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**Fixed-term Contracts**  
an introductory guide

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## Introduction

The Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations were introduced in 2002 to ensure that workers on fixed-term contracts are treated no less favourably than permanent comparable employees.

The Regulations also provide that where an employee has been on a fixed-term contract or a series of consecutive fixed-term contracts for a continuous period of four or more years, a further renewal, or the commencement of a new contract, will take effect as a permanent contract, unless the employer can objectively justify the continued use of a fixed-term contract.

## Definition of a 'fixed-term contract'

A fixed-term contract is defined as a contract of employment that:

- terminates on a specific date;
- terminates on completion of a specific task; or
- terminates on the occurrence or non-occurrence of any specific event (other than the attainment by the employee of any state or occupational default retirement age).

Teachers covering a period of maternity leave, for example, would therefore be included under this definition.

The Regulations only apply to **employees** and therefore do not apply to agency workers (i.e. day-to-day supply teachers), who are specifically excluded from the scope of the Regulations.

## The right not to be treated less favourably

Under the Regulations, an employee on a fixed-term contract has the right not to be treated less favourably by the employer than a comparable permanent employee in relation to:

- the terms of the contract; or
- any act, or deliberate failure to act, on the part of the employer, or any other detriment they are subjected to by the employer.

## Pay and conditions of service

'Less favourable treatment' is prohibited in relation to the actual terms and conditions of employment, as between permanent and fixed-term employees. Therefore, a teacher on a fixed-term contract is entitled to the same pay and conditions as a comparable permanent employee, including:

- access to the same pension provision as other teachers working for the same employer (e.g. the Teachers' Pension Scheme – TPS). Employees on fixed-term contracts automatically pay superannuation contributions

to the TPS in the same way as employees on permanent contracts;

- access to the same policies and procedures as a comparable permanent employee, including **performance management or appraisal**. However, the duration of a fixed-term contract and the specific nature of the post may mean that it is more appropriate for someone on a fixed-term contract to agree objectives which are proportionate to the role they are undertaking;
- access to the same sick pay entitlements as a comparable permanent employee;
- access to the same parental rights, including maternity, paternity, and adoption leave and pay, including the same rights as a comparable permanent employee to protection from discrimination if pregnant or taking maternity leave; and
- the same working pattern and working hours as a comparable permanent employee.

It is important to note that some statutory and occupational schemes may require a qualification period (e.g. 26 weeks' continuous service with the same employer) which may, in some cases, exceed the duration of a fixed-term contract.

### **Training and career professional development**

The right not to be treated less favourably also applies to the opportunity to receive training and continuing professional development (CPD) (*Regulation 3(2) (b)*).

### **Information on vacancies**

The Regulations entitle those on fixed-term contracts to secure a permanent position within the workplace (*Regulation 3(2) (c)*). A fixed-term employee, therefore, 'has the right to be informed by his employer of available vacancies in the establishment' (*Regulation 3(6)*).

For example, a fixed-term employee should have the opportunity to respond to a job advertisement, or be given reasonable notification of any vacancies, in the same way as other comparable permanent employees.

### **Access to non-contractual information**

*Regulation 3(2) (C)* also entitles a fixed-term employee to access the same non-contractual benefits available to permanent employees.

### **Protection against redundancy and dismissal**

An employee on a fixed-term contract is entitled to protections against redundancy and dismissal (*Schedule 2, Part 2, paragraph 5 (2)*).

## Comparable employee

In order for a fixed-term employee to show that they have been treated less favourably, they need to compare their treatment with that of 'a comparable permanent employee'.

The Regulations establish the following criteria to be applied when determining the appropriate comparator:

- both the permanent and the fixed-term employee have to be employed by the same employer at the time the less favourable treatment takes place;
- both employees have to be 'engaged in the same or broadly similar work, having regard, where relevant, to whether they have a similar level of qualification and skills'; and
- both employees must work or be based at the same establishment, or, if there is no comparator permanent employee at the same establishment who fulfils the first two conditions, a comparison can be drawn with an employee who works for the same employer somewhere else, provided they fulfil the first two conditions.

