

**University of Stirling  
December 2006**

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Fixed Term Employees  
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# FIXED TERM EMPLOYEES

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## Part 1: Fixed Term Contracts – The Regulations

The Fixed Term Employees (Prevention of Less Favourable Treatment) Regulations came into effect on 1 October 2002. The Regulations cover the employment of staff on contracts with a defined end date. In law the definition of a Fixed Term Contract is:

***A contract of employment which is made for a specific term which is fixed in advance, or which terminates automatically on the completion of a particular task or upon the occurrence or non-occurrence of any other specific event.***

### The Regulations

The Regulations make it unlawful to treat an individual on a fixed term contract [less favourably](#)<sup>1</sup> unless it can be objectively justified. This means that the terms and conditions of employees on fixed term contracts must be comparable to staff whose employment is not fixed term unless the employer can justify a variation in terms and conditions.

Furthermore, from 10 July 2006, if a fixed term employee, who has four or more years' continuous service, has their contract renewed the **new** contract will make the employee's status permanent **unless** employment on a fixed term basis can be [objectively justified](#).

Therefore, a member of staff who is offered a second or subsequent fixed term contract after 10 July 2006, who has acquired 4 or more years' continuous service, is entitled to request a written statement if their fixed term contract is extended explaining the [objective justification](#) for the continuation of their fixed term status. The employer must provide this within 21 days. The employee has the right to challenge the [objective justification](#).

### Less Favourable Treatment

Fixed-term employees have the right not to be treated less favourably than comparable<sup>2</sup> permanent employees because they are fixed-term, unless the different treatment can be objectively justified.

What is an objective justification?

- It is to achieve a legitimate objective e.g. a genuine business objective
- It is necessary to achieve that objective
- It is an appropriate way to achieve that objective

An employer can objectively justify different conditions for fixed-term employees:

- By showing that there is an objective justification for not giving the fixed-term employee a particular benefit or for giving him/her the benefit on less good terms e.g. sometimes, the cost to the employer of offering a particular benefit to an employee may be disproportionate when compared to the benefit the employee would receive, and this may objectively justify different treatment. An example of this may be where a fixed-term employee is on a contract of three months and a comparator has a company car. The employer may decide not to offer the car if the cost of doing so is high and the need of the business for the employee to travel can be met in some other way.

<sup>1</sup> This includes pay and benefits (including pension), opportunities for training, development and promotion.

<sup>2</sup> See [FAQ](#) section for examples and explanation

- By showing that the value of the fixed-term employee's total package of terms and conditions is at least equal to the value of the comparable permanent employee's total package of terms and conditions.

### **Informing fixed term employees of permanent vacancies**

Employers must give fixed-term employees the same opportunity to secure permanent vacancies in their establishment as permanent employees. At the University of Stirling all current [vacancies](#) are posted on HR Services website. Departments should endeavour to display vacancies on notice boards particularly in areas where staff may not have access to a pc. All fixed term workers will receive a copy of the current vacancy list from HR Services when they are notified that their fixed term contract is to come to an end.

### **Non Renewal of a Fixed Term Contract**

There may be times when the use of a fixed term contract is the most appropriate way to employ someone. For example, if the person is being employed to undertake a specific task or if funding can only be guaranteed in the short term. However, it should be noted that the non renewal of a fixed term contract is automatically a dismissal in law. Fixed term employees with more than 12 months continuous service have the right not to be unfairly dismissed.

Furthermore, with effect from 1 October 2002 a fixed term contract cannot contain a redundancy waiver. Therefore, an employee whose fixed term contract extends beyond two years is entitled to receive a [redundancy payment](#). This is applicable only to contracts commenced or renewed after 1 October 2002. If a fixed-term employee signed a waiver clause before 1 October 2002, the waiver still applies and the employee is not entitled to a statutory redundancy payment if their contract expires and is not renewed. However, if the contract was renewed or extended after 1 October 2002, any waiver clause would not be effective. If the fixed-term contract then expired and the fixed-term employee had at least two years' continuous service by this point, they would be entitled to a statutory redundancy payment, if the reason for non-renewal was redundancy. Heads of Department or Grant Holders must ensure that externally funded posts include sufficient funding for redundancy payments. Also Heads of Department must consider provision for redundancy payments in the budgeting process in departments.

Furthermore, an employee on a fixed term contract cannot be automatically selected for redundancy because of their fixed term status unless it can be [objectively justified](#) e.g. if a fixed-term employee has been brought in specifically to complete a particular task or to cover for a peak in demand e.g. seasonal work, it is likely that an employer could objectively justify selecting them for redundancy at the end of their contract.

It should be noted that although there is no limit on the duration of a first fixed term contract it is illegal to terminate a fixed term contract solely to prevent the four year rule from applying.

## Part 2: Policy on Employing Staff on Fixed Term Contracts

### Policy Aim

The University of Stirling is committed to treating all employees fairly and equitably. This includes ensuring that employees have equal access to the development and promotional opportunities employment at the University can bring. It is the intention of the University, where possible, to employ staff on permanent contracts (sometimes referred to as open ended or indefinite contracts). However, the nature of the University sector, its work and the funding that helps pay for the University's research and staffing costs does not always make this possible.

