

Managing and Reviewing Fixed Term Contracts (FTC) – Managers Guidance

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Purpose of Guidance	An employee engaged on a fixed-term contract of employment has various legal rights and protections governed by the Fixed-Term Employees (Prevention of Less Favourable Treatment) Regulations 2002. The University has also committed to reduce the use of Fixed Term Contracts wherever possible. The purpose of this guidance is to detail how fixed term contracts must be managed at the University of Edinburgh in order to comply with The Fixed Term Employees (Prevention of Less Favourable Treatment) Regulations and also the University's commitment to reduce the use of fixed term contracts. This guidance will also cover your responsibilities when employing members of staff on a fixed term basis.
Definition of Contract Types	The type of contract offered to an individual should best reflect the regularity of the work they carry out. Whilst not an exhaustive list the most common types of contracts offered to employees or workers in the University are summarised in the guidance document on contract types. The three contract types relevant for this guidance are as follows: Fixed term contract (FTC): is a contract where there is a finite requirement and/or funding for the post or there is another justifiable business reason for the fixed term basis. Open-ended contract (OE): is a contract where there is an indefinite requirement and funding for the post to be carried out as far as can be reasonably predicted. Open-ended contract with a contract review date (OECRD): is a contract that is underpinned by restricted funding or the work is anticipated to end by a specific date, referred to as the contract review date. The funding and requirement for employment may continue beyond the review date but this cannot be confirmed from the outset.

General Recruitment Guidance	When you are carrying out any recruitment exercise it is important that you give full consideration to the type of contract the individual will be engaged on. You should refer to Fixed Term Contracts Reasons.doc which outlines the valid, justifiable and acceptable reasons for the use of fixed-term contracts at the University. If you are recruiting to a fixed-term appointment which has initial funding or approval for a period exceeding 3 years and it is anticipated that the ongoing need for the post will be confirmed then you should consider advertising on an open-ended basis in the advert, making it clear during the recruitment process that the post has initial funding or approval for the specified period but is not guaranteed to continue. Recruiting in this way will attract a larger pool of candidates which may be particularly advantageous for longer term projects or activities which you anticipate will continue over the longer term.
Fixed Term Employees (Prevention of Less Favourable Treatment) Regulations	The Fixed Term Employees (Prevention of Less Favourable Treatment) Regulations provide protection to employees engaged on a fixed term basis. These regulations ensure that fixed term employees are not treated less favourably than open-ended employees in terms of pay, conditions of service and pensions. The regulations also restrict the repeated use of fixed term contracts.
Complying with the Regulations	In order to comply with the fixed term employee regulations, the University must ensure that a regular review of all employees on fixed term contracts is carried out. The review of fixed term contracts will involve identifying employees who have been on a series of fixed term contracts for 4 years or more. Identifying an employee whose contractual status must be reviewed should be carried out as follows: When recruiting an existing employee to a new fixed term appointment When considering an extension to an existing FTC When a transfer request is made through People and Money Where the employee is identified as eligible for transfer through regular HR reporting

Determining whether to transfer to Open-ended or Open-ended with Contract Review Date or Retain on a Fixed Term Contract	There are key requirements, set out in the regulations, to support applying an objective justification to keep employees on a fixed term contract. These are as follows: Demonstrate a legitimate business rationale: provide clear reasons related to operational needs such as project-specific roles or temporary replacements. Please refer to the use of fixed contracts document found here. This document details the valid, justifiable and acceptable reasons for the use of fixed-term contracts at the University. Show proportionality and necessity: provide that the FTC is the most appropriate and least discriminatory method to achieve the business objective. Ensure consistency and fairness: apply the criteria for FTCs uniformly across the organisation to avoid discrimination. Maintain evidence and documentation: keep detailed records of the decision-making process, including business rationale and consultations. As a general rule if further work is only available for a confirmed period of less than 12 months then it may be appropriate to extend on a fixed-term basis, even where the employee has continuous service of 4 years or more. For extensions of 12 months or longer then an open-ended or open-ended with review date contract should be issued.
Carrying Out a Review at Recruitment Stage	When carrying out any recruitment it is important to identify if a candidate has been continuously employed by the University on a fixed term contract for 4 years or more, with at least one extension or transfer. If you intend to offer the post to an internal candidate who is on an FTC with more than 4 years' service, you should contact the HR Helpline for support and the team will be able to provide you with the relevant information regarding the individuals employment history. If the candidate has been employed for 4 years or more, with at least one extension or transfer then you must consider whether the individual should be offered an open-ended contract with review date, open-ended contract or exceptionally a fixed term contract. The key requirements outlined in the above section should be referred to. Advice can be sought from your local HR Partner when considering and making a decision.