There must therefore be a real comparator within the employer's organisation (or, if not, at another of the employer's workplaces) at the time the less favourable treatment takes place. The choice of the comparator is therefore significant.

## 'Pro rata principle'

Fixed-term employees must apply the 'pro rata principle' when making a comparison with a permanent employee. This means that where a benefit can be broken down into separate parts that relate to the amount of time worked, then this should be done.

For example, if a fixed-term contract is less than a year's duration then the entitlement to annual leave would need to be calculated on a pro rata basis in comparison to a comparable permanent employee.

## When the right applies

The right not to be treated less favourably applies only:

- if the treatment is on the ground that the employee is a fixed-term employee; and
- the treatment cannot be objectively justified by the employer.

## 'Objective justification'

The reason for a fixed-term employee being treated less favourably is vital as the Regulations enable employers to defend a claim of less favourable treatment if they can show the difference is 'justified on objective grounds', including:

- if it is aimed at achieving a legitimate goal, such as a genuine business objective;
- if it is necessary to achieve that goal; and
- if it is an appropriate way to achieve it.

Even where a fixed-term employee is treated less favourably in regards to a specific aspect of their contract, the Regulations permit an employer to specifically provide a defence of objective justification if they can show that, taken as whole, a fixed-term contract is at least as favourable as the terms of a comparable permanent employee.

This means that less favourable treatment can be objectively justified if the total package offered to the fixed-term employee is of at least equal value to that of a comparable permanent employee.

The Regulations entitle employees on fixed-term contracts to write to the employer requesting a written statement giving particulars of the reasons for the treatment. The employer has to provide a statement within 21 days of the request.

## Dismissal

### Non-renewal

If a fixed-term contract is not renewed by the employer, then the failure to do so is treated as a dismissal in law, to which the relevant statutory procedures apply.

If the individual employed on a fixed-term contract has at least two years' continuous service with the same employer,<sup>1</sup> then it may be possible to pursue or challenge their dismissal further in an employment tribunal.

### If the employer wants to end the contract earlier

If the employer wants to end a fixed-term contract earlier, then this can only be done if it is clearly stipulated in the contract and the employer gives the relevant notice period (currently one week for at least one month's continuous service or one week for each year worked, provided there is two or more years continuous service).

A fixed-term contract may specify a longer notice period.

### If the employee wants to end the contract earlier

If the employee wishes to end the contract early, then they must hand in their notice one week in advance if they have worked more than a month for an employer.

A fixed-term contract may specify a longer notice period.

<sup>1</sup> In maintained community schools, the local authority is the 'employer'. In foundation and voluntary aided/controlled schools, the 'employer' is the governing body.

In independent schools, the employer may be the governing body/board, trustees or the proprietor. In multi-academy trusts (MATs), stand-alone academies, free schools and trust schools, the 'employer' could be the individual school, or it could be the overarching organisation.

## Working longer than the contract's end date

If an employee continues working past the end of a contract without it being formally renewed, there is an 'implied agreement' by the employer that the end date has changed.

The employer would still need to give the proper notice period.

## Conversion to permanent status

The Regulations specify that where employees have been employed on a **series of continuous, successive fixed-term contracts**<sup>2</sup> for four years or more, they are entitled to be regarded as permanent – unless the employer can show an objective justification for their continuing fixed-term status (i.e. for the achievement of a legitimate objective; necessary to achieve that objective; and an appropriate way to achieve that objective).

Where this is the case, any provisions in the contract that restrict its duration will cease to have effect and it will be regarded as a contract of indefinite duration (a permanent contract).

A fixed-term employee will be regarded as a permanent employee from whichever is the later of:

- the date on which the current contract was entered into or last renewed; or
- the date on which the employee acquired four years' continuous service.

The employee is entitled to write to the employer requesting a written statement of their permanent status, or alternatively giving the objective reasons why the contract remains fixed-term. The employer has to provide a statement within 21 days of the request.

