting manager/Head teacher must consider whether the nature of the post continues to truly be fixed term and the continuing purpose and reason for the extension of contract must be clear. If unsure whether a FTC continues to be appropriate or you are unsure of the correct approval and establishment control process, please contact HR.

Where the underlying purpose of the FTC ceases to be applicable, the following should be put in place:

Although an employee is not entitled to the statutory minimum notice contained in S.86 of the Employment Rights Act 1996 if the end of the contract has already been agreed in advance and the FTC therefore expires on a specified date or on the completion of a specified task, it is still good practice to give at least the statutory minimum notice. In all cases the process should therefore be started before the required contractual notice period by the employer. This can mean starting the process up to 4 months before the expiry date or date the contract is to be ended if there is not an expiry date in the FTC (e.g. where the contract is to cover maternity leave). Clarification can be sought from HR on notice period requirements.

- Employees should be invited to a meeting on or before the date that their notice period starts. Clarification on this can be obtained from HR.
- A letter (see Toolkit) should be issued which ensures the employee is given appropriate notice before the expiry of the FTC, the reason for the meeting and their rights to representation explained.
- A script is available (see Toolkit) to ensure all the relevant points are covered and that statutory obligations are met.
- Following the meeting, a letter (see Toolkit) should be issued confirming the outcome of the meeting, any actions agreed and setting out the employee's right of appeal.
- If an appeal is received, a panel of Governors should be convened (in Schools) and within the Core Council, a manager more senior to the manager terminating the FTC should hear appeals.

In every instance an employee will be given the opportunity to be placed on the "First Consideration" list to increase awareness and opportunity to be re-deployed into another position should the employee wish. It is the responsibility of the line manager/Head teacher to notify their HR Advisor so this can be put in place. The individual will remain on the "First Consideration" list up to the final day of employment. The objective of this is to achieve redeployment into an alternative role wherever possible.



- In addition to being placed on the First Consideration list, HR will proactively seek information concerning possible future vacancies in an attempt to avoid the termination of a FTC.

*NB: 1. If a FTC runs for a period of 2 years, or somebody on a FTC has previous continuous Local Authority service which will reach 2 years (at the termination date) and the reason for the non renewal of the FTC is redundancy the employee will be entitled to a redundancy payment. This includes where an employee is recruited from a permanent post into a fixed term post. Your HR Advisor will advise on the additional steps needed in the above process to ensure this entitlement is met.*

## **11. SUMMARY OF KEY POINTS FOR MANAGERS:**

- Consult HR over whether a FTC is the most appropriate option for meeting your resourcing need and be aware of the implications by fully familiarising yourself with these guidance notes.
- Highlight the reason for the FTC on the documentation sent to HR so that the contract can be issued accurately
- Ensure that when the anticipated end date approaches you are aware of the process to be followed (particularly around time-scales and the inclusion of your employee on the First Consideration list)