Carrying out a Review at Extension to Fixed Term Contract Request Stage	A review of employment status is also triggered by the monthly redundancy report which is sent to School / Department Administrators and line managers highlighting employees who are at risk of redundancy. When considering an extension to a fixed term contract for any employee who has been employed on a fixed term contract for 4 years or more, with at least one extension or transfer to another post a review must take place and consideration given to whether a move to Open Ended (OE) or Open Ended with Contract Review Date(CRD) can be confirmed. The key requirements outlined in the above section should be referred to. Advice can be sought from your local HR Partner. The outcome of a review at this stage will be to either extend the current fixed term contract (as there is a justifiable reason to do so), move to an open-ended contract with contract review date, move to open-ended contract or end current contract at fixed term expiry date. Only in exceptional circumstances should the employee be retained on a FTC.
Monthly Fixed Term Contract Review List	A Fixed Term Contract review list will be available to all Director of Professional Services, or equivalent, and School/Department contacts on the 20th of each month. An email will be sent each month to advise the list has been refreshed and ready for review. HR Partners will also have access. The review list will detail staff who have been employed on a fixed term contract for 4 years or more, with at least one extension or transfer to another post. All listed staff should be reviewed and consideration given to whether a move to Open Ended (OE) or Open Ended with Contract Review Date(CRD) can be confirmed. Any status changes made within the review list are not automatically updated in People and Money. Should any extension to a FTC, move to open-ended or open-ended with contract review date be required you must process via the Change Assignment process in People and Money. If staff are converted to open-ended or leave their FTC post they will be removed from the list and archived.

Carrying out a Review when appointing an employee who is already on a FTC	When considering employing a current University employee to your team consider whether a move to Open Ended (OE) or “Open Ended with Contract Review Date (CRD) can be confirmed. If the appointment has not been you must still make the same consideration and follow the same steps as outlined above. An example of a situation where advertising will not take place but a transfer contract is required is when someone is named on a research grant. In order to identify if candidates have been employed on FTCs for over four years with one extension or a transfer you can contact the HR Helpline for support and the team will be able to provide you with the relevant information regarding the individuals employment history. Advice can be sought from your local HR Partner when considering and making a decision.
Receiving and responding to a formal written Request Under the Regulations Direct from the Employee	Staff have certain legal rights under The Fixed Term Employees (Prevention of Less Favourable Treatment) Regulations, including the right to request a written statement confirming the nature of their contract. You or your local HR Partner may receive such a written request direct from the employee A written response must be provided within 21 days of receiving a written request from an employee. Advice must be sought from your local HR Partner in order to consider and respond to the written request.
Communicating with the Employee who will Move to Open Ended or Open Ended Contract with review date	If an employee can be moved from a fixed term contract to Open ended or Open-ended contract with review date HR will issue a new contract letter. You must request a contract change in the usual way through People and Money.
Additional Support & Resources	Further support, information and resources are: A to Z of HR Policies Human Resources

Be aware of Data protection and Subject Access Request requirements	Information relating to the management of FTCs should be held in line with the University's Retention Schedule. Remember that an employee may make a subject access request to see data about their employment which will include any emails between you and HR and anyone else you correspond with about the individual or the management of a FTC. Therefore, you must be prepared that any of your correspondence may be seen by the worker.
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