

UEA Code of Practice on Fixed Term Employees

Compliance Guide for Heads of Schools, Divisional Heads and Line Managers

The purpose of the Fixed Term Employee Regulations is to protect employees engaged on fixed term contracts (i.e. those where the length of employment contract has a stated maximum period) from being treated less favourably than comparable employees on indefinite contracts. The impact of the Regulations is substantial for the Higher Education sector because of the high number of Fixed-Term Contract Research, hourly-paid and term-time staff within its employment.

This Code of Practice therefore reviews and amends UEA's existing arrangements to ensure we meet our legal obligations, while retaining sufficient flexibility to meet changing level of demand. Although this guidance and its related forms will undoubtedly place additional administrative responsibilities within the Schools and Divisions, it is necessary to ensure that UEA complies with current employment legislation.

Part I: Appointment of staff to fixed term contracts

The regulations do not prohibit use of fixed term contracts. However, the following key elements of the Fixed Term Employees Regulations demonstrate the reduced attraction of employing staff on fixed term contracts:

- An individual's employment can no longer be terminated at the end of a fixed term contract purely because that contract has expired, without following a specific process of consultation (as detailed in Part III of this document), exploration of redeployment options and, in the event that these do not produce continued employment, a redundancy process. If employment is terminated without following such a process, the dismissal is deemed to be unfair in accordance with employment legislation and the employee may have recourse to an employment tribunal on grounds of unfair dismissal.
- Under the Fixed Term Regulations, a fixed term contract that is renewed or extended will become permanent automatically after four continuous years employment, starting at zero from 10th July 2002, unless the fixed term can be justified for good business reasons. However, there is no restriction on a single fixed term contract. There has to be a series of two or more successive contracts lasting at least four years in total. For example there is no restriction on a five year fixed term, but if it were renewed after the initial five years then it would become indefinite unless there was an objective reason for continuing the fixed term.
- All employees who complete more than two years service, whether fixed term or indefinite, now qualify for a redundancy payment if their service is terminated on grounds of redundancy.
- No fixed term employee must receive less favourable treatment than a comparable indefinite employee and if they perceive this to be so, may request a written explanation of the differences and make a claim to an employment tribunal. This less favourable treatment could include being selected for dismissal purely on the

grounds that they are employed on, and subsequently dismissed from, a fixed term contract.

- As fixed term employees may now subsequently become indefinite employees, the impact of advertising a post on a fixed term, rather than an indefinite basis, should be considered in terms of the candidates it is likely to attract.
- It will not be deemed a fair reason to dismiss at the expiry of a fixed term contract on the grounds that an employee has not performed well. It is expected that performance will be managed throughout the contract. If performance is sufficient an issue that the employee should be dismissed, this would fall within another fair reason for dismissal – that of capability, but would need to be managed and dealt with as a separate issue to the expiry of a fixed term contract.

Therefore fixed-term appointments should only be made where a clear and stated business need can be demonstrated, and the reason for the fixed term contract should be documented on the employee's personal file. Examples of necessary and objective reasons or circumstances could include:

- The post requiring specialist expertise or recent experience not already available within the institution in the short term.
- Cover for an identified period of specific staff absence, such as maternity/paternity or adoption leave, long term sickness cover or secondment.
- Providing an existing post-holder with an identified short term career opportunity.
- Input from specialist practitioners.
- Where there is no reasonably foreseeable prospect of short term funding being renewed nor other external or internal funding being available or becoming available. Where the short-term funding has already been renewed, continuing use of the fixed term contract would need to be justified by objective reasons.
- Where student or business demand can be clearly demonstrated as particularly uncertain.

These examples are those provided by the Joint Negotiating committee for Higher Education Staff (JNCHES) Fixed-Term and Casual Employment Guidance for Higher Education Institutions, but this should not be taken as the definitive list.

In all cases, the relevant Human Resources Manager must be consulted prior to the advertisement of the proposed fixed term appointment.