This policy aims to set out the University's position on the use of fixed term contracts and to ensure that such contracts are only used in circumstances that can be [objectively justified](#). The purpose of this is to ensure that the University not only adheres to its legal responsibilities but also the responsibilities it has towards all employees irrespective of their contract type.

The University of Stirling is committed to ensuring that staff engaged on fixed term contracts enjoy similar terms and conditions of employment as their colleagues on permanent contracts. As well as financial remuneration, this also includes access to training, development and promotion opportunities.

The University aims to reduce the number of fixed term contracts where possible. In light of this there will be strict criteria on the renewal of fixed term contracts and regular reviews carried out to ensure that all fixed term appointments can be [objectively justified](#). This will ensure that the use of fixed term contracts is transparent, necessary and [objectively justified](#).

### Review of Fixed Term Contracts

HR Services, in conjunction with Head of Departments, will undertake an ongoing review of fixed term contracts of 4 years or more in duration to comply with the Fixed Term Employees (Prevention of Less Favourable Treatment) Regulations. HR Services will provide Heads of Department with a monthly report detailing employees with four or more years continuous service whose contract of employment are due to expire in the next three months. The review will establish the following:

- Duration of appointment
- Reason/s for fixed term status
- Number of times contract has been renewed (if applicable)
- Anticipated staffing changes including retirements, promotions
- Changes in funding and income

Heads of Department will be required to complete a 4 Year Fixed Term Review Form for each employee named in the report. If the employment is to continue beyond the fixed term expiry date the Head of Department must demonstrate the reason/s for the continuation of fixed term status. [Appendix C](#) provides guidance on the renewal of fixed term contracts and should be used in conjunction with [Appendix B](#) (4 Year Fixed Term Review Form). The Head of Department should consult with the employee during this process.

Prior to a recommendation being made by the department consideration should be given to:

- The work carried out by the employee to date and whether the work undertaken will be required in the future
- An estimate of the anticipated duration of the work which the employee is currently undertaking

- An evaluation of the funding and the likelihood of obtaining additional funding
- The Research Assessment Exercise (RAE)
- An assessment of the risk of continuing employment without securing external funding
- The risk/loss of non renewal (e.g. loss of skills/expertise)
- The financial support which can be identified through the University or from the departmental generation of resources.

HR Services will review the recommendation of the department before a final decision is made. In the event that there is a difference in opinion between the department and HR Services a Deputy Principal or delegated authority will assess the case and the reasons preventing permanent status being granted and a decision will be made accordingly.

If the employee's contract is to be renewed on a fixed term basis or if a permanent contract is to be offered the following procedure should be followed:

- The employee should be invited to a meeting with their HoD or delegated authority<sup>3</sup> to discuss the extension of their contract on a fixed term basis or the transfer of their employment to a permanent contract using the standard review letter ([Appendix A](#)). This meeting is voluntary and the employee does not have to attend. However, HR Services should be informed by the HoD or delegated authority if the employee declines the invitation to attend a meeting so that a file note can be made confirming that the employee did not wish to meet.
- The employee has the right to be accompanied to the meeting by a trade union representative or work colleague.
- At the meeting the employee should be informed that their contract is to be extended on a fixed term basis or transferred to permanent. If the contract is to be extended on a fixed term basis the reasons for this must be explained. The reason/s must be [objectively justified](#). This should be done as soon as the department knows the situation regarding the contract.
- During the meeting the employee should be given the opportunity to discuss any issues/queries they have with the decision to extend their fixed term contract/offer a permanent contract.
- There is no right to [appeal](#) against a decision to offer an extension on a fixed term basis unless the employee is offered a second or subsequent fixed term contract and has acquired 4 or more years' continuous service<sup>4</sup>. In such cases the employee is entitled to request a written statement if their fixed term contract is extended explaining the [objective justification](#) for the continuation of their fixed term status. A request for a written statement should be made in writing to HR Services. The employer must provide this within 21 days. The employee has the right to challenge the [objective justification](#) by using the [appeal](#) procedure detailed below.
- A "fixed term extension" form or an "employee details change" form (whichever is applicable) should be completed and forwarded to HR Services if employment is to continue (following the necessary approval)

In the event that the employee's contract is not being renewed the [procedure](#) detailed below should be used. It should be noted that it is illegal to terminate a fixed term contract solely to prevent the four year rule from applying.

<p><b>The Expiry of a Fixed Term Contract (in excess of 12 months)</b></p>
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[Managers](#)<sup>5</sup> have a responsibility to ensure that when a fixed term contract comes to an end the process is managed efficiently and with due care. Departments should agree locally at what level the responsibility lies for managing this process. HR Services will provide a monthly report to departments highlighting the names of employee's whose fixed term

<sup>3</sup> HoDs should delegate this to the most appropriate person e.g. Head of Section, Principal Investigator, Line Manager etc

<sup>4</sup> This is effective from July 2006

<sup>5</sup> This includes HODs, Principal Investigators, Head of Section etc

contracts are due to expire within the next 6 months (for Academic or ALC positions) or 2 months (for Manual, Technical and Secretarial/Clerical positions).

