

GUIDANCE ON USE OF FIXED-TERM CONTRACTS

1. Introduction

This guidance has been developed to implement the requirements of current employment legislation relating to the equality of treatment of fixed-term employees.

The definition of a fixed-term contract for the purpose of this guidance is one that:

- has a pre-determined end-date or an indicative end-date
- will end when a specified task has been completed (i.e. a contract for a task)
- will end when a specified event to which the contract is linked does or does not happen

The definition typically includes contracts that would normally be referred to as fixed-term or as temporary.

The Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002 lay down a statutory limit of four years on the use of successive fixed-term contracts unless the use of successive fixed-term contracts can be objectively justified. A fixed-term contract that is renewed or extended will automatically be deemed to be permanent after four continuous years' employment, starting at zero from 10 July 2002, unless the fixed-term can be justified for good business reasons. However, there is no restriction on an initial fixed-term contract: there has to be a series of two or more successive contracts lasting at least four years in total.

In light of the introduction of these regulations, the University of Essex will only use fixed-term contracts where there is an objective and justifiable reason for their use. It will not be possible to eliminate completely the use of fixed-term contracts, although their use will be kept to a minimum, consistent with legislation and with this guidance. Where it is deemed appropriate and necessary to employ staff on fixed-term contracts, they will, in accordance with legislation, be engaged on terms and conditions of employment and have access to services on terms that are no less favourable to those enjoyed by comparable permanent employees unless any difference in treatment can be objectively justified. Issues of performance or quality will not be used to establish whether or not a fixed term contract should be used. Performance and quality issues will be dealt with in accordance with the University's procedures on such matters.

2. Objective Reasons for the Use of Fixed-Term Contracts

There will be occasions where the initial or continued use of fixed-term contracts is justified. The University is committed to providing the reason for any appointment to or renewal of a fixed-term contract at the time of that appointment or renewal.

The use of a fixed-term contract may be justified by reference to one or more of the following reasons:

1. Where there is no reasonably foreseeable prospect of short-term funding being renewed nor other external or internal funding being available or becoming available
2. To cover for specific absences: e.g. sickness, secondment, maternity leave, adoptive leave, unpaid leave of absence.
3. Where there is a demonstrable need in the short-term for defined, specialist input from practitioners in a particular area, or where there is evidence that the post requires specialist expertise or recent experience not already available within the University.
4. Where the contract is clearly defined as being for training or career development for a specific, limited period (e.g. graduate trainee programme).
5. Where the contract is to provide a secondment.

6. Where the student or other business demand can be clearly demonstrated as being subject to particularly uncertain fluctuating demand.
7. Re-engagement following retirement/severance to complete activities, to transfer knowledge, or to provide specialist input.
8. Where a post has been created to satisfy a short-term need. e.g. seasonal conference work

Any objective justification referred to in this agreement will be reviewed in light of developing case law and legal thinking.

3. Requesting a Fixed-Term Appointment

In accordance with the requirements of the regulations it is essential that the use of every fixed-term contract is strictly managed within an agreed framework.

Where a request is made to advertise or to issue a fixed-term contract, the individual making the request must provide an objective and justifiable reason (making reference to Section [2] above), in advance, for the request. Details of any relevant circumstances should also be included to demonstrate that the use of a fixed-term contract is objectively justifiable within the spirit of this guidance and the requirements of current employment legislation. The reason and any supporting information will be held on file.

The Employee Relations Adviser should be contacted for advice on the use of fixed-term contracts, or if there is any doubt about the validity of using a fixed-term appointment.

4. Review at the End of a Fixed-Term Contract

Six months prior to the end of a fixed-term contract, it is the responsibility of the Head of Department/Head of Section, in conjunction with the grant-holder where relevant, to review the fixed term contract. This should involve exploring whether the contract can be extended or made permanent, and if not, whether alternative work can be identified. If there is no alternative work available within the Department, the assistance of the Employee Relations Adviser should be sought to ensure that redeployment opportunities elsewhere within the University are fully explored. It is recognised that the timescale of six months prior to the end of the contract may not be possible in cases where the appointment is for a short period or has been extended for a short period, but the action should still be taken as soon as possible within the time available. The expiration and non renewal of a fixed term contract is a dismissal and needs to be treated as such following a fair, agreed process.

The Head of Department/Section should consult their Employee Relations Adviser if they wish to seek advice on the process of review at the end of a fixed-term contract, or on the options available to them at the end of a member of staff's fixed-term contract.

5. Individual Requests for Review

Where a decision is taken to use a fixed-term contract, the reason for the use of a fixed-term contract will be confirmed in writing to the individual at the time of their appointment.

Post-holders on fixed-term contracts subsequently have the right to ask for the objectively justified reasons for the decision to be confirmed, in accordance with current legislation.

If an individual wishes to appeal against the decision, they should refer to the University of Essex grievance procedure, available from Human Resources.