Part II: During employment

Fixed term employees have the right not to be treated less favourably than indefinite employees. Therefore any fixed term employees must receive the same opportunities, such as appraisal, training and development, and promotion opportunities, as indefinite staff. They must also be informed of any indefinite vacancies that arise.

Managers are asked to ensure that fixed term employees are included in the appraisal cycle, and have access to any training and development to which they would otherwise be eligible as indefinite employees. If managers identify any areas in which indefinite staff have benefits that are not accessible to fixed term employees, they must consult their Human Resources Manager.

HRD will ensure that all fixed term employees are notified on how to access current vacancies within the university.

Part III: Termination of fixed term contracts

Any termination of employment brought about by the cessation of a fixed term contract may not be considered a fair dismissal in accordance with legislation unless the process documented below is followed.

In particular, the following action must be taken in each case where a Fixed Term contract is due to terminate.

1. No later than five months prior to expiry, explore whether the contract could be renewed, extended or made indefinite, and consider any possible alternatives such as redeployment. The outcome of these deliberations should be documented. HRD contact you and will provide a Checklist (Document 2), Meeting Template (Document 3) and Form FTC (Document 4) to trigger this process.
2. No later than four months prior to expiry, managers should meet with the employee to discuss alternative options, using the Meeting Template (Document 3) as the invitation letter and Checklist (Document 2) to structure the meeting.
 - (a) If the employee plans to leave at the end of their current fixed term contract they should be asked to confirm this in writing by signing Form FTC (Document 4). Managers should be aware that in such a case, employees *may* still be entitled to a redundancy payment if they have more than two years continuous service with the university on the date their contract expires, and no continued or suitable alternative employment could have been offered. Managers should inform their Human Resources Manager on Form FTC (Document 4).
 - (b) If the employee wishes to remain, and we ARE able to renew or extend the contract, managers should consider whether it is possible to make the contract indefinite, taking into account the points identified in Part I of this Compliance Guide. Managers must inform their Human Resources Manager of the outcome on Form FTC (Document 4).
 - If it is not possible to make the post indefinite, and the extension is on a fixed term basis, the manager must be able to justify the reason. The reason must be valid and must be documented on Form FTC (Document 4) and in the employee's file, and the appropriate Human Resources Manager must be consulted.
 - Note also that in cases where an extension is granted, it will again be necessary to repeat Steps 1 and 2 above prior to the end of the new termination date. Therefore if the extension is for less than four months and there is no reasonable likelihood of any further extension, the timing above would not allow for any delay in this process and so the steps under c) below should be followed.
 - (c) If the employee wishes to remain, and we are NOT able to extend or renew the contract for any reason, managers should inform their Human Resources Manager on Form FTC (Document 4).

- Where it is not possible to extend or renew the contract, the process summarised below and described in full in the University Redundancy Policy must be followed in order that any termination of employment brought about by the cessation of a fixed term contract is considered a fair dismissal in accordance with employment legislation:
- This must be followed in consultation with the relevant Human Resources Manager who will advise at each stage of the process.

Where a contract is for less than five months in duration, this process should commence immediately the post-holder begins employment and the resulting information must be provided to the Human Resources Manager immediately it is obtained, as above.

Employees must be informed that they have the right to be accompanied to these meetings.

Summary of management action to be taken:

For all fixed term appointments:

No later than five months in advance of the end date:

Determine whether the fixed term post can be extended or made indefinite, or whether it will need to end on the stated date. Consider any alternative employment options that may exist in the School/Division. Document these deliberations.

No later than four months in advance of the end date:

Invite the employee to a meeting, using the Meeting Template (Document 3), to discuss their intentions. Use the Checklist (Document 2) to structure the meeting. Are they planning to leave at the stated date or do they wish to remain in employment if possible?

Let the appropriate Human Resources Manager know the outcome of the meeting as soon as possible using Form FTC (Document 4).

The appropriate Human Resources colleague will then liaise with the Head of School/Director or line manager as appropriate to ensure that the steps taken prior to the expiry date of the contract are in keeping with employment legislation in relation to fixed term workers.