On receipt of the report, the department should, if this has not already been done, establish if the continuation of the post is required and whether further funding is available. A formal consultation process with the employee must commence as soon as possible and should be equivalent to the notice period applicable to the staff group<sup>6</sup>. The purpose of the consultation process is to keep the employee fully informed and to manage their expectations. The consultation should include:

- Written confirmation that the employee's fixed term contract is due to expire and that their contract and employment status is being reviewed
- Discussions with the employee regarding their employment
- Advise the employee on where they can view other vacancies within the University
- Update on the situation regarding funding, or continued requirement to cover long term absence etc
- Invite input from the employee regarding any suggestions they may have to secure an extension to their contract (e.g. redeployment suggestions, funding suggestions)

Dialogue should continue with the employee throughout the consultation period and should be documented. This is extremely important as the documentation may be used in any subsequent appeal. Once the department has finalised the situation regarding the extension/expiry of the employee's contract a formal meeting should be arranged, at which the employee may be accompanied by a work colleague or Trade Union Official, to confirm the final position.

### Meeting

In the event that the post is no longer required the following procedure should be followed:

- The employee should be invited to a meeting to discuss the termination of their employment using the standard letter ([Appendix A](#)). This meeting is voluntary and the employee does not have to attend. However, HR Services should be informed if the employee declines the invitation to meet to enable a file note to be made<sup>7</sup>.
- The employee has the right to be accompanied to the meeting by a trade union representative or work colleague.
- At the meeting the employee should be informed that their contract is due to end and the reasons why no extension is possible. The reason must be [objectively justified](#). This should be done as soon as the department knows the contract is to end. The ongoing dialogue between the department and the employee during the consultation process should ensure that the outcome is not unexpected. It is fundamental that the expectations of fixed term employees are managed at all times.
- During the meeting the employee should be given the opportunity to discuss the end of their fixed term contract and any concerns/issues they have with the decision not to extend their employment.
- The Manager should discuss redeployment opportunities with the employee and the employee should be made aware of the University's redeployment policy.
- Details of all vacancies within the University are available on HR Services webpage [www.personnel.stir.ac.uk/recruitment/recruitment\\_opportunities.html](http://www.personnel.stir.ac.uk/recruitment/recruitment_opportunities.html). A copy of all vacancies should be posted on departmental notice boards for staff members who do not have access to a computer.
- The employee should be notified of their right to [appeal](#) against the non renewal of their contract

<sup>6</sup> This is not intended to imply that employees on fixed term contracts should receive notice as the end date of their employment is clearly defined in their contract of employment or letter of extension and therefore no notice is due.

<sup>7</sup> This is to ensure that there is a record that procedure has been adhered to

- A “fixed term expiry” form should be completed stating the reasons for non-renewal. The reason for non renewal must be from the approved [objective justification](#) list.
- The “fixed term expiry” form should then be forwarded to HR Services. This should be undertaken expeditiously to enable adequate time for any subsequent appeal to take place and to ensure payroll records are up to date.
- HR Services will issue a letter confirming the end of contract, the [objective justification](#) for non renewal and the employee’s right to appeal. A copy of the University’s vacancy list will be included with the letter. If the employee has in excess of 2 years service they will also be informed of their [redundancy](#) entitlement (if any).
- HR Services will forward a copy of the termination letter to the campus unions

## Right of Appeal

Employees, with more than 12 months continuous service, have the right to appeal against a decision not to renew their fixed term contract. Furthermore, an employee who is offered a second or subsequent fixed term contract and has acquired 4 or more years’ continuous service<sup>8</sup> may challenge the objective justification for the continuation of their fixed term status. The right to appeal should be notified to the employee during the consultation meeting and again in writing when the end of their contract is confirmed by HR Services.

### Appeal Procedure

- Appeals should be made in writing, to the Director of HR Services, within 10 working days of the date of the letter from HR Services.
- The grounds of the appeal should be clearly stated and any supporting evidence included
- The Director of HR Services or delegated authority will consider the grounds of the appeal. This process will include:
  - Determining the reason/s for the non renewal or continuation of the fixed term contract
  - Determining the process that was followed prior to a decision being reached regarding the non renewal or continuation of the fixed term contract
- The outcome of the appeal and the reasons for the decision will be confirmed in writing within 10 working days of the appeal being received by HR Services<sup>9</sup>
- There is no further right of appeal

## Statutory Redundancy Payment

Employees with two or more years’ continuous service have the right to a statutory [redundancy payment](#). The amount of a statutory redundancy payment depends on the employee’s age, length of service, and the amount of a week’s pay. The maximum payment is up to 30 weeks’ pay (or statutory limit). Service before the age of 18 does not count towards this and reckonable service is limited to 20 years.