If the employer asserts that there are objectively justifiable grounds for the use or renewal of the fixed-term contract, they must state what those grounds are. This statement can be taken into account should an employee wish to pursue a complaint.

Once a contract is regarded as permanent then the relevant minimum notice periods for all permanent employees will apply. The notice period should be set out in the written statement of particulars/contract provided by the employer.

## Continuous service

Individuals can link successive fixed-term contracts to form one unbroken period with an employer for the purposes of continuous service.

Under certain circumstances it may be possible to 'bridge gaps' in employment

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<sup>2</sup> For these purposes the Regulations provide that a 'renewal' includes an extension.

for the purposes of continuous service, such as:

- if successive contracts are 'end-on' to each other (e.g. one ending on 31 August and the next beginning on 1 September);
- successive weeks where two contracts finish and start in successive calendar weeks (e.g. one ends on 31 August and the next begins on 6 September). There is no break as the whole of any week during the whole or part of when an employee works can be counted for the purposes of continuous service;
- re-employment after redundancy where an employee is made redundant, but a further contract with the same (or an associated) employer is offered before the end of the previous one and it begins within four weeks of its expiry; and
- 'temporary cessation of work' where there is no contract, and the employee is not being paid, but the break is due to a 'temporary cessation of work', such as school closures or school holidays.

### Redundancy and redundancy payments

A redundancy arises when an employee is dismissed or when a fixed-term contract is not renewed because 'the requirements of the business for employees to carry out work of a particular kind...have ceased or diminished'.

In respect of a fixed-term contract, if the contract existed to cover long-term sickness absence or maternity cover, then it is unlikely that a redundancy situation will exist as the overall number of employees required will not have diminished (e.g. the individual on maternity leave will make up the full complement of employees on their return).

However, the non-renewal of a fixed-term contract which was created for a specific additional purpose (e.g. a specific project/assignment) may give rise to a potential redundancy situation provided that the individual involved has two years' continuous service.

The fact that an end to a fixed-term contract was anticipated from the outset does not mitigate against the fact that the employer no longer needs their services and that the work has ceased to exist.

A fixed-term employee will be entitled to at least statutory redundancy pay if they have two or more years' continuous employment with their current employer.

An employer may have a redundancy policy which is better than the statutory entitlements.

### Collective or workplace agreements

It may be the case that there is a collective agreement which has been agreed with the NASUWT regarding the use of or renewal of fixed-term contracts which

enhances the current statutory provisions and provides additional protections and guarantees around the appropriate use of fixed-term contracts. Where this is the case, such enhanced provisions should be protected.

### **Grievance procedure**

Whilst the Acas code of practice on disciplinary and grievance procedures does not apply to the non-renewal of a fixed-term contract, it is good practice to allow for the use of the grievance procedure in order to try to resolve the matter.

The code should be followed if the employer is seeking to dismiss an employee on a fixed-term contract for any other reason.

### **Industrial action**

Employees on fixed-term contracts are entitled to participate in any industrial action organised by the NASUWT in order to protect or improve the rights at work of NASUWT members.

It is unlawful for an employer to select an employee on a fixed-term contract for dismissal or decide not to renew their contract because they have taken part in lawful industrial action.

### **The use of successive fixed-term contracts**

The use of successive fixed-term contracts as an alternative to permanent employment has the effect of depriving employees of employment protection to which they would otherwise be entitled.

The NASUWT believes that fixed-term contracts should only be used to cover temporary needs, such as where there is a requirement to cover a teacher on maternity leave or long-term sickness absence, or where there is special funding of limited duration for the post.

In the case of newly qualified teachers, provided they have not been appointed on a genuinely temporary basis such as those described above, there is no valid reason why the employer should place them on a fixed-term contract for their induction period. If the post being offered to the newly qualified teacher is in reality a permanent post within the school structure, the NASUWT believes that a permanent contract should be offered.

### **Further legal context**

Fixed-term employees continue to have various additional rights under existing legislation (e.g. the Working Time Directive and the Equality Act 2010).





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