Record of consultation meeting

Name of Employee	[Pre filled by HR...]
School/Department	[Pre filled by HR...]
Details of fixed term contract (job title and/or grant details where applicable)	[Pre filled by HR...]
Current contract end date	[Pre filled by HR...]
Name of PI or line manager	[Pre filled by HR...]

Record of meeting (to be completed by PI or line manager)

Date of Meeting	
-----------------	--

Is the employee is intending to resign and leave at the end of the contract (or before)? *Please indicate: yes no

Please complete the next section if the employee wishes to remain employed beyond current expiry date. The employee was informed that as things currently stand, and subject to the outcome of consultation, the current position is that (please tick as appropriate):

Please select ONE option *see footnote		Information required
1. Funding has been secured for a further period (or indefinite contract)	√	New expiry date (if not indefinite): Has post release for UEA funded posts been approved, or has formal confirmation of external funding been received? <input type="checkbox"/> yes <input type="checkbox"/> no
2. Funding is being actively explored and it is anticipated that an extension is likely.		Please indicate date when outcome is likely to be known:
3. Unsure at this stage whether further funding will become available.		Please indicate a suitable review date:
4. The contract will not be renewed.		If not related to cessation of funding, please add reason for non-renewal in the box below.

Reason for non-renewal

--

Signed by PI or line managerDate

Signed (by employee).....Date

Checklist – end of fixed term contract meeting

1. Check the employee knows they can be accompanied to the meeting by a workplace colleague or recognised trades unions' representative, and that they are happy to proceed if unaccompanied.
2. Explain the purpose of the meeting is to discuss the forthcoming end of the fixed term contract, which means that they are potentially at risk of redundancy.
3. Confirm the end date of the existing fixed term contract and establish whether or not the researcher is intending to resign and leave at the end of the contract. If they are intending to resign, make sure they sign the form as this will be used in lieu of a resignation letter. Explain that HR will follow up in writing to formalise their resignation.

If not;

4. Confirm the position regarding the likelihood of renewal at this stage, i.e.
 - **Option 1 funding has been secured for a further period (or a move to an indefinite contract, where appropriate)** – please explain that HR will write formally to confirm details of the extension. N.b. ensure that you make it clear that funding may be subject to formal confirmation (if post release or AN2/3 not yet secured).
 - **Option 2 & 3 - funding is being actively explored and it is anticipated that an extension is likely or unsure at this stage whether further funding will become available** - please explain that further discussions will take place (with REN for externally funded research posts) and once approved, HR will write to the employee to confirm.

Make the employee aware that if funding is not secured by the end date then, in the absence of an alternative post or other funding source, their contract may end on the grounds of redundancy. It is important that the employee is made aware of this risk even if an extension is anticipated, so that we can maximise opportunities for redeployment, if necessary, and the employee is aware of the risk.

Confirm that HR will follow up in writing and will provide details of the University's Redeployment Register, information on vacancies across the University, and opportunities for further consultation.

- **Option 4 - the contract will not be renewed** – explain that in the absence of an alternative post or other funding source, their contract will end on the grounds of redundancy. HR will write formally to the employee to confirm and will provide details of the University's Redeployment Register, information on vacancies across the University, and opportunities for further consultation.

5. Ask if they have any questions, comments or suggestions and provide a full opportunity for the employee to state their case should they wish to do so.
6. If asked, explain that any entitlement to a redundancy payment will be based on two or more years' continuous service and that HR can provide further details if required.
7. Ask the employee if there is anything else they would like to ask or bring to the University's attention at this stage.
8. Complete the FTC Form, ticking the relevant box and recording details of any further discussion, and ensure that it is signed by both you and the employee.
9. Return the FTC Form to HR by the date given.

The full process is contained in the UEA Code of Practice on Fixed Term Employees

<https://www.uea.ac.uk/documents/2506781/2684168/Fixed+Term+Employees+-+Code+of+Practice.pdf/dc26cdda-cd9f-4097-ac95-52483c78e3af>