The statutory payments are:

- Service between the age of 18-21 – half a week’s pay (or statutory limit) for each complete year of service
- Service between 22 and 40 (inclusive) – one week’s pay (or statutory limit) for each complete year of service
- Service over the age of 41 – one and a half week’s pay (or statutory limit) for each complete year of service

A week’s pay is considered to be the amount an employee is entitled to under his/her terms of the contract at the calculation date or the statutory limit on redundancy pay whichever is the

<sup>8</sup> This is effective from July 2006

<sup>9</sup> Should circumstances prevent a decision being made within this time frame an explanation for the delay will be notified to the employee with an anticipated date a response can be expected

lesser amount. Statutory redundancy pay is currently capped at £290<sup>10</sup> per week. The calculation date is the date on which the university gives the employee notice. If the pay varies the amount of the weeks pay is averaged over the 12 weeks prior to the calculation date. There is a statutory limit on the amount of a week's pay that may be reckoned. This figure is reviewed annually. Statutory redundancy payments are likely to be amended following the implementation of Age Discrimination in 2006.

### Objective Justification

Heads of Department must justify the reasons for making an appointment on a fixed term basis or renewing a contract on a fixed term basis. The University of Stirling considers the following to be objective justification for fixed term contracts:

- Where the post relates to a specific activity or event or project which is expected to end at an identifiable point or date (includes seasonal work)
- Where cover is required for sickness or maternity leave
- Where cover is required for a secondment or leave of absence
- A Fellowship
- Externally funded appointment where funding is finite or there is no reasonably foreseeable prospect of the funding being renewed or reasonable prospect of alternative funding (either internal or external) being available
- Where the fixed term appointment requires input from a specialist
- Where student numbers or business demand can be clearly demonstrated to be uncertain
- Where the contract is to provide a career development or training opportunity of limited duration
- Where the appointee cannot commit to a permanent contract due to work permit or visa restrictions
- There are contractual restrictions to funding e.g. European funding
- Where staff have been reengaged post-retirement

Prior to a fixed term appointment being advertised or a fixed term contract being issued the Head of Department must demonstrate the [objective justification](#) for the fixed term status. The [objective justification](#) must be clearly stated on all paperwork relating to the post.

### Transfer to a Permanent Contract

Since the implementation of the Fixed Term Employees Regulations there is little difference between long term fixed term employees and those on permanent contracts (terms and conditions, promotion opportunities etc). Furthermore, the same principles exist when a fixed term contract (in excess of 12 months) is not renewed and a substantive post is made redundant. Both require to be [objectively justified](#) and a consultation process undertaken. Therefore, consideration should be given to the purpose and advantage of retaining fixed term status and whether transferring employees on fixed term contracts to permanent contracts, other than in exceptional circumstances, should be implemented. The University of Stirling is committed to reducing the number of fixed term contracts and to this end employees on fixed term contracts with six years' continuous service or more, effective from July 2006, will be strongly considered to be transferred to a permanent contract, unless exceptional circumstances exist to prohibit this. The Director of HR Services will review cases made by departments regarding exceptional circumstances in conjunction with HoDs to assess the reasons preventing permanent status being granted and a decision will be made accordingly.

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<sup>10</sup> This figure is reviewed on 1<sup>st</sup> February each year

## **Fixed Term Extensions**

The University will continuously monitor the appropriateness of fixed term extensions. An extension of employment will only be approved on a fixed term basis if there is an objective justification for doing so otherwise the employment status will become permanent. HoD will be required to objectively justify the continuation of fixed term status when an application to extend an appointment is made. The reason for the fixed term extension must be from the approved list of objective justifications unless the HoD can provide alternative justification based on objective and demonstrable criteria. In this event, the Director of HR Services or delegated authority will assess the case and the reasons preventing permanent status being granted and a decision will be made accordingly.

## **Redeployment**

The University will pursue redeployment opportunities for staff whose fixed term contracts are due to end. Please refer the University's redeployment policy for details.

## **Performance Management**

Performance issues should not be managed through the continuation of fixed term contracts. The University's probation schemes or performance management should be used to address issues relating to performance. Furthermore, Fixed Term contracts should not be used as a form of probation. If an employee has a performance issue please contact the relevant HR Officer for your [area](#) to discuss ways of managing this situation.

## **Managing Fixed Term Employees**

It is important that employees on fixed term contracts are given the same opportunities in terms of training, development and promotion. It is also important that Managers discuss career aspirations with employees on fixed term contracts and manage expectations both in terms of these aspirations but also future career prospects within the University.

## **Bridging Contracts**

When a fixed term contract is being reviewed and the funding element is not certain, or in the process of being secured, departments should be aware of the risk of extending employment through a bridging contract funded through departmental funding or other resources. From July 2006, if an employee has four years or more service, the bridging contract (irrespective of how short term) will count as a second or subsequent contract. This will result in the department having to [objectively justify](#) any future non renewal of contract or fixed term status.

## **Contract Research Staff**

The University strives to adhere to SHEFC's recommendations to reduce, as far as possible, the use of fixed term contracts. Furthermore, it is recognised that developing and retaining the research expertise of our staff can help the University achieve its strategic aims. It is however recognised that fixed term grants will continue to influence the funding of posts and that it is not always possible to appoint on permanent contracts. The University will however monitor all fixed term appointments and work towards increasing the number of long term Contract Research Staff (CRS) being transferred to permanent contracts.

The University recognises the important contribution that CRS play within the University and aims to ensure that the principles of the Concordat<sup>11</sup> are applied.

### **Career Development**

- On appointment CRS will be given:
  - a. A clear job description, to be produced by the PI/HoD
  - b. Confirmation of their supervisor/line manager
  - c. A statement of their terms and conditions of employment
- CRS, with a PhD or equivalent experience, will be appointed to Research Grade 1A or above<sup>12</sup>
- The expectation for CRS appointed to Research Grade 1B is that progression to Research Grade 1A will take place following the attainment of a PhD or equivalent experience
- Progression beyond Research Grade 1A will take into account relevant qualifications and experience
- CRS will have access to promotion opportunities

### **Career Management**

- CRS will participate in the University's internal staff induction programme
- CRS will participate in the University's Career Development and Appraisal Scheme
- CRS will have access to training and development opportunities

### **Conditions of Employment**

- CRS will receive the same conditions of service as University staff on permanent contracts in regards to:
  - a. Holidays
  - b. Sick leave
  - c. Maternity and paternity leave
  - d. Incremental progression<sup>13</sup>
  - e. Pensions
  - f. Opportunities to apply for discretionary pay
  - g. Participation on committees which relate to the governance of the University

### **Fixed Term Teaching Assistants**

A separate review is being carried out on all staff employed on a Fixed Term basis as Teaching Assistants within the University.

### **Advertising Fixed Term Posts**

Prior to advertising a fixed term post, the department must provide an [objective justification](#) for the post being fixed term. The reasons and supporting evidence for fixed term status (e.g. copy of grant letter) will be kept on file and may be used as evidence should justification be required for the non renewal of a contract or continuation of fixed term status.

<sup>11</sup> The Concordat is an agreement regarding the employment and development of Contract Research Staff

<sup>12</sup> Or equivalent new grade – under Framework negotiation

<sup>13</sup> It is normal practice for increments to be applied on the anniversary of appointment or renewal of contract.

Appendix A

**Personal**

Name  
Address

Date

Dear ....

As you will be aware your current fixed term contract ends on (date). Following a period of consultation to discuss the options available, I am writing to invite you to a meeting with myself on (date) at (time). The location of the meeting will be (location). The purpose of the meeting is to discuss a proposal to terminate your employment on the above date **or** extend your fixed term contract **or** offer you a permanent contract.

**(If termination is being proposed the following statement should be included)**

The reason/s for the proposed termination is/are \* (reason must come from the approved list of [objective justifications](#))

You are welcome to invite a work colleague or trade union representative to accompany you to the meeting if you choose.

Please let me know by (date) if you are able to attend this meeting or if you wish to decline. If you are unable to make the suggested time/date please let me know so a mutually convenient time can be arranged.

Yours sincerely

Head of Department (or delegated authority)

Cc HR Services

**4 Fixed Term Review Form**

<b>Name of Employee</b>	
<b>Position</b>	
<b>Grade</b>	
<b>Department</b>	
<b>Continuous service date</b>	
<b>Date fixed term contract ends</b>	
<b>Number of successive contracts</b>	
<b>Head of Department</b>	
<p>The above named employee has been employed on a fixed term contract for a period of four years or more. Within the next 12 months their contract is due to expire. We are legally required to review whether the continuation of their employment can be objectively justified on a fixed term basis. In order to determine if there are <a href="#">objective reasons</a> for this person's employment status remaining fixed term please complete the questionnaire below and return to HR Services by <b>(Date)</b>. The <a href="#">guidelines</a> for fixed term review should be used when completing this form.</p>	
<b>Section A</b>	
<b>FUNDING</b>	
<p>1. Is the purpose for fixed term status due to funding? <b>Yes/No</b> If no, go to Section B</p>	
<p>2. If yes, explain nature of funding including number and size of grants, restrictions placed by funding body (e.g. fixed term contract only)</p>	
<p>3. How likely is the funding to continue beyond its current date?</p>	

4. If the funding for the post ceases, how likely is it that other funding sources will be secured (both internal and external funding)?

**REQUIREMENT FOR POST**

5. How likely is it that the department will require this type of work to be done or skills/expertise beyond the funding period?

**REDEPLOYMENT**

6. Are there any planned staffing changes e.g. retirements, promotions etc **Yes/No**

7. If yes, is redeployment or staff restructuring possible to enable the fixed term employee's contract to be made permanent **Yes/No**

8. If no, please state reasons

9. How redeployable within the research area/department/faculty is this member of staff?

10. In your opinion, could this employee's skills and experience be redeployed elsewhere in the University? **Yes/No**  
If yes, please state where

11. How likely is it that a suitable alternative post will become available?

**CONTRIBUTION**

12. How important is the contribution of the post holder to the academic, financial and business objectives of the department?

**RISK**

13. What are the risks to the department/university if the post holder is transferred to a permanent contract?

14. What are the consequences to the department/university if the post holder's contract is not transferred to a permanent contract (e.g. resignation, RAE)?

***Go to Section C***

**Section B**

15. For fixed term posts not restricted by funding please state reasons for fixed term status (i.e. cover for period of absence, special project role etc)

16. Will contract cease at end date? Yes/No  
If no, state reasons and type of contract to be offered

17. If fixed term explain reasons for continuing fixed term status and confirm end date of contract?

18. Do you foresee contract being extended beyond this date? **Yes/No**

**Section C**

Any other comments/information

Head of Department signature:

Date:

Print name:

HR Services comments

To be transferred to permanent contract **Yes/No**

HR Services signature:

Date:

Print name:

[Appendix C](#)

To evaluate whether an objective justification exists for the continuation of fixed term status the following guidance should be used when completing the Fixed Term review form.

<b>Criteria</b>	<b>Strong justification for retaining FT status</b>	<b>Weak justification for retaining FT status</b>
FUNDING	External funding that has restrictions regarding contract status (e.g. European funding)	External funding that is medium to long term with no restrictions on contractual status
	External funding that is short term and has a known end date	External funding that is medium to long term
	External funding from a single source	External funding is from several sources and renewal of funding is likely or the loss of some funding can be sustained.
	The post holder has no ability to generate additional funding	The post holder is able to generate additional income and is RAE returnable and is successful in securing research grants
	Self funded posts with unpredictable income.	Self funded posts where the post holder has a proven history of income generation
	Posts where student numbers are unpredictable or commercial activities are unpredictable	Posts with an proven track record against established criteria (e.g. student numbers)
SPECIFIC PURPOSE	Posts that are for a clearly defined purpose or project that is time limited	Posts that were initially devised for a specific purpose but where post holder has become integral to the objective of project/event's success
	Requirement for post has diminished e.g. decline in student numbers	Requirement for post continues and is integral to department's academic or business plans
LEGAL RESTRICTIONS	The position cannot be made permanent due to work permit or visa restrictions	n/a
CAREER DEVELOPMENT	Post is designed to provide a career development opportunity	n/a
TEMPORARY COVER	Post is to cover period of absence (e.g. sabbatical, maternity, sick leave)	n/a
CONTRIBUTION	The postholder's contribution is limited in regards to the department's academic/business objectives including RAE, research grants, knowledge/skills	

SPECIALIST PRACTITIONER	The post requires specialist skills/knowledge for a limited period of time (e.g. to set up or devise a system or course)	The department requires the continued specialist knowledge/skills to meet its academic/business objectives or maintain the project/service/system etc
REDEPLOYMENT PROSPECTS	The postholder does not have redeployable skills	The postholder has transferable skills
	There is little prospect of a suitable post becoming available	Opportunities exist or are likely to become available within the university to enable redeployment to take place

## FAQs on Fixed Term Contracts and Employees

### **Who is covered by the Fixed Term Regulations?**

Employees on contracts that last for a specified period of time or will end when a specified task has been completed or a specified event does or does not happen. Examples include employees covering for maternity leave and peaks in demand and employees on task contracts such as setting up a database.

The Regulations define 'permanent' employees as those who are not on fixed-term contracts. These employees may more generally be referred to as employees on contracts for an indefinite or indeterminate term. The term permanent will be used in this guidance, since it is used in the Regulations.

### **Who can Fixed-term employees compare their conditions to?**

Employees who are not on fixed-term contracts and are employed by the same employer to do the same or broadly similar work. Where relevant the comparator should have similar skills and qualifications to the fixed-term employee. If there is no comparator in the establishment, a comparison can be made with a similar permanent employee working for the same employer in a different establishment

### **How is Less favourable treatment assessed:**

- The terms and conditions of employment of the fixed-term employee should not be less favourable than the equivalent treatment given to their comparator
- The fixed-term employee's overall package of conditions should not be less favourable.

In both instances any less favourable treatment would need to be justified on objective grounds.

### **Is there a limit on the duration of a fixed term contract?**

There is no limit on the duration of a first fixed term contract. However, since 10 July 2002, if an employee has four or more years continuous service a renewal or new contract will be permanent unless an objective justification can be made.

### **What is continuous service?**

Continuous service is the date the employee began working for the University not necessarily the date the employee commenced their current post. Furthermore, an employee may be continuously employed if there are gaps between successive contracts if a pattern can be defined or there is an expectation of renewal based on past occurrences. Short gaps in contracts in an attempt to avoid permanency are unlikely to be considered a break in service by a Tribunal.

### **What additional rights do fixed term employees now have?**

Since October 2002, employees on fixed term contracts have the right not to be unfairly dismissed. This means that there must be an objective justification for the non renewal of a contract in excess of twelve months. Failure to provide such a justification may result in an unfair dismissal claim being brought.

Fixed term employees also have the right not to be treated less favourably. This includes promotion and training opportunities, access to an occupational pension schemes, redundancy rights and terms and conditions.

### **Do fixed term employees have redundancy rights?**

Fixed term employees will no longer be asked to waive their rights to redundancy payments. This applies to contracts issued after 1 October 2002 or any contract renewed after this date.

Fixed term employees with two or more years' continuous service have the right to a [redundancy payment](#) on the expiry of their contract. Fixed term employees should not be selected for redundancy on the basis of their fixed term status.

### **What are statutory redundancy payments?**

Employees with two or more years' continuous service have the right to a statutory [redundancy payment](#). The amount of a statutory redundancy payment depends on the employee's age, length of service, and the amount of a week's pay. The maximum payment is up to 30 weeks' pay (or statutory limit). Service before the age of 18 does not count towards this and reckonable service is limited to 20 years.

The statutory payments are:

- Service between the age of 18-21 – half a week's pay for each complete year of service
- Service between 22 and 40 (inclusive) – one week's pay for each complete year of service
- Service over the age of 41 – one and a half week's pay for each complete year of service

A week's pay is considered to be the amount an employee is entitled to under his/her terms of the contract at the calculation date or the statutory limit on redundancy pay whichever is the lesser amount. Statutory redundancy pay is currently capped at £290<sup>14</sup> per week. The calculation date is the date on which the university gives the employee notice. If the pay varies the amount of the weeks pay is averaged over the 12 weeks prior to the calculation date. There is a statutory limit on the amount of a week's pay that may be reckoned. This figure is reviewed annually.

### **Do the regulations apply to all fixed term employees?**

The regulations do not apply to the following categories of staff:

- agency workers
- apprentices
- skillseekers
- Princes Trust volunteers
- students on work experience placements of 1 year or less as part of their course
- employees on government/EC funded training, work experience or temporary work schemes designed to help the employee find work

### **Objective justification**

What is an objective justification?

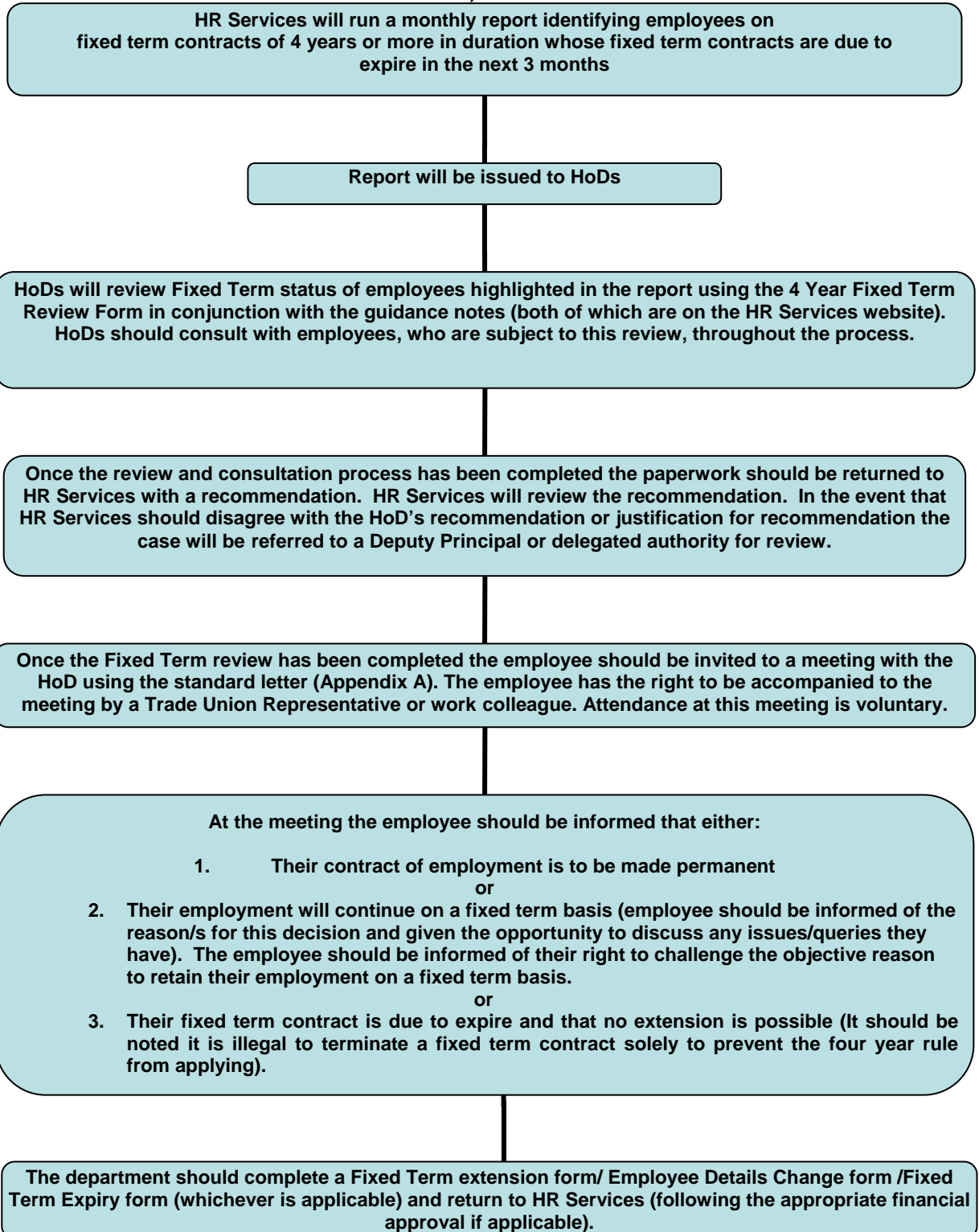
- Where the post relates to a specific activity or event which is expected to end at an identifiable point or date (includes seasonal work)
- Where cover is required for sickness or maternity leave
- Where cover is required for a secondment or leave of absence
- A Fellowship
- Externally funded appointment where funding is finite or there is no reasonably foreseeable prospect of the funding being renewed or reasonable prospect of alternative funding (either internal or external) being available
- Where the fixed term appointment requires input from a specialist
- Where student numbers or business demand can be clearly demonstrated to be uncertain
- Where the contract is to provide a career development or training opportunity of limited duration
- Where the appointee cannot commit to an permanent contract due to work permit or visa restrictions
- There are contractual restrictions to funding e.g. European funding
- Where staff have been reengaged post-retirement

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<sup>14</sup> The amount is reviewed on 1<sup>st</sup> February each year.

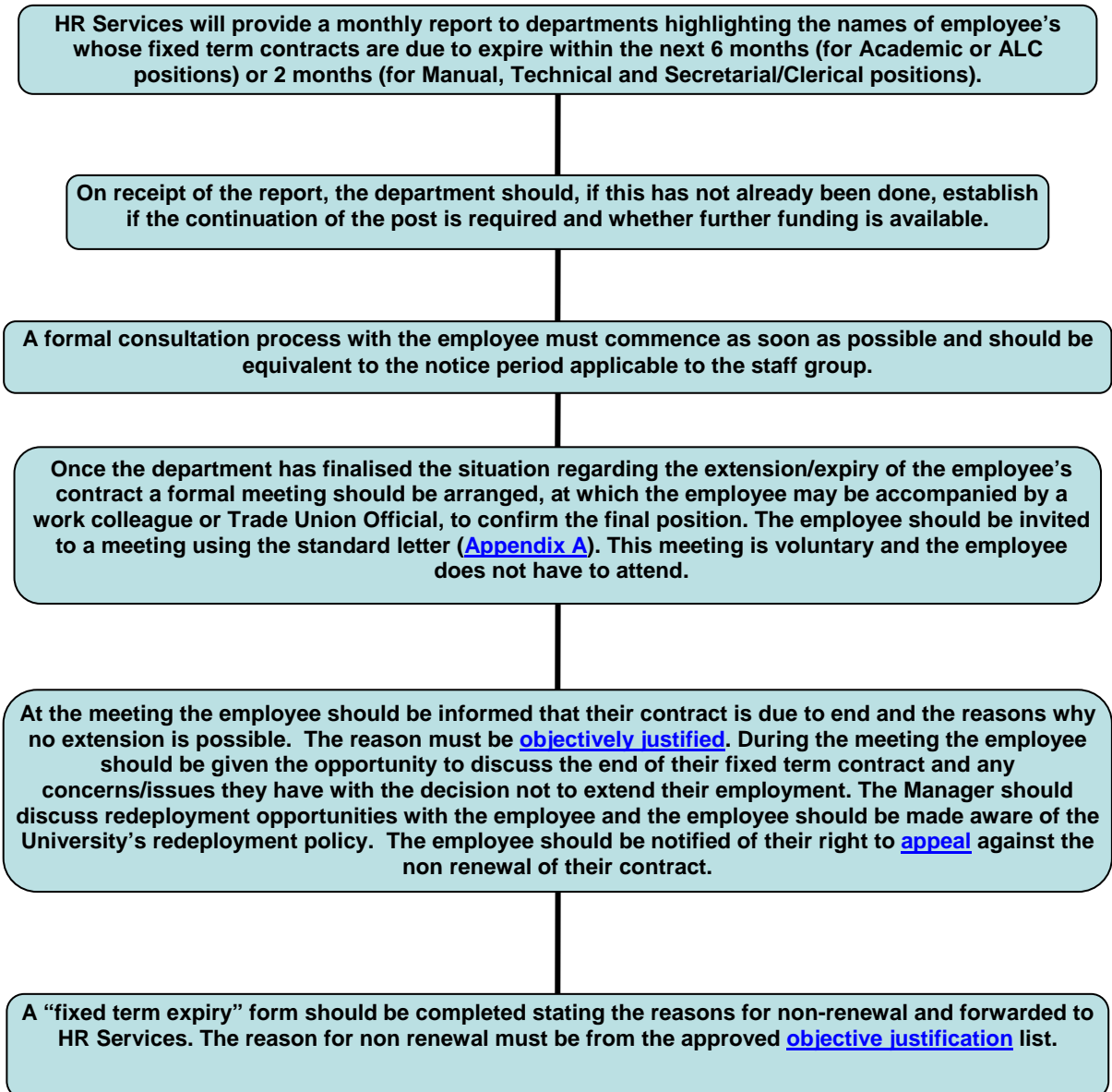
## Review of Fixed Term Contracts

(of 4 years or more in duration)



Flow Chart

The End of a Fixed Term Contract (in excess of 12 months)



Appendix G

Flow Chart  
Appeal Process

